

THE LIFE AND WORKS OF RAPHAEL LEMKIN:
A POLITICAL HISTORY OF GENOCIDE IN THEORY AND LAW

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ABSTRACT

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Dissertation Director: Stephen Eric Bronner

Raphael Lemkin coined the word genocide and led a movement in the United Nations to outlaw the crime in the 1940s. During the 1920s and 1930s, Lemkin worked to establish an international criminal court at the League of Nations, and to criminalize state terror and the repression of national minorities. After the Second World War, Lemkin worked to enshrine the United Nations Convention for the Prevention and Punishment of the Crime of Genocide, which is now a cornerstone of international humanitarian law.

For several decades after the 1940s, however, Lemkin's accomplishments were ignored, partly because he left nearly 20,000 pages of writings on genocide unpublished, and partly because, in the context of the Cold War, global politics did not value humanitarian law. With the outbreak of genocide in the former Yugoslavia and Rwanda in the 1990s, the Genocide Convention became relevant to world affairs and Lemkin studies enjoyed a renaissance. Yet, until 2007, there were only two monographs written about Lemkin, and one was authored by a Holocaust denier.

This dissertation is the first intellectual biography and political history of Lemkin. The argument begins by examining Lemkin's Polish writings in the 1920s and 30s, and demonstrates that Polish legal, social, and political theory influenced Lemkin's work on genocide in the 1940s and 1950s. Secondly, the thesis also presents the first scholarly

analysis of Lemkin's magnum opus, *Axis Rule in Occupied Europe*, placing the book in the context of contemporary theorists and into the historiography of Holocaust and genocide studies.

The third part of the dissertation uses Lemkin's nearly 20,000-page archive to show his influence at the Nuremberg trials. Lemkin's memoirs and papers are used to present a new account of the diplomatic history of the UN Genocide Convention drafting processes, arguing that the US, UK, France, South Africa, Belgium, and Canada, opposed the convention but were out-maneuvered politically by a coalition of smaller states and former colonies, and global social movement Lemkin inspired. The final chapter then uses Lemkin's manuscripts to elucidate his social and political theory of genocide that he worked on while teaching at Yale and Rutgers universities, but died before he could publish.

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INTRODUCTION

Raphael Lemkin coined the word genocide and led a movement in the United Nations to outlaw the crime in the 1940s. Before his work at the UN, Lemkin was part of a generation of jurists who sought to establish an international criminal court and criminalize state terror and the repression of national minorities during the 1920s and 1930s. Together with figures such as René Cassin, John Humphrey, Hersch Lauterpacht, Jacob Robinson, Vespasian Pella, Henri Donnedieu de Vabres, and Eleanor Roosevelt, Lemkin set his sights on re-imagining humanitarian law after the Second World War, and convinced the states people of the world and their governments that placing humanitarian limits upon state sovereignty was in their own interests.¹

For several decades after the 1940s, the humanitarian institutions envisioned by these thinkers were ignored. The great powers saw genocide and human rights violations as trivial concerns in a world divided between the East and West, the USA and the USSR, where real and existential danger lurked in the specter of nuclear annihilation and the ideological battles over capitalism and communism. Lemkin described the Paris Assembly of 1948 as “the end of the golden age for humanitarian treaties at the U.N.”²

¹ Daniel Marc Segesser and Myriam Gessler, “Raphael Lemkin and the International Debate on the Punishment of War Crimes (1919–1948),” *Journal of Genocide Research* 7 (2005); Ana Filipa Vrdoljak, “Human Rights and Genocide: The Work of Lauterpacht and Lemkin in Modern International Law,” *European Journal of International Law* 20 (2010); Michael R. Marrus, “A Jewish Lobby at Nuremberg: Jacob Robinson, and the Institute of Jewish Affairs, 1945–1946,” *Cardozo Law Review* 27 (2006).

² Raphael Lemkin, *Autobiography*, Raphael Lemkin Papers, Manuscript Collection 1730, Manuscript and Archives Division, New York Public Library (hereafter NYPL), New York, Reel 2, Box 1, Folder 36, pagination unclear. See Raphael Lemkin, *Totally Unofficial: The Autobiography of Raphael Lemkin*, ed. Donna-Lee Frieze (New Haven: Yale University Press, 2013), 173.

Within a few short years, the same governments that agreed to outlaw genocide and draft a Universal Declaration of Human Rights tried to undermine these principles.³

During his lifetime, Lemkin enjoyed fleeting celebrity. After the UN adopted the Genocide Convention in 1948, the word “genocide” quickly fell from the historical horizon, and Lemkin slipped into obscurity. By the last years of his life, Lemkin was living in poverty in a New York apartment without full-time employment. When he died of heart failure in 1959, it had been two years since he last taught at Rutgers University and his life work seemed for naught. The US, Lemkin’s adopted country, had systematically refused to ratify the Genocide Convention. It was a political death-blow to the law, which needed the backing of the US in order to have any meaningful legitimacy. If they were familiar with the word at all, states people and the public shrugged off genocide as inevitable, or they believed that the sovereign nation-state had the right to commit genocide against the people living within its borders.⁴

Except for a few scholars who took him seriously, decades passed before Lemkin’s name and accomplishments were recognized.⁵ But Lemkin’s public reception began to change in the 1970s with the emergence of a global human rights movement.⁶ The 1990s brought a revival of international law that put the Genocide Convention’s

³ Mark Mazower, *Dark Continent: Europe’s Twentieth Century* (New York: Alfred Knopf, 1999).

⁴ Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven: Yale University Press, 1982).

⁵ A. Dirk Moses, “Raphael Lemkin, Culture, and the Concept of Genocide” in *Oxford Handbook of Genocide Studies*, ed. Donald Bloxham and A. Dirk Moses (Oxford: Oxford University Press, 2010).

⁶ Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2012).

legal machinery to work for the first time in nearly half a century.⁷ Prosecutions of genocide began in response to atrocities in the former Yugoslavia and Rwanda, and in 1998 the International Criminal Tribunal became the first international court to prosecute the crime of genocide, convicting Jean-Paul Akayesu of genocide in Rwanda. Lemkin's ideas were suddenly a cornerstone of international law.⁸ Yet, until 2007, there were only two books written about Lemkin. One of them was authored by a Holocaust denier who accused him of spinning anti-Nazi propaganda.⁹

Despite its claim to neutrality and impartiality, international law emerged from polemic ideological battles and remains deeply enmeshed in international politics.¹⁰ This helps us understand why international humanitarian law went dormant during the Cold War and emerged again in the 1990s as global political movements looked to the humanitarian institutions created in the 1940s in the hopes that they could govern. Whatever the case may be, that international humanitarian law and human rights were relevant to the global politics in the 1990s sparked an effort to reexamine the life and works of the jurists and thinkers who created those laws and institutions after the Second World War.¹¹ Cassin, along with Humphrey, is considered the main author of the Universal Declaration of Human Rights, and is now regarded as one of the century's

⁷ William A. Schabas, *Genocide in International Law: The Crime of Crimes*, 2nd ed. (Cambridge: Cambridge University Press, 2009), 642.

⁸ Alexander Laban Hinton, "Critical Genocide Studies," *Genocide Studies and Prevention* 7 (2012), 4–15.

⁹ James J. Martin, *The Man Who Invented "Genocide": The Public Career and Consequences of Raphael Lemkin* (Torrance, CA: Institute for Historical Review, 1984).

¹⁰ Martti Koskenniemi, *The Politics of International Law* (Oxford: Hart Publishing, 2011).

¹¹ Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton: Princeton University Press, 2009). Mark Lewis, *The Birth of the New Justice: The Internationalization of Crime and Punishment, 1919-1950* (Oxford: Oxford University Press, 2014).

most influential figures.¹² And Lauterpacht, who gave crimes against humanity its juridical form and helped usher in an international legal regime based on individual rights and responsibilities, has also enjoyed a renaissance after years of neglect.

Beginning in the late 1990s, scholars began to realize that Lauterpacht's legal theory succeeded in revising a Grotian and Victorian tradition in international law, moving the law away from a Hugo Groitius's model of viewing international relations as the relations between states, and towards an understanding that international politics was shaped by individuals and social movements within states and that individuals could be the subject of international law. Lauterpacht, nevertheless, upheld Grotius's vision that morality and self-interest were always aligned, and that the object of international law should point towards a law of love and charity.¹³ Lemkin, as I argue, shared these views and the two jurists should be understood as working in tandem to advance this vision of the law, conceptualizing the two crimes that now rest at the foundation of humanitarian law, crimes against humanity and genocide.

This dissertation aims to critically reexamine the life and works of Raphael Lemkin, and to position Lemkin in the panoply of jurists and theorists who helped to re-imagine humanitarian law in the twentieth century. Intellectual biographies are inevitably built around a "double gaze" that looks back into time "in the direction of the practical field" of what the subject accomplished and did, and forward "in the direction of the

¹² Jay Winter and Antonie Prost, *René Cassin and Human Rights: From the Great War to the Universal Declaration* (Cambridge: Cambridge University Press, 2013).

¹³ Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* (Cambridge: Cambridge University Press, 2001), 410.

ethical field” to establish the importance of the subject.¹⁴ As a work of political history, the dissertation seeks to provide an account of Lemkin’s juridical thought that connects the history of ideas to the historical and political contexts of Lemkin’s milieu, with an eye towards the importance of Lemkin’s life and works for our own time and, perhaps, even the future.

Chapter 1 reviews Lemkin’s early life, placing his autobiographical account of his own intellectual development into the context of eastern European politics, in a region historians have termed the “shatter zone of empires” or “blood lands.” Given that there is such little documentation of Lemkin’s early life, most of what is known about Lemkin comes from Lemkin’s own account. I do not take Lemkin’s autobiography as a repository of historical facts—although it certainly contains many—but as a narrative that reveals the texture of Lemkin’s particular way of thinking about his own life and the political and social issues that defined his life experiences. In such a way, Lemkin’s autobiography in my account becomes a text that is open to theoretical analysis, which can help answer questions about Lemkin as a thinker—not in regards to what he was thinking when he was a young man, but in his fifties when he wrote his autobiography. This helps mitigate against the “rhetorical illusions” that are inevitable in an intellectual biography, for the biographical account of any person is built upon fragments of the subject’s life that are contrived so as to give his or her life and mind a logical coherence, when the subject’s actual life could never have been reduced to any such logic.¹⁵

¹⁴ Paul Ricoeur, *Oneself As Another*, trans. Kathleen Blamey (Chicago: The University of Chicago Press, 1992), 115.

¹⁵ Pierre Bourdieu, “L’illusion Biographique,” *Actes de la Recherche en Sciences Sociales* 62-63 (1986), 70.

Chapter 2 uses Lemkin's early writings to place Lemkin's emergent ideas within two major intellectual traditions that dominated the intellectual and political milieu of central and eastern Europe. The first tradition that Lemkin engaged was national cultural autonomy, as articulated by the Jewish historian Simon Dubnow and the Austrian Social Democrats, Otto Bauer and Karl Renner. The second intellectual tradition that Lemkin was indebted to was Polish studies of totalitarianism, from legal theory to sociology and economics, with a particular focus on how the USSR criminalized forms of "anti-revolutionary" national consciousness and defined people who held such "enemy" identities as criminals to be arrested or killed for the protection of society. Lemkin's theoretical ideas on the law and politics in the Soviet Union was shaped by the political discourse over the nationalities question in eastern Europe and, most especially, by the traditions of humanitarian intervention on behalf of vulnerable minorities and the minority protection treaties of the interwar years.

The chapter argues that Lemkin's work on international law, along with his studies of totalitarianism, the Soviet Union, and the nationalities question in Eastern European politics, culminated in his 1933 proposal to the Fifth International Conference for the Unification of Criminal Law in Madrid that the League of Nations outlaw "barbarism" and "vandalism." He defined barbarism as the attempt to destroy entire minority groups through violence, discrimination or economic disenfranchisement. Vandalism was the attempt to destroy a group's cultural works, including libraries and art, but also their unique rituals, ceremonies, and beliefs.¹⁶ Lemkin's work in the mid-

¹⁶ Raphael Lemkin, "Les Actes Constituant un Danger General (*interétatique*) Considérés Comme Delits du Droit des Gens," in *Actes de la Vème Conférence Internationale pour l' Unification du Droit Pénal (Madrid 14–20 Octobre 1933)*, ed. Manuel López-Rey (Paris: A. Pedone, 1935).

1930s, I argue, is indicative of a growing synthesis in his thinking between Polish theories of totalitarianism and Jewish autonomy and national cultural autonomy.

In the 1940s, Lemkin synthesized his ideas of barbarism and vandalism into one concept, “genocide,” to describe the processes by which nations are systematically destroyed through a wide range of tactics, the most brutal of which was the attempt to massacre every individual who belonged to the targeted nation. This chapter argues that although Lemkin was already a highly accomplished scholar, he had not yet formulated his social, political, and legal theory of genocide. Namely, barbarism and vandalism for Lemkin were acts, while he would see genocide as a dynamic social and political process. Secondly, there is no evidence that Lemkin connected barbarism and vandalism directly to colonial processes, as he did with genocide—although he did view barbarism and vandalism to be crimes endemic to the colonial world, along with slavery, the trafficking in children, and a litany of other terrors.

When Hitler and Stalin consummated their secret pact and invaded Poland in 1939, Lemkin became a refugee, fleeing the very horrors and terror that he had been trying to outlaw in the League. In the midst of the Second World War, he escaped to Sweden and lectured at the University of Stockholm on totalitarian innovations to international finance and foreign exchange policy. In Stockholm, Lemkin began a massive study of the Axis occupation of Europe. In the summer of 1942, he coined a word to describe the horrors that were unfolding: genocide. Out of this research, Lemkin wrote *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government,*

Proposals for Redress, where the word genocide first appeared in print.¹⁷ The book immortalized Lemkin among students of international law and is now considered to be among the finest examples of legal and political thought in the century.¹⁸

Curiously, *Axis Rule* is more often considered a foundational text of genocide studies than Holocaust studies. Alexander Hinton has written that most scholars who cite *Axis Rule* focus on the ninth chapter on genocide while ignoring the rest of the text, which covers the events that are now called the Holocaust. One possible reason for this, Hinton suggests, is that genocide did not figure prominently in the Nuremberg war crimes tribunals and therefore *Axis Rule* was never institutionalized in the memory of Nazi atrocities. Coupled with this, Hinton argues, is the fact that genocide studies and Holocaust studies each have their own origin myth, where the UN Genocide Convention, not the Holocaust, is viewed as the landmark moment in the genealogy of genocide studies, which places *Axis Rule* within the mythical origins of genocide studies, not Holocaust studies.¹⁹ Another reason is that *Axis Rule* was written before the institutionalization of Holocaust memory.²⁰ A last possibility is that the Holocaust is generally used to signify the destruction of European Jewry while Lemkin in did not interpret the persecution, destruction, and the suffering of Jews as different from the

¹⁷ Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (New York: Carnegie Endowment for International Peace, 1944).

¹⁸ Sergey Sayapin, "Raphael Lemkin: A Tribute." *European Journal of International Law* 20 (2010): 1157-59.

¹⁹ Hinton, "Critical Genocide Studies," *Genocide Studies and Prevention*, 6.

²⁰ A. Dirk Moses, "Does the Holocaust Reveal or Conceal Other Genocides? The Canadian Museum for Human Rights and Grievable Suffering," in *Hidden Genocides: Power, Knowledge, Memory*, ed. Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson (New Brunswick: Rutgers University Press, 2013), 21-22.

suffering of other “enemy” nations whom the Germans targeted for destruction, or even the victims of Stalin’s genocides or colonial genocides.

Regardless, the origin myth of the two academic fields is precisely that—a myth.

In Hinton’s words, the narrative:

elides the fact that, without the Nazis’ attempted annihilation of European Jews and other groups, Lemkin’s word might never have made it into the dictionary and the field of genocide studies might not exist, Lemkin might have been a forgotten man, and we might very well be talking about “extermination” and “crimes against humanity” instead of genocide. In other words, no Holocaust (as the Nazi atrocities were later constituted), no Lemkin, no UNCG [Genocide Convention], no genocide studies. For these and other reasons, the Nazis’ attempted destruction of the Jews and other groups clearly stands as a watershed event in the twentieth century, one that helped catalyze the human rights regime and led to the emergence of genocide studies.²¹

Following this view, Chapter 3 establishes the case for interpreting *Axis Rule* as a work of social, political, and legal theory. The chapter places Lemkin’s work within the context of other studies of totalitarianism, fascism, and National Socialism written by Lemkin’s contemporaries, including Franz Neumann, Ernst Fraenkel, and Carl Schmitt as well as the later works of Hannah Arendt, among others. Chapter 4 traces the significance of *Axis Rule* in the context of Holocaust and genocide studies. One argument I develop shows the clear affinities between Lemkin’s *Axis Rule* and Raul Hilberg’s classic history, *The Destruction of the European Jews*. *Axis Rule* shaped Leni Yahil’s 1969 account of the rescue of Danish Jews, also. And Lemkin figured prominently in the works of Yehuda Bauer and Steven Katz, and their debates on the uniqueness of the Holocaust, and whether the Holocaust was the only true genocide in history.

²¹ Hinton, “Critical Genocide Studies,” *Genocide Studies and Prevention*, 6.

The two chapters help to answer a central question in the field: What was so special about the word genocide? The word *völkermord*—or, nation-murder—appeared in turn of the century reports about the German colonial war against the Herero and Nama peoples, and was later used by public and private German and Habsburg sources to describe the Ottoman campaign against Armenians.²² Yet, for whatever reason, Lemkin, who was fluent in German and would have come across this word, chose not to use it. Likewise, the word genocide finds an antecedent in the concept of *nationicides*, used by François-Noël Babeuf in his 1794 book, *Du Système de Dépopulation ou la Vie et les Crimes de Carrier*, to describe and condemn the conduct of Jean-Baptiste Carrier in the War of the Vendée when troops sent from Paris started a project of depopulation and destruction of the territory.²³ Yet, for whatever reason, genocide—not *völkermord* or *nationicides*, nor barbarism and vandalism—was the word that took hold. Perhaps it was the philosophy behind Lemkin’s neologism? But luck also played a role. Although Lemkin finished writing *Axis Rule* in 1943, a contract dispute delayed the publication by one year. Serendipitously, this ensured that the book was released right after Soviet forces liberated the Majdanek, Belzec, Sobibor, and Treblinka camps, and just before the liberation of Auschwitz. Public figures, journalists, and lawyers turned to the word genocide to describe and explain the horrors of the camps.

Impressed by *Axis Rule*, the Chief US Prosecutor at the Nazi war crimes tribunal in Nuremberg, Robert Jackson, hired Lemkin, who had been working for the US Board of

²² Henry R. Huttenbach, “From the Editor: Lemkin Redux: In quest of a Word,” *Journal of Genocide Research* 7 (2005), 444.

²³ Carmelo Domenico Leotta, *Il Genocidio Nel Diritto Penale Internazionale: Dagli Scritti di Raphael Lemkin allo Statuto di Roma* (Torino: G. Giappichelli Editore, 2013), 72-76.

Economic Warfare. While the charges of genocide were eventually dropped from the Nuremberg proceedings, and Lemkin left Nuremberg believing his legal efforts were a failure, Lemkin left his mark on the tribunal. As Assistant US Prosecutor Sidney Alderman recalls, *Axis Rule* and Neumann's *Behemoth* were the two basic texts used by the jurists of the Nuremberg tribunal to understand the facts, basis, and structure of Axis war crimes.²⁴

Lemkin's limited role in the International Military Tribunal at Nuremberg is the focus of Chapter 5. Despite his perceived failing, Lemkin succeeded in influencing the prosecution's strategy of exporting Anglo-American criminal conspiracy laws into international law to charge Nazi defendants with war crimes and crimes against humanity by virtue of their participation in a vast criminal enterprise. Similarly, the chapter also discusses Lemkin's behind-the-scenes plea to prosecute Nazi rape and sexual violence as genocide. Indeed, crimes that we would now call gender crimes or gender violence occupy a significant position in *Axis Rule*. Lemkin carried these proposals into his lobbying work in the UN, securing the support of women's organizations partly through his instance that a law against genocide could bring rape and sexual violence under the preview of international humanitarian law.

Chapter 6 outlines the coalitions Lemkin built in order to secure the convention's passage. Not only did Lemkin inspire a global movement of authors, public intellectuals, and dignitaries—such as Gabriela Mistral, Pearl Buck, Aldous Huxley, and Leon Blum—

²⁴ John Q. Barrett, "Raphael Lemkin and 'Genocide' at Nuremberg, 1945-1946," in *The Genocide Convention Sixty Years After Its Adoption*, eds. Christoph Safferling & Eckart Conze (The Hague: T.M.C. Asser Press, 2010).

to support the convention, but he had a talent for presenting the genocide convention as relevant to a far-reaching range of values and ideals. Lemkin managed to convince his supporters and the UN delegates that the genocide convention spoke to the values of progressivism, anti-colonialism, Islamic theology, and Gandhism, in addition to being a defense against rape as a weapon of conquest, and a source of cosmopolitan values. By the end of the drafting process, delegates had taken to arguing that Muslims around the world were being targeted for genocide while the world watched in silence. Two of the delegations that Lemkin relied upon for support—Pakistan and Egypt—reminded the other delegates in the drafting committee that the partition of India and the displacement of Palestinians constituted genocide according to the laws they were debating. One of the main theses of the chapter is that—contrary to popular memory which places the western European countries as the great champions of humanitarian principles and human rights—Brittan, France, Belgium, Canada, the United States, and the Soviet Union worked to undermine a rigorous and enforceable law against genocide, fearing that such a law would be used to prosecute their treatment of their own oppressed populations and colonial subjects. Instead, it was a coalition of smaller states, many of which were former colonies, that ensured the convention was finally adopted.

Lemkin relied upon this collation of smaller states, but he also gained the help of powerful diplomats who intervened procedurally at important moments. And he masterminded, along with his friend James Rosenberg, an incessant lobbying effort that flooded the delegates' offices with hundreds of telegrams. However, the history of the Genocide Convention cannot be reduced to Lemkin's thinking and his efforts.²⁵ Indeed,

²⁵ Lewis, *The Birth of the New Justice*, 295.

Lemkin quickly learned that the Genocide Convention no longer “belonged” to him, for the final law differed greatly from his theoretical understanding of genocide. While Lemkin is often presented as paranoid, seeing enemies of the Genocide Convention around every corner²⁶—and indeed, he often turned on long-time friends and allies such as Pella, believing that they were orchestrating the destruction of the convention²⁷—Lemkin had a keen instinct for understanding the position of every delegation at any moment in the drafting processes, learning to what extent they were willing to compromise, and then negotiating compromises to preserve the convention.

On December 9, 1948, The Convention on the Prevention and Punishment of the Crime of Genocide was signed. The first humanitarian law of the UN, the Genocide Convention along with the Universal Declaration of Human Rights formed the basis of the international human rights regime after 1948. For his efforts, Lemkin was awarded in 1950 the Cuban Grand Cross of Carlos Manuel de Cespedes, and was many times a nominee for the Nobel Peace Prize. During these years, Lemkin held professorships at Yale University and Rutgers University, and continued to work on an autobiography, a three-volume world history of genocide, and a book titled *An Introduction to the Study of Genocide in the Social Sciences*. He did not publish any of these works, dying prematurely.

Even though a significant, and unknown, percentage of his output was lost in a house fire, nearly 20,000 pages of Lemkin’s writings, manuscripts, papers, and letters

²⁶ Lewis, *The Birth of the New Justice*, 281.

²⁷ Raphael Lemkin to Edward A. Conway, December 19, 1949, AJHS, Box 2, Folder 2.

survive and are now housed in three primary archives in the US.²⁸ Chapter 7 uses these unpublished writings to elucidate Lemkin's system of thinking. Far from a marginal thinker, Lemkin was one of the few theorists who could connect ideas to action. The political context of the decade after 1948, however, ensured that Lemkin's ideas would be ignored by the governments of the world and dismissed in scholarly journals by academics who accused *Axis Rule* of writing unscientific and emotional polemics because of his Polish and Jewish bias (both of which were seen as disqualifying Lemkin from being a scholar). Lemkin's book proposals for his ambitious *History of Genocide* were routinely rejected by publishers who did not think there was a sufficient general or academic audience interested in genocide.

Had Lemkin completed and published these works, he might have been remembered as one of the most prolific authors and theorists of the twentieth century. Yet, as it was, his ideas on genocide spoke to the political and moral conditions of world affairs for only a brief window of time. "The rain of my work fell on a fallow plain," Lemkin wrote in his autobiography, describing how little the world seemed to care about his work.²⁹

The landmark texts that appeared in the early 1980s and formed the basis of genocide studies engaged Lemkin's ideas in various ways.³⁰ More often than not, these

²⁸ The Manuscripts and Archive Division of the New York Public Library (NYPL), 5th Avenue and 42nd Street, New York City, New York; the American Jewish Historical Society (AHJS), 15 West 16th Street, New York City, New York; and the Jacob Rader Marcus Center of the American Jewish Archives, 3101 Clifton Avenue, Cincinnati, Ohio.

²⁹ Lemkin, *Autobiography*, pagination unclear. See Raphael Lemkin, *Totally Unofficial: The Autobiography of Raphael Lemkin* (New Haven: Yale University Press, 2013), 132.

³⁰ Israel W. Charny, *How Can We Commit the Unthinkable? Genocide, The Human Cancer* (Boulder, CO: Westview, 1982; Irving L. Horowitz, *Taking Lives: Genocide and State Power*, rev. ed. (New Brunswick,

early authors proceeded to correct Lemkin on a concept that he himself had invented, presuming Lemkin did not understand genocide.³¹ It was Leo Kuper who most seriously engaged Lemkin's writings to shed light on the Genocide Convention.³² Indeed, for Kuper, the convention and the concept of genocide could only become intelligible by engaging Lemkin's work.

The UN Genocide Convention defined the crime of genocide as follows:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

The right of humanitarian intervention to protect persecuted populations had already been established in the laws of nations, Kuper wrote. However, the Genocide Convention, for the first time, established the basis of humanitarian intervention through judicial processes.³³ What Kuper noticed was that the Moscow Declaration of August 8, 1945—which established the Charter for the International Military Tribunal to try Nazi war crimes—contained the embryonic categories of international law but dealt with the prevention of mass atrocities in a retroactive manner, prosecuting past actions. What is more, the three categories of “Crimes Against Peace,” “War Crimes,” and “Crimes

NJ: Transaction, 2002); Jack Nusan Porter, *Genocide and Human Rights: A Global Anthology* (Washington, DC: University Press of America, 1982).

³¹ Moses, “Raphael Lemkin, Culture, and the Concept of Genocide,” 21.

³² Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven, CT: Yale University Press, 1982).

³³ Kuper, *Genocide*, 20.

Against Humanity,” could only be prosecuted when they were committed in connection to an act of international war between states. The UN Genocide Convention, by contrast, invited member states of the UN to enact corresponding domestic legislation against genocide so as to coordinate multilateral humanitarian intervention to suppress and prevent genocide, as well as prosecute genocide in relevant tribunals. This meant, in Kuper’s analysis, that the Genocide Convention could have direct political consequences in international affairs to a degree that far exceeded the Nuremberg principles. As a result, Kuper’s analysis shows, the UN member states directed their delegations to work towards rewriting Lemkin’s idea of genocide so that the law against genocide would not infringe upon the actions of their own states but could still be used as a political weapon against their global competitors.³⁴

The great powers were largely unwilling to renounce their right to commit genocide against their own nationals, and their delegations expressed anxiety about the potential for the convention to intervene in their internal affairs to prevent genocide.³⁵ In interpreting the convention, therefore, it is necessary to recognize that the major powers all believed they were committing genocide as Lemkin defined the crime, and took it upon themselves to write their own genocides out of the law. By turning back to *Axis Rule* to revive the spirit of the law, Kuper argued that the legal and scholarly understanding of genocide must take into account that Lemkin held a broad and subjective understanding of what groups should be protected by the convention, as well as a wide range of actions that qualified as genocide, which could be committed through

³⁴ Kuper, *Genocide*, 24.

³⁵ Kuper, *Genocide*, 29.

political, social, cultural, economic, biological, physical, religious and moral actions, as well as through mass killings.³⁶

Lemkin would become known to the wider public in 2002 when Samantha Power included a short biographical sketch of him in her Pulitzer-Prize winning book, *A Problem from Hell: American in the Age of Genocide*. While Power deserves credit for popularizing Lemkin, the book's journalistic account does not engage the depths of Lemkin's theory, but attributes the origins of Lemkin's idea of genocide to his experience of the pogroms in Poland and to reading novels about mass slaughter as a young boy. This creates a narrative in which Lemkin's life experiences are taken to be the impetus for his ideas, and a straight line is drawn between his childhood and the passage of the Genocide Convention, without investigating the intellectual milieu in that Lemkin engaged. Similarly, John Cooper also collapses Lemkin's theory into his biography.³⁷ Thus, in Cooper's account, it is Lemkin's reaction to the Holocaust that led to his formulation of the idea of genocide in the summer of 1942, so that the events now known as the Holocaust was *the* formative moment in Lemkin's idea of genocide, rather than *a* formative moment.

Between Power and Cooper's texts, a set of myths have developed around the figure of Lemkin. Both narratives present him as a type of loner whose ideas were misunderstood by his contemporaries, but would one day be vindicated when the world reached a more enlightened state. While Lemkin certainly felt alone and said that he was a solitary figure, his loneliness was not the loneliness of a shut-in, but the loneliness of a

³⁶ Kuper, *Genocide*, 30.

³⁷ John Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention* (New York: Palgrave MacMillan, 2008), 4.

man whose closest friends and family members lost their lives in genocide, and the loneliness of a man who was condemned to the company of hundreds, if not thousands, of people with whom he could only relate to on a professional level. Furthermore, Lemkin's contemporaries understood his ideas perfectly well, for he conversed fluently about philosophy, the law, and international affairs with a small legion of Nobel Prize winners and global intellectuals. Nor was Lemkin a misunderstood figure, for it is simply not possible for him to have lead a global movement to convince the world's states to write a law that revoked their warrant to commit genocide, if his ideas did not strike a chord with the spirit of his times or if he were misunderstood.

A critical bibliography of works on Lemkin that corrects these misconceptions has developed around body of journal articles and chapters. As the concept of genocide continues to play a larger role in international law, scholarship, and human rights discourse, it becomes increasingly important to investigate the genealogical origins of the genocide idea. Yet few scholars have attempted to systematically account for the intellectual origins and development of the idea of genocide in Lemkin's thought.³⁸ A political history of Lemkin's life and works is only the beginning of such a project.

Definitional Boundaries and the Question of the Uniqueness of Genocide

As scholars continue to focus more on Lemkin's works, Lemkin's position within genocide studies was slowly grown. Over the last decade, scholars have found that Lemkin's conception of genocide "had a broad historical purview and analytical focus on the different ways in which group life is destroyed, which he viewed as potentially

³⁸ See Moses, "Raphael Lemkin, Culture, and the Concept of Genocide."

encompassing not only physical but also biological, cultural, and political destruction carried out by state and non-state actors.”³⁹ This conception has provided scholars with an analytical lens for considering largely forgotten cases of genocide, or for comparing seemingly disparate cases of genocide to fruitfully investigate the role of colonialism, conquest, settler societies, and even modernity, in causing or motivating genocide.⁴⁰ This approach, however, troubles many scholars who regard the UN Genocide Convention and later genocide scholars as correcting Lemkin’s understanding of genocide, by restricting the meaning of genocide so that it encompasses a fewer array of cases.

One prevalent argument is that the concept of genocide loses its moral opprobrium when the definition of genocide is expanded to include Lemkin’s original, intended definition of genocide. This common critique amongst scholars who study genocide—from across the academic disciplines—rests on the correct assumption that the originator of a concept does not always develop the most workable definitions of it. The argument holds that the concept of genocide in its contemporary usage developed its meaning not from Lemkin’s thinking, but more from the drafters of the UN Genocide Convention, the international tribunals of the 1990s and 2000s, and scholars who developed definitional boundaries of the concept in order to speak about genocide as an objective social fact.⁴¹

In the context of this debate, it is necessary to consider the closely related argument that the drafters of the UN Genocide Convention wrote the convention with the

³⁹ Hinton, “Critical Genocide Studies,” *Genocide Studies and Prevention*, 11.

⁴⁰ Hinton, “Critical Genocide Studies,” *Genocide Studies and Prevention*, 11.

⁴¹ For a discussion on this trend in scholarship, see Hinton, “Critical Genocide Studies,” *Genocide Studies and Prevention*, 11.

Holocaust in mind. This argument rests on a belief that the drafters of convention were trying to define a concept for what they regarded as a new and horrendous crime: the physical extermination of a group, as such, as opposed to other forms of mass killing.⁴² Since the people doing the drafting were representing powers that had killed millions of civilians through campaigns of strategic bombing, including the use of the atomic bomb, the argument goes, they did know the distinction between mass killing in war, which was horrible, but did not believe it qualifies for the supreme opprobrium that genocide was meant to entail. In such a view, the UN Genocide Convention is taken as a conscious attempt by the drafters of the convention to place a particular type of mass violence at the apex of international law—the attempt to exterminate an entire ethno-racial, religious, or cultural group through mass killing. From this view, Lemkin’s definition is seen as being improved upon because genocide, in his view, was not something rare and unusual, but something ordinary in human history, if tragic. This, however, was Lemkin’s point. The tragedy of world history, for him, was that history is filled with cases of human beings attempting to remove other groups of human beings from the social fabric of the world—and that all examples of this were genocide, whether the victims were consumed by fire in death camps; whether they were starved to death through intentional famines; whether they died on slave ships; or, as the UN Genocide Convention states, whether the perpetrators of genocide intended to destroy a group by “forcibly transferring children of the group to another group” or inflicting serious “mental harm.”

The final version of the convention is far from Lemkin’s first proposed draft (as discussed in Chapter 6) and does not include acts such as the banning of languages or the

⁴² On this debate, see Martin Shaw, *What is Genocide?* (Cambridge: Polity, 2007).

burning of museum as acts of genocide—unless they can be shown to cause serious mental harm. Nevertheless, brining about “serious mental harm” and “forcibly transferring children” are not types of physical killing. This is an important detail when addressing some of the definitional debates that linger in the field of genocide studies, which must be addressed before beginning the main argument of the book. Lemkin, who spoke from the widely-held position of National Cultural Autonomy, believed that nations were aspects of human consciousness. Thus, Lemkin wrote, nations exist in the mind, so it followed that nations could be destroyed through the mind. Since the Genocide Convention specifically protects national groups, Lemkin also believed that the convention protected the minds of the people—and, indeed, it does (see Chapter 7). It is legally possible to charge a perpetrator with committing genocide by inflicting terror, trauma, or torture upon a population—without ever physically destroying the group. Likewise, with the forcible transfer of children, no individuals would have to die in order for genocide to be found. Rather, the perpetrators need only to cause serious mental harm, or forcibly move children to a new group, with the intention of severing the social reproduction of the group, producing a kind of cultural or symbolic death while leaving the individual people alive. As I argue in Chapter 6, the delegations that favored Lemkin’s original and expansive definition of genocide fought dearly to preserve these few short sentences, seeing them as the necessary foundation for a cosmopolitan international law.

This reading of the diplomatic history of the convention requires that we critically examine the “dilution” metaphor that is so prevalent in scholarship, inside and outside of Genocide Studies. The metaphor rests on an implicit belief that the drafters of the UN

Genocide Convention wrote the law with the intention to outlaw the kinds of violence that occurred specifically during the Holocaust—a narrow type of mass violence, committed intentionally, to destroy a religious, racial, or ethnic group. From this starting point, the Holocaust stands out as a particular type of moral wrong, far beyond the violence that was committed by the states whose delegates were serving on the drafting committees—violence such as mass-killings and terror in colonial territories, or the use of atomic weapons. To restate the argument cynically, we find that the argument suggests that the UN Genocide Convention intended to criminalize the kinds of mass killing inflicted by the Nazis in Europe, while leaving the mass killing committed by the US and Western European countries—such as the killing of hundreds of thousands of human beings with firebombs and atomic weapons—as legal forms of violence that were not as morally offensive as the Holocaust. The problem with this view-point, however, is that it misunderstands that the exact wording of the convention does not limit genocide to mass killings, while also misrepresenting what was actually happening in the Genocide Convention drafting committees.

Indeed, the major powers would only agree to sign the convention so long as their violence was removed from the scope of the law. The Stalinist Soviet Union moved to ensure that political groups and economic groups were not explicitly listed as the potential victims of genocide. The UK, France, Canada, New Zealand and the US worked to make sure that the Genocide Convention would not apply to their treatment of colonial subjects, indigenous populations, or citizens belonging to racial minority groups, while South Africa wanted to make sure the convention could not cover Apartheid. However, this is only half of the story. What about the delegations that believed the experience of

the Holocaust in Europe was a particularly violent expression of longstanding social and political processes of state power being used to exterminate undesired human beings and remove entire societies and cultures from the world? Do their intentions not count when we speak about the delegates' intentions?

From the perspective of the law or social theory, there is no a priori reason why genocide should have to be defined narrowly or encompass a small set of cases, Hinton has written.⁴³ The argument that expanding definition of genocide “dilutes” the meaning and power of the term conjures up the image of a pure substance being adulterated by a contaminating extraneous element, Hinton continues. Thus, genocide as a concept remains “pure” when it refers only to a few, narrow historical cases—the Holocaust, and often the Armenian or Rwandan genocides. To include as genocide other cases that are not “pure” genocides is seen as cheapening the term. But, Hinton asks, who determines what is extraneous? “The dilution trope is a gate-keeper notion that asserts case-study primacy and relevance on the basis of embodied metaphor, not critical analysis.”⁴⁴ So, we might ask, what political processes or potential cases of genocide are excluded from the purview of critical analysis when this gate-keeping metaphor is applied to interpreting Lemkin’s definition of genocide and intentions of the delegates who drafted the UN Genocide Convention?

Since the dilution metaphor rests on a claim that the delegates on the UN Genocide Convention drafting committees had the Holocaust in mind when they corrected Lemkin’s first definition of genocide, it must be remembered that it was

⁴³ Hinton, “Critical Genocide Studies,” *Genocide Studies and Prevention*, 11.

⁴⁴ Hinton, “Critical Genocide Studies,” *Genocide Studies and Prevention*, 11.

countries such as India that first supported Lemkin's efforts to outlaw genocide under international law at the UN. The Indian delegate told Lemkin that the concept of genocide was in keeping with the anti-colonial politics and the ethics of Gandhism (see Chapter 6). The *travaux préparatoires* and UN documents demonstrate that the delegates on the committees debated whether or not the foundation of Israel constituted a genocide in the Holy Land, according to even the most narrow of understandings, along with many other cases (see Chapter 6).⁴⁵ Do the intentions of these delegates not count?

For as much as Lemkin said that the UN Genocide Convention was a moral force, he knew the document was the product of a political process, not a moral process. Perhaps more than anybody else, he was keenly aware that the law against genocide was a compromise between the major powers that initially wanted nothing to do with an international law criminalizing genocide, and a coalition of smaller states and former colonies that wanted to outlaw a broad range of violence and persecution aimed at destroying groups because of their religion, or other aspects of the ethno-national identity. As William Schabas pointed out, Lemkin had a remarkable gift of being able to mobilize public movements in favor of the genocide convention so that any delegation's opposition to the convention would tarnish the prestige of their country.⁴⁶ In Lemkin's autobiography he described this as a tactic to embarrass the major powers back to the bargaining table with the delegations that wanted a robust, enforceable, and broad convention. Indeed, the states that wanted no convention at all would only agree to a

⁴⁵ A point of clarity is in order: Lemkin never said that the genocide was being committed in the Holy Land with the foundation of Israel. However, as Chapter 7 makes clear, this claim was brought up by delegation with whom Lemkin worked very closely, and Lemkin never stopped working with them.

⁴⁶ Schabas, *Genocide in International Law*, 77.

convention one that was limited in its scope, and largely unenforceable. The parties that favored a rigorous and wide-reaching convention, on the other hand, took whatever version of the text they could succeed in getting. In such a way, Lemkin wrote in his autobiography, the final wording of the UN Genocide Convention was arrived at because of politics, not moral ideals.

Cosmic Consciousness

One of Lemkin's dearest friends, Nancy Ackerly, described him as a man who enjoyed keeping up with the latest openings of the art galleries in New York, and practiced Hindu sutras in Riverside Park along the Hudson River. When she first met him, erudite and romantic, he introduced himself to her outside of the International House on Claremont Avenue saying, "I can say I love you in fourteen languages." She keeps the books Lemkin was reading in the 1950s on cosmic consciousness—a movement partly inspired by Walt Whitman's transcendentalism and his concept of the over-soul that sought to find a unified human consciousness that transcended particular religious and philosophical expressions. Lemkin's volume of Rilke's poetry, which he also gave to Nancy, contains annotations where he underlined examples of what he saw as Rilke's expression of this cosmic consciousness.

This was Lemkin, a man who was fiercely dedicated to eradicating bigotry and provincialism, who described himself as belonging to many races, many religions, and many nations. But Lemkin was far from a utopian dreamer. Instead, he was ruthlessly pragmatic in his quest to enshrine these values into the world through the auspices of international law. He recognized that a world free of genocide was a fanciful dream—and he never pretended that he nor his movement nor the Genocide Convention could bring

the utopian world into existence. However, the foundation of how human beings treated each other could be transformed, slowly. The values necessary for making the utopian world real could be institutionalized, through the law, or through poetry, art, in college classrooms, and in the stories parents told to their children when explaining the horrors of the world. A new world was always possible.

Lemkin saw international affairs, war, and peace, not in Grotius's terms as the abstract relations between states, but as social and political processes that were ultimately driven by individuals whose actions were determined by their values and sentiments. He believed genocide existed throughout history, but that people did not think that it offended the moral senses. While Lemkin is often taken as a natural law theorist—and genocide an expression of natural law—he believed the great articles of natural law that grounded human rights and humanitarian law were not imminent in nature, but historically and socially created. Governments could manage human life “like currency in a bank,” he wrote, because the people who made up the state did not believe that it was wrong to do so. Lemkin's goal was to slowly change this, so that genocide would no longer be seen as inevitable or heroic, or a reasonable solution to political problems, but something that violated the foundation of the human cosmos.

CHAPTER 1: YOUTH, 1900-1923

*Henceforth I am the poet of labor, knowledge, grief —
No more in praise of beauty my hand the harp shall sweep.
I sing no song of conquest, no song of glorious deeds;
I suffer with the suffering, I weep with those who weep.*

— Semyon Yakovlevich Nadson, from “Dreams”⁴⁷

1.1 EARLY LIFE

Raphael Lemkin was born on June 24, 1900 into a Polish speaking Jewish family of tenant farmers in Imperial Russia. The farm, called Ozerisko, was located near the village of Bezwodene, fifty miles outside the city of Bialystok, in a region Lemkin described as “historically known as Lithuania,” which now sits in Belarus.⁴⁸ The people of this region lived in the shatter zone of empires and blood lands.⁴⁹ They survived political upheavals. They knew persecution. In his autobiography, Lemkin wrote that his life work to outlaw genocide was derived from his childhood experience of trying to survive and understand the antisemitism and violence of his world.

Today, Lemkin is recognized as one of the twentieth century’s seminal humanitarian theorists and activists. He coined the word “genocide,” and led a movement in the 1940s in the United Nations to outlaw genocide. In the years since, the word genocide has taken on a symbolic quality as the crime of crimes, the darkest of humanity’s inhumanity. Despite Lemkin’s legacy and accomplishments, little is known

⁴⁷ Semen Yakovlevich Nadson, “Dreams,” in *Songs of Russia: Rendered into English Verse*, trans. Alice Stone Blackwell (Harvard: Harvard University Press, 1905), 17.

⁴⁸ Raphael Lemkin, *Autobiography*, Raphael Lemkin Papers, Manuscript Collection 1730, Manuscript and Archives Division, New York Public Library, New York (hereafter NYPL), Reel 2, Box 1, Folder 36, 1.

⁴⁹ Omer Bartov and Eric D. Weitz, eds., *Shatterzone of Empires: Coexistence and Violence in the German, Habsburg, Russian, and Ottoman Borderlands* (Bloomington: Indiana University Press, 2013); Timothy Snyder, *Bloodlands: Europe Between Hitler and Stalin* (New York: Basic Books, 2010).

about his life and works. This is mainly because the only book he published on genocide, *Axis Rule in Occupied Europe*, was concerned with defining the crime of genocide, documenting how the Axis powers were committing genocide, and offering proposals for how to stop, prosecute, and prevent the crime. The book was the work of a consummate jurist and became a founding text in international humanitarian law. Lemkin intended to save his theoretical and social scientific writings on genocide for future publications. Dying young, he left these works unfinished. Among the surviving papers is the manuscript for his autobiography, *Totally Unofficial*, which remains the most significant source of information on his early life and intellectual development.⁵⁰

Donna-Lee Frieze explains that, for as much as *Totally Unofficial* was Lemkin's own autobiography, Lemkin thought of the book as a "biography" of the United Nations Convention for the Prevention and Punishment of the Crime of Genocide. In locating the origins of his life work to abolish genocide in his childhood, Lemkin's autobiography employs an implicit teleology that is troublesome to the scrupulous reader looking for a historiography of the UN Genocide Convention. The teleology naturalizes his life work and suggests that the course of his life was the only course possible. The claim actually undercuts one of the central points he wanted to make in the final chapters of *Totally Unofficial*—that the success of the UN Genocide Convention was not preordained. To outlaw genocide, his movement in the UN had to convince, one by one, the "smaller" states of the world to give up their sovereign right to commit genocide, in order to

⁵⁰ Tanya Elder, "What You See Before Your Eyes: Documenting Raphael Lemkin's Life by Exploring his Archival Papers, 1900-1959," *Journal of Genocide Research*, 7 (2005): 469-499.

outmaneuver the UK, USSR, USA, France, Belgium and South Africa, which were steadfastly opposed to outlawing genocide.

Nevertheless, from the first pages, Lemkin made clear that his family's existence in the Russian Empire was precarious because Jews were forbidden from living on farms or in villages. In a chapter titled "Buying the Right to Live," he recalled that the family was compelled to pay a prohibitive tenure to the owner of the farm, as well as a large bribe to the local police official, whom the children learned to fear "as a symbol of our bondage."⁵¹ But the family was not only buying the protection of the police. They were also buying isolation. Imperial Russian laws had forced Jews to live together in vulnerable locations, while providing no protections and rights to guarantee their safety. The Lemkin family may have been miles from a vibrant Jewish community, but living on the farm kept them away from the pogroms that swept through surrounding cities. Lemkin presents himself as an insatiable reader, shy and reflective, and decidedly uninterested in farm chores. Over and again, he credits his mother, Bella, as the source of his education and moral disposition, presenting her as an intellectual, a teacher, and an artist. When war encroached the farm, Bella buried her books in boxes in the forest. The fields were shelled and their harvests and possessions were seized, but the library always survived. In other writings and in interviews long into his life, Lemkin fondly recalled the literature Bella read to him. She ensured Raphael knew all of Nietzsche's works and was

⁵¹ Lemkin, *Autobiography*, 11.

fluent in four foreign languages before the age of fourteen.⁵² She sang the poetry of Semyon Yakovlevich Nadson to her children until they knew the words by rote.

Nadson was one of the most popular Russian poets during the three decades before the 1917 revolutions. Dying of tuberculosis at age 24, the poet was a cult figure among young adults and university students.⁵³ His poetry, described as a “quest for an enduring liberal ideal of humanity,”⁵⁴ contained an ethical and moral element that Bella sought to imprint on the young Raphael. While Jewish thought most certainly influenced him, Lemkin wanted people to know that romantic poetry and literature set his moral horizons. Bella was unable to locate a universal moral condemnation of violence in religious teachings, Lemkin wrote, so she turned to the poets. Nadson “was stronger than the Bible” in the family household, because “there was a pure repudiation of violence in Nadson” while “in the Bible we found some murders which our teachers had difficulty explaining.”⁵⁵

Throughout his later works, Lemkin would maintain that the only way to banish genocide from human societies would be to affect a change in morals and sentiments that fundamentally changed the way people treated each other. While the murder of individuals had firmly been condemned in moral codes in societies around the world, Lemkin believed, the destruction of entire peoples was accepted as a right of conquest

⁵² John Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention* (London: Palgrave, 2008), 12.

⁵³ Maxim Shrayner, *An Anthology of Jewish-Russian Literature, Volume 1: 1801-1953* (Armonk, New York: M.E. Sharpe, 2006), 79-80. Nadson’s verse was set to music by many Russian composers including Anton Arensky and Sergei Rachmaninoff, and his collected works sold 200,000 copies before 1917.

⁵⁴ Shrayner, 79-80.

⁵⁵ Lemkin, *Autobiography*, “First Love and Early Education.”

and celebrated. But to bring about such a change and usher in an age that condemned genocide instead of celebrating it, people needed a moral reference point to ground their sentiments. From an early age, beginning with his university studies, Lemkin believed that international law could provide such a moral reference point. But, he felt, such moral landmarks could also be provided by art and poetry.

Lemkin evidenced the role of art in shaping moral sentiments by pointing to the influence Nadson held over himself and his family. When news of a particularly violent pogrom in Bialystok reached the family farm, “in my childish way,” Lemkin wrote, “I joined with Nadson in protesting the grotesque mockery that men have perpetrated on other men.”⁵⁶ This pogrom was likely the Bialystok pogrom of 1906, a notorious massacre that shook the entire region.⁵⁷ Violence ignited when a police chief sympathetic towards Jews was assassinated. The deputy police chief blamed Jews for the murder and refused to allow Jews to lay a wreath on the coffin. Russian soldiers were deployed with rumors of a Jewish revolt. When a bomb exploded in a Christian religious ceremony, Jews were blamed. Soldiers opened the first shots of the pogrom, killing Jews and providing cover fire for rioters destroying and looting Jewish property.⁵⁸ Lemkin recalled that his mother used folklore and fables to help her children make sense of the violence. These lessons taught that “equity, justice, and fairness are the basic elements of reason,” Lemkin wrote. Yet, the parables offered a “pragmatic optimism” beyond “the naive

⁵⁶ Lemkin, *Autobiography*, 14.

⁵⁷ Donna-Lee Frieze, ed., *Totally Unofficial: The Autobiography of Raphael Lemkin* (New Haven: Yale University Press, 2013), 243, n.8.

⁵⁸ Sara Bender, *The Jews of Bialystok During World War II and the Holocaust*, trans. Yaffa Murciano (Waltham: Brandeis University Press), 14.

idealism of Nadson,” Lemkin remembered: “The unjust is made a fool because he destroys the reasonable bases of life.”⁵⁹

Historically, there was one element to the 1906 pogrom that the Russian state did not count on: solidarity between Jewish and Catholic Poles. Although the city government portrayed the riots as a conflict between Poles and Jews, news spread throughout the region that Bialystok’s Christians refused to join the massacre and protected their Jewish neighbors against the Russian troops and anti-Semitic agitators.⁶⁰ As Lemkin put it describing such violence, “nemesis catches up with the guilty.” This was a part of the world “in which various nationalities lived together for many centuries.” While “they disliked each other, and even fought each other,” they “all had a deep love for their towns, hills, and rivers.” This “feeling of common destiny” transcended the political borders of states and prevented these Poles, Russians, Prussians, Lithuanians, Ukrainians, and Jews “from destroying one another completely,” Lemkin wrote.⁶¹ Around the age of ten, Lemkin’s family enrolled the children in school in nearby Wolkowysk. In 1911, anti-Semitic tensions flared throughout Russia with the murder case of Mendel Beilis, a Jew accused of killing a young boy in Kiev. The Russian government charged Beilis with ritual murder, and built its case around the accusations of two drunkards. Lemkin remembers his classmates taunting the Jewish students by calling out “Beilis.” Tensions in the town grew and fears of mob violence against Jews spread

⁵⁹ Lemkin, *Autobiography*, “Introduction,” 13-14.

⁶⁰ Bender, *The Jews of Bialystok*, 14.

⁶¹ Lemkin, *Autobiography*, “Introduction,” 1.

through Western Russia. “The axes, the hammers and the guns were already prepared while the jury deliberated,” Lemkin recalled.⁶²

The Lemkin family discussed the trial at great length. At the time, they were reading the novel *Quo Vadis* by the Polish author Henryk Sienkiewicz, who won the Nobel Prize for Literature in 1905.⁶³ After reading Sienkiewicz’s description of the Roman persecution of Christians, Lemkin asked his mother why the Christians could not call upon the police for help. His mother reminded him that oppressed groups cannot turn to the state for protection. In Lemkin’s autobiographical narrative, the vignette plays a literary role, foreshadowing the fearful image of the police official whom the family must bribe to stay safe. It was the lawful police officials who posed a danger to the Jewish families, and the corrupt ones who saved them. His mother’s answer thereby establishes a theme in the narrative that reflected a core belief Lemkin held throughout his life: persecuted groups relied on the mercy of their oppressors, who often acted mercifully not out of the goodness of their heart but in accordance with their own interests.

Sienkiewicz’s depiction of the Roman persecution of Christians reminded Lemkin of the other histories his mother had him read: histories of French Huguenots shackled naked and roasted alive on hot stones, of seventeenth-century Japanese torture victims forced to drink water after all their bodily openings were cemented closed, of fifteenth century African and Spanish Muslim slaves crowded on the decks of ships under a murderous sun, paying sailors for the privilege of sitting in the shade without knowing

⁶² Lemkin, *Autobiography*, 16.

⁶³ Lemkin mentions his conversations with his mother about the novel on the first page of his draft autobiography, and in Herbert Yahraes, “He Gave a Name to the World’s Most Horrible Crime,” *Collier’s*, March 3, 1951.

they would soon be thrown into the sea. “A line of blood led from the Roman arena through the gallows of France to the pogrom of Bialystok,” he wrote. “And I hear the screaming of Jews in pogroms, with their stomachs ripped open, filled with feathers and tied with ropes.”⁶⁴ Lemkin likely exaggerates the ability of his child’s mind connect these historical events. Yet, in these lines of his autobiography, he demonstrates a belief that the suffering of Jews in eastern Poland was part of a larger pattern of injustice and violence that stretched back through history.

Lemkin was raised a conversant Jew,⁶⁵ and his ethics and activism were clearly grounded in Jewish traditions.⁶⁶ Yet, Lemkin hardly mentioned his Jewish identity, or religion in general, in any of his writings.⁶⁷ Speaking of his own cultural identity as a person born in imperial Russia into a Jewish family who considered himself Polish and then American, Lemkin told the *Christian Century* that he did “not belong exclusively to one race or one religion.”⁶⁸ He came into adulthood between the two world wars and rose to great success in Warsaw. While Poland, on the whole, was plagued by rampant antisemitism, Warsaw was a cosmopolitan center.⁶⁹ Jews were barred from civil service and the army corps but, in Warsaw, Lemkin could rise in the legal sector and become a

⁶⁴ Lemkin, *Autobiography*, 14.

⁶⁵ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 8-12.

⁶⁶ Steven Leonard Jacobs, “The Human, The Humane, and the Humanitarian: Their Implications and Consequences in Raphael Lemkin’s Work on Genocide,” in *Rafal Lemkin: A Hero of Humankind*, eds. Agnieszka Bienczyk-Missala and Slawomir Debski (Warsaw: The Polish Institute of International Affairs, 2010), 153-162.

⁶⁷ A. Dirk Moses, “Raphael Lemkin, Culture, and the Concept of Genocide,” in *Oxford Handbook of Genocide Studies*, eds. Donald Bloxham and A. Dirk Moses (Oxford: Oxford University Press, 2010), 23.

⁶⁸ Robert Merrill Bartlett, “Pioneer vs. an Ancient Crime,” *The Christian Century*, July 16, 1956.

⁶⁹ Daniel Feierstein, *El Genocidio Como Práctica Social: Entre el Nazismo y la Experiencia Argentina* (Buenos Aires: Fondo de Cultura Económica, 2008).

public prosecutor. There were also Jewish political parties in Poland, and a thriving free press in Warsaw that published newspapers and magazines in Polish, Yiddish, and Hebrew.⁷⁰ Within this context, Lemkin as a Jew expressed a deep sense of Polish patriotism. In the words of Professor A. Dirk Moses, Lemkin did not structure identity like a zero sum game.⁷¹ For Lemkin, one could “straddle the interstices” of more than one nation—in this case, a Jewish and Polish nation.⁷²

1.2 MINORITY RIGHTS AND MASSACRE

Scholars have suggested that the UN Genocide Convention grew directly out of the group rights and minority protection treaties that emerged in international affairs after the First World War.⁷³ This view wisely recognizes the continuity in Lemkin’s thinking between the 1930s and the 1940s, even if Lemkin eventually rejected the minority rights tradition as a means of protecting vulnerable national minorities. Because the minority rights treaties formed the foundation of contemporary human rights law, and because Lemkin engaged these treaties during his work on genocide,⁷⁴ it is necessary to present a brief overview of the minority rights tradition, which developed alongside the nineteenth-century tradition of military humanitarian intervention, where European powers sought

⁷⁰ Yehonatan Alsheh, “¿Puede un Ethnoscape Heterogéneo Constituir un *Genos* y Su Exterminio Genocidio?,” *Revista de Estudio Sobre Genocidio* Vol. 5 (2011): 11-27.

⁷¹ Moses, “Raphael Lemkin, Culture, and the Concept of Genocide,” 24.

⁷² Natan Sznaider, *Jewish Memory and the Cosmopolitan Order* (New York: Wiley, 2013), 82.

⁷³ Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton: Princeton University Press, 2009).

⁷⁴ William A. Schabas, *Genocide in International Law: The Crime of Crimes*, 2nd ed. (Cambridge: Cambridge University Press, 2009).

to intervene in the internal affairs of the other states to prevent the massacre of Christians or people they deemed were fellow nationals.

The minority rights tradition dates to the seventeenth and eighteenth centuries, when the annexation of sovereign states and the transfer of territory between sovereigns was conducted with provisions guaranteeing the protection of peoples living within the territories. More often than not, these stipulations regarded religious toleration. At the Congress of Vienna—held between 1814 and 1815 to preside over the political restructuring of Europe in the wake of Napoleon’s defeat—the guarantee of minority rights was framed in the context of nationality for the first time.⁷⁵ The wake of the eighth Russo-Turkish War in 1877 presented another major turning point in the history of minority rights.⁷⁶ Russia instigated the conflict to capture the Straits of Istanbul under the pretext of freeing pan-Slavic European Christians from Ottoman rule. This humanitarian narrative within European societies centered on the theme of saving good Christians from bad Muslims.⁷⁷ Lemkin was drawn to this humanitarian narrative from a very young age, and focused a considerable amount of his research efforts in the 1950’s on Ottoman massacres of Bulgarians in 1876. In his later research, Lemkin complained about the

⁷⁵ C. A. Macartney, *National States and National Minorities* (New York: Russel and Russel, 1968), 157-160.

⁷⁶ Carole Fink, *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878-1938* (Cambridge: Cambridge University Press, 2006), 4.

⁷⁷ Gary J. Bass, *Freedom’s Battle: The Origins of Humanitarian Intervention* (New York: Knopf Doubleday Publishing Group, 2009); Edward Said, *Orientalism* (New York: Vintage, 1978).

“armed support of [Great Britain] to the Turks against an invasion by Russia on behalf of the Christian population of the Balkans.”⁷⁸

The nineteenth century tradition of humanitarian intervention to prevent the massacre of national and religious minorities was an important source of inspiration for Lemkin’s eventual idea of genocide. European newspapers reported widely on “wars of extermination” in the provinces of the Ottoman Empire, by which they meant the massacre, displacement, or forced removal of indigenous populations.⁷⁹ And European diplomats contemplated the possibility of states destroying nations, much in line with the ideas Lemkin would term genocide. Commenting on the Russian government’s attempt to destroy the Polish nation in 1836, for example, the British Foreign Secretary Lord Palmerston remarked:

A kingdom is a political body, and may be destroyed; but a nation is an aggregate body of men; and what I states was, that if Russia did entertain the project, which many thinking-people believe she did, of exterminating the Polish nation, she entertained what is hopeless to accomplish, because it was impossible to exterminate a nation, especially a nation of so many millions of men as the Polish kingdom, in its divided state.⁸⁰

When Lemkin defined genocide in *Axis Rule in Occupied Europe* as a colonial process of destroying the national pattern of the oppressed and replacing it with the national pattern of the oppressor, he very much had in mind the scope of such nineteenth-century massacres—both in eastern Europe and the Ottoman Empire, but also the wars of extermination being committed by Western European powers in their colonies.

⁷⁸ Raphael Lemkin, “Research Essay on Turkish Massacre of Bulgarians,” Raphael Lemkin Collection, American Jewish Historical Society, Boston, MA, and New York, NY (hereafter AJHS), Box 8. Folder 16, p. 13-14. It is likely that Lemkin did not write this, but the article was prepared by a research assistant.

⁷⁹ Davide Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815-1914* (Princeton: Princeton University Press, 2012), 32.

⁸⁰ Rodogno, *Against Massacre*, 32-33.

The aftermath of the eighth Russo-Turkish War in 1877 was settled during the 1878 Concert of Europe in Berlin, where the Great Powers broke up portions of the Ottoman Empire to keep for themselves.⁸¹ In the Balkans, the Ottoman Empire was forced to grant national independence to Serbia, Montenegro, and Romania, and autonomy to Bulgaria. These Balkan states, which had never before existed, were confronted with the problem of sustaining their internal stability as newly imagined nation-states while containing large percentages of people who considered themselves to be different nationalities. The Great Powers feared that the treatment of national minorities would undermine the new Balkan nation-states and inhibit the expansion of these new economies. In return for granting political sovereignty to these new states, the powers imposed upon them requirements for liberal citizenship rights and minority protections. These minority protections were not reciprocally required of the Great Powers and contained no enforcement mechanisms. Unsurprisingly, these minority protections were ignored at the outbreak of the Balkan Wars in 1912, a conflict that cast dark omens over the fate of minority groups in the young century.⁸² During the war, new nationalist movements were on the rise in the Balkans and the crumbling Ottoman Empire. The twelve-year old Lemkin would not have been aware of these geo-political dynamics, but they were actively shaping the world in which he lived and would give rise to the historical events that first shaped his political consciousness as a young university student.

⁸¹ Russia extended its coastline in the Black Sea and annexed eastern Ottoman territories. Britain, France, and Austria-Hungary awarded themselves Cyprus, Tunisia, and Bosnia-Herzegovina respectively.

⁸² This paragraph is drawn from Fink, *Defending the Rights of Others*.

Leon Trotsky, who covered the outbreak of war on October 14, 1912 for the Russian newspaper *Kievskaya Mysl*, presented a contemporary view of the conflict, writing that the Great Powers had justified their support of the Balkan wars against the Ottoman Empire through the slogan “the Balkans for the Balkan peoples.”⁸³ The national states in the Balkans, which were promoted by Russia and the Great Powers, were carved out of a geographical area where the respective national groups had lived dispersed amongst one another. Thus the state-political forms were determined not by the ethnographic map of the peninsula, but by European diplomacy. While “we have learned to wear suspenders, to write clever articles, and to make milk chocolate,” Trotsky quipped, “when we need to reach a serious decision about how a few different tribes are to live together ... we are incapable of finding any other method than mutual extermination.”⁸⁴ His predictions of mutual exterminations along national identity lines would be a fairly accurate prediction of the violence to come.

As the war concluded and Ottoman provinces began to break free into new nation-states, the Bulgarian military began to torture and massacre Muslim Ottomans, sending streams of Muslim refugees from Balkan territories into Istanbul, carrying stories of horrors at the hands of Christian troops. In the words of Ugur Ümit Üngör, the effect upon the Young Turks nationalist movement was formidable. Much of the Young Turk leadership was from areas under Serbian and Greek rule, and the forced removal of Muslims and massacres set in motion a discourse of revenge against Christians that underscored Young Turk ideology and legitimized the revanchist genocides committed

⁸³ Leon Trotsky, *The Balkan Wars: The War Correspondence of Leon Trotsky*, ed. Brian Pearce, trans. George Weissman and Duncan Williams (New York: Pathfinder, 2010), 193.

⁸⁴ Trotsky, *The Balkan Wars*, p. 193.

by the Young Turk regime against Armenian, Assyrian, and Greek Christians during the First World War.⁸⁵ Living in Poland, Lemkin never heard about the Christian atrocities committed against Muslims. It was the Ottoman massacres of Armenians that reached Lemkin's ears after the war and inspired him to follow a career in the law. By the time he began working with the League of Nations in 1933, and especially when he coined the word genocide in 1942, Lemkin, unlike Lord Palmerston a century earlier, was now able to imagine the possibility of an entire nation of millions of human beings being destroyed in its entirety.

1.3 THE NATIONALITIES QUESTION IN INTERWAR GERMANY AND POLAND

The First World War claimed the life of Lemkin's youngest brother, and brought the collapse of the German, Habsburg, and Ottoman empires. In 1916 Germany conquered Poland from Russia and declared their intent to grant Polish independence, yet planned to place Poland under German control while depopulating the Jewish and Polish inhabitants along the Polish border and repopulating the area with German citizens.⁸⁶ In the middle of the war the Russian Empire collapsed in the face of peasant, worker, and soldier revolts. In February 1917, a new liberal regime continued Russia's offenses against Germany and Austria-Hungary. Germany helped the Bolshevik leader Vladimir Lenin return to Russia from exile in Switzerland in the hopes that his revolution would

⁸⁵ Ugur Ümit Üngör, *The Making of Modern Turkey: Nation and State in Eastern Anatolia 1913-1950* (Oxford: Oxford University Press, 2011).

⁸⁶ H. E. Goemans, *War and Punishment: The Causes of War Termination and the First World War* (Princeton: Princeton University Press, 2000), 114.

succeed and take Russia out of the war. By the end of 1917, Lenin's government in Russia was installed through a *coup d'état* and negotiated a peace with Germany in 1918, granting Germany control over Ukraine, the Baltics, and Poland. The Entente Powers eventually won the war and divided the eastern European portions of the German empire into independent republics to serve as a check against Bolshevik Russia and to prevent a German resurgence.

The League of Nations was established after the First World War in order to address the perceived causes of the war. The diplomats and statesmen negotiating the peace settlements believed that the Concert of Europe failed to prevent the war in Europe because it neither provided a structure of permanent representation nor guaranteed the collective security of its member states. It was also widely believed that the Concert failed because the previously defeated country, France, was included at the bargaining table in the peace settlements that established the Concert of Europe, offering an incentive for states to instigate wars.⁸⁷ The victorious powers after the First World War were determined to offer Germany no such incentive and excluded Germany from the peace negotiations.

Today, it is now commonplace to suggest with John Maynard Keynes that the great error in the peace treaties following the First World War was that they imposed a Carthaginian peace upon Germany, laying the groundwork for a politics of resentment.⁸⁸ At the time, however, Keynes was a dissenting voice. The punishment of Germany would

⁸⁷ Richard Langhorne, "Reflections on the Significance of the Congress of Vienna," *Review of International Studies* 12 (1986): 313-324.

⁸⁸ John Maynard Keynes, *The Economic Consequences of the Peace* (New York: Harcourt, Brace & Howe, 1920).

fit into a larger framework of the League of Nations, where collective security among League members was to be guaranteed by tiers of sanctions and by the threat of the full military might of the League being brought against any member that might wage war upon another member. The victorious powers then sidelined German participation in the peace settlement and carved out new democratic nation-states from the ashes of the continental empires. One of these new nation-states was Poland.

While the peace settlement created entirely new “nations,” the settlement also created around twenty million equally new minorities.⁸⁹ The entire region of Eastern Europe, from the Baltic to the Black Sea, was an ethnic-national tableau, with social identities diffusing throughout the region, making it impossible to establish any correlation between the geographical and sociological borders of a given nation. These were lands, after all, that had been ruled for centuries by empires that did not directly link territorial sovereignty to national identity.⁹⁰ Without citizenship rights in nation-states based on a homogenous identity, national minorities faced resentment and repression during the interwar years.

Compounding the problem, the victorious powers had limited Germany’s ability to shape the minority protection treaties at a time when Germans in the regions of the new nation-states were now second-class citizens, especially in inter-war Poland.⁹¹ The Weimar Republic became one of the most vocal defender of the rights of minorities abroad. And,

⁸⁹ Joseph B. Schechtman, *European Population Transfers: 1939-1945* (New York: Oxford University Press, 1946).

⁹⁰ Fink, *Defending the Rights of Others*.

⁹¹ See Eric Langerbacher, “Ethical Cleansing? The Expulsion of Germans from Central and Eastern Europe,” in *Genocides by the Oppressed: Subaltern Genocide in Theory and Practice*, eds., Nicholas A. Robins and Adam Jones, (Bloomington: University of Indiana Press, 2009).

by the 1930s, Germany could eventually claim that the League of Nations and international law were illegitimately established through a putative peace settlement, and that the German state had the right to intervene directly in the domestic affairs of foreign states to protect the racial German nation living outside of Germany.⁹² Many Germans, seeing themselves as subalterns, were an audience sympathetic to Hitler's claim in *Mein Kampf* that Germans were an oppressed indigenous people, setting the state for the Nazi program of genocidal revenge.⁹³

Poland was also deeply impacted by national minority politics after the First World War, as the new Polish state needed to forge solidarity among Polish people who had been separated politically and economically for over a century. The Austro-Hungarian Empire had preserved Polish national autonomy in Galicia while safeguarding the rights of large populations of Jews and Ukrainians. While there were frequent Polish peasant revolts against Polish landowners in Galicia, the Polish populations generally remained loyal to Vienna, while Poles were involved in the highest levels of state bureaucracy. In the Prussian Empire by contrast, and later Germany, intense nationalist campaigns to Germanize Polish lands produced xenophobic forms of German and Polish nationalism. In Russia, the Kingdom of Poland was ruled directly from St. Petersburg, remained one of the poorest in Europe, and suffered intense Russification efforts, while Polish revolts were followed by bloody crackdowns.⁹⁴

⁹² Carole Fink, *Defender of Minorities: Germany in the League of Nations, 1926-1933* (Cambridge: Cambridge University Press, 1972).

⁹³ A. Dirk Moses, "Empire, Colony, Genocide: Keywords and the Philosophy of History," in *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, A. Dirk Moses, ed. (New York: Berghahn Books, 2008), 37.

⁹⁴ Ezra Mendelsohn, *The Jews of East Central Europe Between the World Wars* (Bloomington, IN: Indiana University Press, 1983).

Several important Polish institutions sustained Polish nationalism across the three empires, including the Polish Catholic Church, Polish universities, a Polish language intelligentsia, and a romantic movement in the arts, music, and literature. After the First World War, these institutions were conduits for a new Polish national identity.⁹⁵ This led to problems, however, over how to integrate people living in Poland who were not “Poles.” In the minds of many, the Polish nation had survived over a century through resistance against Germans in Poznan and Upper Silesia, against Ukrainians in Galicia, and in the east against Jewish and, later, Bolshevik threats.⁹⁶ This sentiment divided the citizens of Poland, a state with sizable minorities of Ukrainians (14%), Jews (8%) Belarusians (4%), and Germans (4%).⁹⁷ While the state sought to assimilate Ukrainians and Belarusians, German and Jewish assimilation was viewed as impossible and undesirable. As a result, the Polish state sought to nationalize Slavic populations of the eastern rural districts while Germans and Jews faced civil and political suppression.⁹⁸ Germans in the west faced economic discrimination while their local press was harassed, their organizations disbanded, and their elected officials disqualified.⁹⁹

⁹⁵ Peter Brock, “Polish Nationalism,” in *Nationalism in Eastern Europe*, eds. Peter F. Sugar and Ivo J. Lederer (Seattle: University of Washington Press, 1994).

⁹⁶ Rogers Brubaker, *Nationalism Reframed: Nationhood and the National Question in the New Europe* (Cambridge: Cambridge University Press, 1996), 84-85.

⁹⁷ Brubaker, *Nationalism Reframed*, 86. Also see Anthony Polonsky, *Politics in Independent Poland* (Oxford: Oxford University Press, 1972). The census figures were underestimated in order to present Poland as more “Polish” than it actually was.

⁹⁸ Brubaker, *Nationalism Reframed*, 86.

⁹⁹ Richard Blanke, *Orphans of Versailles: The Germans in Western Poland, 1918-1939* (Lexington: University Press of Kentucky, 1993).

With regards to the positions of the Jews, historians have not shied away from calling Poland the most anti-Semitic country in interwar Europe.¹⁰⁰ Jews were excluded from jobs in public hospitals, universities, and the civil service. Jewish enrollment in universities was limited to a small percentage of the student body, and Jewish students risked physical attacks from classmates. Even moderate political parties felt the state belonged to the ethno-cultural Polish nation, and advocated for the exclusion of the “alien nation” of Jews.¹⁰¹ The “cultural antisemitism” of Poland, had deep roots, and took shape between 1880 and 1890 in political propaganda as well as literary and journalistic writing, which portrayed Jews as a type of sickness.¹⁰² The words “enemy” and “foreigner” became synonymous with Jews, who were described as “swamp people,” “plagues,” “filthy insects,” and “weeds.”¹⁰³ Conservative institutions, such as the Catholic press, cast Jews as scapegoats for Poland’s struggling economy and geo-political impotence. While many individual Catholics and priests denounced anti-Semitism, and published pleas for tolerance, the religious press tended to conflate Polish nationalism with Catholicism and disseminated a belief that Jews were the enemy of both the Polish nation and Christianity.¹⁰⁴

¹⁰⁰ Ezra Mendelsohn, “A Note on Jewish Assimilation in Polish Lands,” in *Jewish Assimilation in Modern Times*, Bela Vago, ed. (Boulder: Westview, 1981), pp. 141-150. Also see Jonathan Frankel and Steven J. Zipperstein, eds., *Assimilation and Community: The Jews in Nineteenth-Century Europe* (Cambridge: Cambridge University Press, 1992).

¹⁰¹ Brubaker, *Nationalism Reframed*, 96-103.

¹⁰² Joanna Beata Michlic, *Poland’s Threatening Other: The Image of the Jew from 1880 to the Present*, (Lincoln: University of Nebraska Press, 2006), 52.

¹⁰³ Michlic, *Poland’s Threatening Other*, 52-53.

¹⁰⁴ Z. Anthony Kruszewski, “Nationalism and Politics: Poland,” in *The Politics of Ethnicity in Eastern Europe*, eds. George Klein and Milan J. Reban (New York: East European Monographs, 1981). Also see Brian Porter, “Marking the Boundaries of the Faith: Catholic Modernism and the Radical Right in the Early

The ideology of Polish anti-Semitism also emanated from political parties that stoked the fires of hatred for their benefit. Anti-Jewish sentiment became a fixed plank in almost every political party's platform.¹⁰⁵ The National Democratic Movement often advocated for an ethnically and culturally pure Polish state for Polish people. The National Democratic leader Roman Dmowski claimed at one point that Jews had declared war on the Polish nation, that modern Poland's troubles were caused by "centuries of Jewish invasion," and that the Polish state had to "get rid of the Jews as the Spaniards did in the fifteenth century."¹⁰⁶ Even the peasant parties were resoundingly anti-Jewish. The Union of Peasants Party and the Christian-Peasant Party, both from Galicia, presented Jews as a national threat and centered their party's platform on removing Jews from Galician villages.¹⁰⁷ The most prominent peasant party, Stronnictwo Ludowe, advocated for moderate treatment of Jews and opposed anti-Jewish violence, but only because it believed that anti-Jewish violence caused social disorder and harmed peasants. The only political movements in Poland that did not position Jews as dangerous alien nation were the Polish Socialist Party (PPS) and the Polish Bund, a Jewish socialist party.¹⁰⁸

Jozef Pilsudski, the leader of the PPS from 1892 to 1918, and the head of state from 1918 to 1922, was initially adamant that Jewish religion and culture were part of Polish national life.¹⁰⁹ Yet, Pilsudski did not support equal Jewish rights out of principle,

Twentieth Century," in *Studies in Language, Literature and Cultural Mythology in Poland: Investigating "The Other,"* ed. Elwira Grossman (Queensland: Edwin Mellen Press, 2002).

¹⁰⁵ Michlic, *Poland's Threatening Other*, 58-59.

¹⁰⁶ Quoted in Michlic, *Poland's Threatening Other*, 66-67.

¹⁰⁷ Michlic, *Poland's Threatening Other*, 62.

¹⁰⁸ Michlic, *Poland's Threatening Other*, 58-62.

¹⁰⁹ Joshua D. Zimmerman, "Jozef Pilsudski and the Jewish Question, 1892-1905," *East European Jewish Affairs* 28 (1998): 87-107.

but because of political circumstances. As the first head of state in the independent Poland in 1918, Pilsudski found that his position on equal rights for minorities was favorable to the Western European countries that were dictating the terms of the peace talks after the war. The PPS also used the issue to distance itself from political rivals, insisting that Jews were entitled to civil equality, and should neither be discriminated against nor forced to emigrate.¹¹⁰ In 1918, Austrian head of state Karl Renner and Otto Bauer called for transforming the Austrian state into a federated state of nationalities that were not delineated geographically. Pilsudski followed, and asserted that “it is the state which makes the nation and not the nation the state,” copying one of Renner’s common sayings.¹¹¹ The solution to the Jewish question in Poland, Pilsudski believed, was to protect Jewish rights and establish a state where Polish citizenship was not dependent upon having a Polish identity or being a nationalist Pole.¹¹²

It is little wonder that Lemkin, as a young man in this new Poland, supported Pilsudski. His thought changed when Pilsudski returned to power in a 1926 coup d’état. But in 1918, when Lemkin was eighteen years old, the independence war hero promised equal rights and inclusion into the Polish state for all groups, including Jews. And, in fact, the situation for the Jews in Poland did not become terribly bad until Pilsudski died in 1935, leaving behind no major political figure in Poland who supported a multicultural state. There are some scholars who believe Lemkin’s enthusiasm with Polish patriotism

¹¹⁰ Michlic, *Poland’s Threatening Other*, 58-59. Also see, Timothy Snyder, “A Polish Socialist for Jewish Nationality: Kazimierz Kelles-Krauz, 1872-1905,” *Polin: Studies in Polish Jewry* 12 (1999): 257-270. And Michal Sliwa, “The Jewish Problem in Polish Socialist Thought,” *Polin: Studies in Polish Jewry*, 9 (1996): 14-31.

¹¹¹ Quoted in Eric Hobsbawm, *The Age of Empire: 1875-1914* (New York: Vintage Books, 1989), 148.

¹¹² Michlic, *Poland’s Threatening Other*, 62.

led him to organize groups of schoolboys to disarm Germans after the war, a story that is an exaggerated interpretation of a brief account in Lemkin's memoirs.¹¹³ And there are some who believe that, in a sign of his growing devotion to Pilsudski, Lemkin was wounded by shell fragments while fighting in Pilsudski's forces to drive a Bolshevik invasion out of Poland.¹¹⁴ Without any documentation in Lemkin's writings and memoirs, Lemkin's service in the Polish resistance forces is definitively a myth. But it is a myth with symbolic weight, used as proof of Lemkin's Polish loyalties as a teenager.

Fearing that Poland and the new nation-states would crumble in the face of their nationalities problems, the Entente Powers used the Versailles Treaty to install a minority protection regime. The powers, for instance, wrote into Article 93 of the Versailles Treaty a provision giving themselves the right to intervene in Polish affairs to protect minorities. The League of Nations subsequently brought about the first systematic protections for religious and national minority groups.

In *Axis Rule in Occupied Europe*, Lemkin argued that the minority protection treaties of the League were not intended to address a humanitarian need to protect vulnerable people, although there was such a need. Through this assessment, Lemkin arrived a position similar to that of recent scholars who believe the minority protection treaties were not considered to be ends in themselves, but a mean towards maintaining stability within Eastern Europe¹¹⁵ or a facet of the security architecture of the League of

¹¹³ Cooper, *Raphael Lemkin and the Genocide Convention*, 13.

¹¹⁴ There is no evidence in Lemkin's writings that he was injured, and he never fought in an army.

¹¹⁵ Frentz, *A Lesson Forgotten*, 85.

Nations.¹¹⁶ Rather than being intended to solve humanitarian problems, the minority protection treaties were foremost intended to solve political problems, stabilizing fledgling nation-states. Europe was still at war when the treaties were signed, after all. Bolshevik forces in Russia gave spirit to communist revolutionaries across Europe, while a democratically elected German government was employing nationalist rightwing militias to put down left revolutionaries. The US, UK, and France felt they could not risk a situation where minority groups would form nationalist separatist movements and threaten the new democratic nation-states, such as Poland.

The jurists at the Paris Peace Conference after the First World War had set about their task of reconstructing the political landscape of Eastern Europe after the collapse of the great multinational empires as nothing short of establishing a “New World Order.”¹¹⁷ The prevailing ideology of liberal nationalism that hung over these jurists dictated that legitimate states were politically and culturally conterminous, sharing one national identity defined geographically and socially.¹¹⁸ Added to this, US President Woodrow Wilson brought to the Paris talks a belief that the nationalist ambitions on all sides played a role in causing the war.¹¹⁹ Wilson’s Fourteen Points, delivered in January 1918, posited a naive assumption that national independence should be constituted geographically along ethnic lines, with boundary changes securing the sovereignty and autonomy of as

¹¹⁶ Thio, *Managing Babel*, 25.

¹¹⁷ Frederick C. Hicks, *The New World Order: International Organization, International Law, International Cooperation* (New York: Doubleday, 1920).

¹¹⁸ Carlton J. H. Hayes, *The Historical Evolution of Modern Nationalism*, (New York: R.R. Smith, 1931).

¹¹⁹ Li-ann Thio, *Managing Babel: The International Legal Protection of Minorities in the Twentieth Century* (Leiden: Martinus Nijhoff, 2005), 29.

many national groups as possible.¹²⁰ Point thirteen suggested that Polish independence would be jeopardized by the presence of Jewish and German populations, who must be offered minority protection guarantees in order to prevent them from making demands for political and economic autonomy from the Polish state.¹²¹ The peace talks consequently perused a paradoxical course on the issue of national groups in the newly formed states, with delegates viewing nationalism as a potentially destructive agent unleashed by the war yet believing that nationalism would provide the basis of stable states and peace.¹²²

Lemkin, in his later analysis of these political events that took place when he was in his late teenage years, felt these minority protection treaties were an improvement over the bilateral minority protection treaties in the Concert of Europe system, and greatly reduced the fear of smaller states that the Great Powers would use the minority protection treaties to intervene in their domestic affairs when it suited their political goals.¹²³ These rights did guarantee religious freedom, the freedom to speak any language, and the equality of all citizens before the law. On the surface, therefore, it seemed that groups such as Magyars, Ukrainians, Georgians, Azerbaijanis, Kurds, Armenians, Montenegrins, and the Irish had gained civil and political rights within the nation-states where they lived. But the protections and rights gained through the minority protection treaties after the First World War were rarely translated into actual practice, and circumscribed these

¹²⁰ Christian Raitz von Frentz, *A Lesson Forgotten: Minority Protection under the League of Nations* (New York: St. Martin Press, 1999), 38.

¹²¹ Frentz, *A Lesson Forgotten*, 38.

¹²² Nathaniel Berman, “‘But the Alternative is Despair’: European Nationalism and the Modernist Renewal of International Law,” *Harvard Law Review* 106 (1993): 1793-1801.

¹²³ Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (New York: Carnegie Endowment for International Peace, 1944), 91.

groups' political aspirations. Groups across Europe, such as the Irish and Jews, found that the minority protection regime subjected them to the new political order established after the war.¹²⁴ Their claims for political autonomy and rights, for example, were no longer matters of international affairs, but the domestic affairs of the states where the group members resided. When political or social claims made by minority groups were interpreted as secessionist or revolutionary, the doctrine of state sovereignty granted the nation-state the right to suppress minority groups with the full blessing of international law.¹²⁵ As Omer Bartov and Eric D. Weitz have written, nationalism created minorities and majorities, and minorities could either be protected by the majority nation-state under the League of Nations' Permanent Minorities Commission, or they could be driven out, or killed.¹²⁶

While there was no genocide, in almost any form imaginable, inside the system of sovereign states in western Europe from the beginning of the Concert of Europe until the outbreak of the Second World War when Hitler broke down the principle of principle of sovereignty and began a campaign of genocide, European states committed genocidal atrocities in their colonial territories against their colonial subjects and contributed to fueling genocidal violence in the states peripheries of eastern Europe; while the Russian empire committed genocide to solidify its late nineteenth century territorial gains in Poland and the Caucasus, and the Ottoman empire employed genocide to try and hold on

¹²⁴ Robert Redflob, "The Problem of Nationalities," *Transactions of the Grotius Society*, 17 (1931): 21-34.

¹²⁵ Thio, *Managing Babel*, 46.

¹²⁶ Omer Bartov and Eric D. Weitz, "Introduction: Coexistence and Violence in the German, Habsburg, Russian, and Ottoman Borderlands," in *Shatterzone of Empires: Coexistence and Violence in the German, Habsburg, Russian, and Ottoman Borderlands*, eds. Bartov and Eric D. Weitz (Bloomington: Indiana University Press, 2013), 5.

to the territories it was losing control over.¹²⁷ During the interwar years, in Leo Kuper's words, the nation-state was granted a warrant for genocide, broadly defined, to homogenize the national community of the nation-state if national minorities proved too unruly—engendering the horrors that Lemkin would soon make it his life task to prevent.¹²⁸

Reflecting on these political dynamics two decades later, Lemkin wrote in *Axis Rule in Occupied Europe* that during the interwar years the doctrine of national sovereignty trumped the minority protection regime, giving states the right to do what they pleased with their own citizens, from persecution to forced expulsion and massacre. Lemkin was not alone in this observation. An American contemporary who Lemkin corresponded with about the UN Genocide Convention, Quincy Wright, observed that minority group protections depended upon states agreeing to assure the continuance of diverse cultures in the world by protecting the autonomy of national groups within their borders through reciprocal treaties.¹²⁹ But these treaties were made by states that believed world peace and the system of international law depended on unified and whole states, which meant that the leaders and jurists from these states felt it was their state's right to

¹²⁷ Walter Richmond, "Circassia: A Small Nation Lost to the Great Game," in *Hidden Genocides: Power, Knowledge, Memory*, eds. Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson (New Brunswick: Rutgers University Press, 2014), 109-125.

¹²⁸ Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven: Yale University Press, 1982), 22-25.

¹²⁹ Lemkin was familiar with Wright's scholarship. See Quincy Wright, "Correspondence from Quincy Wright to Raphael Lemkin," Raphael Lemkin Collection, Box 1, Folder 18, AJHS, November 24, 1947.

persecute national groups and eliminate cultural diversity within their borders if it was necessary for maintaining their internal integrity.¹³⁰

Thus Poland could follow a trailblazing course and adopt some of the most progressive minority protections between 1918 and 1920 all while instituting increasingly discriminatory economic and civil policies against Jews, denying Jews access to public positions, and subjecting Jews to pogroms and massacres where perpetrators killed with impunity.¹³¹ Other minorities were targeted as well. In addition to the repression of Germans, Ukrainian schools were shut down and Ukrainians were prohibited from attending universities and from holding positions in the state bureaucracy which, coupled with political violence targeting Ukrainians, constituted a concerted effort to drive Ukrainians out of Poland, from regions where they had been living before the war.

Lemkin was nineteen years old when calls for alarm started going off across the United States and Europe about the situation in Poland. The Jewish Socialist League warned that a Polish nation-state would be the “great tomb” of the Jewish people, and prompted the Socialist Conference at Amsterdam in April 1919 to call for a representative of the Jewish nation at the League of Nations.¹³² Pogroms and massacres erupted across Poland, killing hundreds, and possibly thousands, of Jews. The largest of these massacres occurred in the cities Pinsk and Lwów, where Lemkin was set to start university the following year.¹³³

¹³⁰ Quincy Wright, *A Study of War*, 2nd edition, ed. Louise Leonard Wright (Chicago: Chicago University Press, 1983), 190-200.

¹³¹ See Fink, *Defending the Rights of Others*.

¹³² C. A. Macartney, *National States and National Minorities*; And see Frenztz, *A Lesson Forgotten*, 44.

¹³³ Fink, *Defending the Rights of Others*, 175.

1.4 BEAUTIFUL CRIMES: THE TELIERAN AND SCHWARZBARD TRIALS

In 1920, Lemkin enrolled at Jan Kazimierz University. Anti-Jewish violence raged around him, and a year later an assassination trial blanketed the newspapers of Europe. The former Grand Vizier of the Ottoman Empire, Mehmed Talat Pasha, was shot in Berlin by Soghomon Telieran, an Armenian who survived a massacre because the body of his dead mother concealed him. Talat was one of the architects of what Lemkin later termed the Armenian genocide. In his autobiography, Lemkin wrote that he was captivated by the assassin, who was said to have shot Talat while saying the words “this is for my mother.” But Lemkin also notes that, at the time of the trial, he believed that the Ottoman attempt to destroy the Armenian people bore deep similarities to the attempts made by other states to eradicate, expel, or destroy minority groups within their own borders.

After a sensational trial where Telieran admitted to killing Talat but pleaded temporary insanity, the court in Berlin acquitted him, deciding that he had acted under the psychological compulsion of his experience. What struck the young Lemkin was that “this trial [of an Armenian assassin] was transformed into a trial of the Turkish perpetrators.”¹³⁴ While the publicity and condemnation of the massacres was certainly a positive outcome of the trial, Lemkin wrote, there were two elements about the trial that troubled him. Lemkin’s law professors at instructed him that state sovereignty prevented the punishment of the Ottoman leaders. This left personal revenge as the only recourse available for Telieran, Lemkin argued, subverting the principle of legal justice. For the college-age Lemkin, the doctrine of the sovereignty of states meant that those leaders

¹³⁴ Lemkin, *Autobiography*, “Introduction,” 18.

responsible for state-sanctioned massacres could not be brought to trial. This created an highly unusual development in the Telieran case, where the state-perpetrated massacres of hundreds of thousands of Armenians was being judged by a court in Berlin, yet the perpetrator on the dock was not the one responsible for the massacre, but the one who sought vengeance for the massacre.

The court was working backwards, Lemkin wrote. The court had no jurisdiction over Talat's action, but it nevertheless condemned the actions of the state leader and determined that the man who assassinated the official had acted justly. When the court finally acquitted Telieran, Lemkin felt the jury recognized that Telieran upheld a moral order stemming from Talat's responsibility in orchestrating the massacre. But, in order to acquit Telieran, the jury decided he was insane and incapable of discerning the moral nature of his act. How could a court rule that a defendant upheld the moral order of society because he was insane and lacked morality capacity, Lemkin asked. This was a paradox that rendered the system of ethical evaluations undertaken by the court completely incongruent with the letter and spirit of the law, even though the court's moral and ethical evaluations seemed to speak directly to a universal moral maxim condemning the massacres of Armenians.

Lemkin proposed to his professors that the moral incongruity of the trial indicated that the sovereignty of states "cannot be conceived as the right to kill millions of innocent people," but rather should imply "conducting an independent foreign and internal policy, building schools, construction of roads, in brief, all types of activities directed towards the welfare of people."¹³⁵ With this model of sovereignty, Talat could have been held

¹³⁵ Lemkin, *Autobiography*, "Introduction." Pagination unclear. See Lemkin, *Totally Unofficial*, 20.

responsible for the massacres directly, bringing the letter of the law in line with the moral system on display in Telieran's murder case. His professors demurred. A decade later, when Lemkin was ready to name and outlaw these crimes, he would propose turning the concept of state sovereignty on its head in the name of humanitarian law.

In 1923, yet "another bomb exploded" in Lemkin's life when a Jewish tailor, Shalom Schwarzbard, shot Ukrainian Minister of War Symon Petliura in Paris to avenge the death of his parents in a 1918 pogrom in the Ukraine. Like the trial of Telieran, Lemkin observed, the courts in Paris heard the witness testimony of survivors, and the Paris jury found themselves in the same moral position as the court in Berlin. "The conscience of the jury did not permit punishing a man who had avenged the death of hundreds of thousands of his innocent brethren including his parents," Lemkin wrote; "however, neither could it sanction the taking of the law in ones hands in order to uphold the moral standards of mankind." The Paris court ruled that "the perpetrator is insane and therefore must go free." After the Schwarzbard trial, Lemkin published an article referring to the case as a "beautiful crime." He argued that moral sentiments of mankind had finally aligned themselves against acts of destroying a national, racial, or religious group. The evidence of this was the pattern of revenge killings unfolding, and the sympathy the assassins elicited from juries across Europe. In the article, Lemkin called for a law that would "unify the moral standards of mankind" to criminalize the pogroms and massacres that were being avenged.¹³⁶

1.5 THE EARLY WORKS ON THE SOVIET PENAL CODE

¹³⁶ Lemkin, *Autobiography*, "Introduction," 19.

Stirred by these trials where the assassins sought to avenge the massacres of extermination committed against their families and nations, Lemkin followed his interest in law. After finishing his college studies, he enrolled in a graduate program in philosophy at the University of Heidelberg in Germany, and then returned to Lwów where he earned his Doctorate in Law in 1926 at the renowned Jan Kazimierz University. That same year, Lemkin published his first book, *The Penal Code of Soviet Republics (Kodeks Karny Republik Sowieckich)*.¹³⁷ The book contained the first Polish translation of the Russian penal code and, in a commentary, briefly engaged Stalin's nationalities policies while dealing mainly with the historical evolution of the Russian and Soviet penal code. In 1928, the speaker of the Polish parliament Wacław Makowski wrote the introduction to Lemkin's next book, *The 1927 Criminal Code of Soviet Russia (Kodeks Karny Rosji Sowieckiej 1927)*.¹³⁸ In his analysis of the 1927 penal code, Lemkin noted that the reforms made to the Soviet penal code after Lenin's death marked no substantive difference from the laws Lenin's party enacted in 1922. The only difference was that the new code drew on nineteenth century Italian Positive legal theory to explicitly codify "social protection" as the purpose of the law. This small, but crucial, observation would remain a central component of his study of genocide and the law, where he saw genocide as legitimized through the law under slogans of social protection.

In his 1929 on the Italian penal code, Lemkin argued the legal code extended Italian sovereignty beyond Italy's borders through laws such as the criminalization of

¹³⁷ Rafał Lemkin and Tadeusz Kochanowicz, *Kodeks Karny Republik Sowieckich* (Warszawa: Wyd. Sem. Prawa kar., 1926).

¹³⁸ Rafał Lemkin, *Kodeks Karny Rosji Sowieckiej 1927* (Warszawa: Skład Główny w Księgarni F. Hoesicka, 1928).

“any insult to Mussolini committed by foreigners abroad.” This “exaggerated nationalism,” Lemkin wrote, cannot, by any means, “contribute to strengthening friendly relations with other countries.”¹³⁹ Likewise, Lemkin’s commentary on the Soviet Penal Code cited Lenin’s policy of using Soviet law as a component of the dictatorship of the proletariat. The Soviet system, like the Italian legal system, conceived of law as a form of social protection instead of punishment for individual crimes, Lemkin wrote.¹⁴⁰ This legitimized the arrest and killing of people who had a social consciousness considered criminal. The Soviet legal code was not merely a tool for maintaining the gains of the proletarian revolution, Lemkin argued; the law was a means for the education of the proletariat in the new social order, and therefore actively helped create the new communist system by providing the violence and coercion necessary for the destruction and transformation of the bourgeoisie.¹⁴¹

These books made Lemkin into a protégé in Poland. At the age of 27, he was named Secretary of the Court of Appeals in Warsaw and deputy public prosecutor in the District Court of Warsaw two years later. In the coming years, he went on to publish a book on the fiscal law of the Polish Republic, and an analysis of the history of legal

¹³⁹ Rafał Lemkin, *Kodeks Karny Faszystowski Włochy* (Warszawa: Nakładem Księgarni F. Hoesicka, 1929). Translation is quoted from Ryszard Szawłowski, “Diplomatic File: Raphael Lemkin (1900–1959), The Polish Lawyer Who Created the Concept of ‘Genocide’,” *Polish Quarterly of International Affairs* 2 (2005): 108.

¹⁴⁰ Rafał Lemkin, “Dzieje i Charakter Reform Karnego we Włoszech,” in *Kodeks Karny Faszystowski Włochy* (Warszawa: Nakładem Księgarni F. Hoesicka, 1929), 10. The summary of the text is my own. For an English translation of these passages, see Marek Kornat, “Polish Interpretations of Bolshevism and Totalitarian Systems (1918–1939),” in *Totalitarian and Authoritarian Regimes in Europe: Legacies And Lessons from the Twentieth Century*, eds. Jerzy Wojciech Borejsza and Klaus Ziemer (New York: Berghahn Books, 2006), 98.

¹⁴¹ Rafał Lemkin, “Ustawodawstwo Karne Rosji Sowieckiej, Kodeks Karny, Procedura Karno,” *Encyklopedia Podrecznej Prawa Karnego*, Vol. 25, ed. Waclaw Makowski (Warsaw: Warszawiej, 1938), 7. See Marek Kornat, “Polish Interpretations of Bolshevism and Totalitarian Systems (1918–1939),” 98.

amnesty.¹⁴² Lemkin achieved all this and secured a position as a professor of law at Tachkemoni College in Warsaw, and lectured at the Free Polish University, despite prohibitions against Jews from participating in public service. In 1933, he proposed some of the most sweeping changes to the structure of international humanitarian law. The rampant discrimination, the desecration of cultural diversity, the pogroms, the state terror, and the killing of people in order to destroy their group—the horrors that were seemingly endemic to his childhood and Eastern European politics—were to be outlawed as international humanitarian crimes. In 1933, Lemkin called these crimes “barbarism” and “vandalism.” In 1943, he called them “genocide.”

¹⁴² Rafał Lemkin and Jan Karyory, *Ustawa Karna Skarbowa z Dnia z Siepina 1926 r* (Warszawa: Nakladem Ksiegarni F. Hoesicka, 1931); Rafał Lemkin and Wlodz Sokalski, *Opinje O Projekcie Kodeksu Karnego* (Warszawa: Wydawnictwo Bibljoteka Icza, 1931); Rafał Lemkin, *Amnestja 1932 r. Komentarz* (Warszawa: Gebethner Wolff, 1932); and Rafał Lemkin, *Amnestja 1936 r. Komentarz* (Warszawa: Ksiegarna Powszechna, 1936).

CHAPTER 2: SOVIET TERROR AND THE LEAGUE OF NATIONS YEARS, 1933-1941

*Quietly flows the quiet Don;
into my house slips the yellow moon.*

...

*At dawn they came and took you away.
You were my dead: I walked behind.*

— Anna Akhmatova, from “Requiem 1935-1940”¹⁴³

2.1 BARBARISM AND VANDALISM

With the League of Nations, modern international law was being re-imagined for the first time in three centuries. The 1648 Peace of Westphalia contained the first treaties for protecting religious minorities within states but, in upholding state sovereignty, it also put to end a burgeoning medieval practice of international justice that had begun to take shape in the seventeenth century.¹⁴⁴ It was not until the middle of the nineteenth century, with the rise of humanitarian social movements, that sentiments across Europe shifted towards supporting international criminal courts.¹⁴⁵ The first prohibitions against certain weapons were established, as well as protections for combat medics. The Hague Regulations of 1907 are often considered the beginning of contemporary humanitarian law because they extended the laws of war to protect armed combatants and civilians in occupied territories during times of war.¹⁴⁶

¹⁴³ Anna Akhmatova, “Requiem 1935-1940,” in *Poems of Akhmatova*, eds. and trans. Stanley Kunitz and Max Hayward (New York: Mariner Books, 1973), 103.

¹⁴⁴ Georg Schwarzenberger, *International Law as Applied by International Courts and Tribunals: The Law of Armed Conflict* Vol. II (London: Stevens & Sons, 1968).

¹⁴⁵ William A. Schabas, *An Introduction to the International Criminal Court* (Cambridge: Cambridge University Press, 2011).

¹⁴⁶ Schabas, *Genocide in International Law*, 18.

After the First World War, there were major innovations in international law. A committee during the Paris Peace Conference in January 1919 investigated German war crimes and recommended expanding the laws of war to include the persecution of ethnic and national minority groups. The crimes the committee proposed closely resembled the crimes Lemkin later called as barbarism and vandalism, and then genocide.¹⁴⁷ The report listed criminal “attempts to denationalize the inhabitants of occupied territory” and recommended that Bulgarian, German, and Austrian authorities be charged for prohibiting the use of the Serbian language, closing schools, and destroying religious, charitable, educational, and historic buildings.¹⁴⁸

The Treaty of Versailles also contained provisions to establish an international criminal court and indict German Kaiser Wilhelm II, who fled to Holland.¹⁴⁹ Likewise, the Treaty of Sèvres called for an international tribunal to try Ottoman leaders for the murder of civilian populations, the atrocities Lemkin wrote about in university and later called the Armenian Genocide. The treaty was provocative because it called for expanding war crimes prosecutions beyond the killings of soldiers to the killing of civilians. It also established legal groundwork used by the Nuremberg tribunal after the Second World War. A 1915 joint declaration signed by Great Britain, France, and Russia condemned “these new crimes of Turkey against humanity” and affirmed that the allied governments would “hold personally responsible for said crimes all members of the

¹⁴⁷ Schabas, *Genocide in International Law*, 21.

¹⁴⁸ Schabas, *Genocide in International Law*, 21-22. Lemkin had likely read this report, while working with a group of jurists towards the same ends a decade later.

¹⁴⁹ Gary J. Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2000).

Ottoman Government.”¹⁵⁰ This was the first time the term of crimes against humanity was used in the context of international law.

Political sentiments held fast, however. Leaders did not relinquish the sovereign rights of their states. The Turkish tribunal was replaced with a declaration of amnesty in 1923.¹⁵¹ The Dutch government refused to extradite Wilhelm, while Wilson and Churchill refused to peruse legal justice and never fulfilled their tentative desires to bring German war crimes to trial after the First World War. They did, however, bring a handful of low-level German Army suspects to trial, including two judgments on the sinking of hospital ships and the murder of the Allied survivors.¹⁵² Nevertheless, during the interwar years, an international criminal court that could hear such cases was little more than a dream scratched into the pages of the peace settlements.

Initially, the early debates at the League over international war crimes were dominated by English-speaking jurists with a common law background who resisted punishing war crimes, if they considered war a crime at all.¹⁵³ By the mid 1920s, jurists with backgrounds in Roman law came to the fore and pressed for stronger international laws against war and war crimes.¹⁵⁴ The Association Internationale de Droit Pénal—a prominent association of jurists from France, Belgium, Spain and the new Eastern European countries—led the effort in the League to create the first truly international

¹⁵⁰ Schabas, *Genocide in International Law*, 18-19.

¹⁵¹ Schabas, *An Introduction to the International Criminal Court*.

¹⁵² Schabas, *An Introduction to the International Criminal Court*; James F. Willis, *Prologue to Nuremberg: The Politics and Diplomacy of Punishing War Criminals of the First World War* (Westport: Greenwood Press, 1982).

¹⁵³ Quincy Wright, “The Outlawry of War,” *American Journal of International Law*, 19 (1925): 76–103.

¹⁵⁴ Daniel Marc Segesser and Myriam Gessler, “Raphael Lemkin and the International Debate on the Punishment of War Crimes (1919–1948),” *Journal of Genocide Research*, 7 (2005).

criminal law and advocated for an international criminal court.¹⁵⁵

At the Free University of Warsaw, Lemkin met the Vice President of Association Internationale de Droit Penal, Professor Emil Stanislaw Rapport. The two collaborated to draft a new Polish Criminal Code in 1932, establishing Lemkin's reputation as a formidable jurist. The code was highly unusual in that Article 113, written by Lemkin, criminalized the production and dissemination of propaganda intended to incite a domestic population towards aggressive war and violence. Just a few years earlier, in 1927, Hersch Lauterpacht published an influential essay with the Grotius Society finding that prohibitions on propaganda to incite war were not violations of international law, but could be reasonably enshrined into municipal laws.¹⁵⁶ Lemkin claimed that the Polish penal code was the first in the world to do this.¹⁵⁷ In his commentary on the law, Lemkin articulated a position he never abandoned: domestic laws could be instruments for international peace. Because wars abroad had to be legitimized at home, Lemkin thought, outlawing the political and social acts within societies that incited violence and war could help secure peace.

Rapport introduced Lemkin into the circles of international law at the League of Nations through the auspice of the Association Internationale de Droit Pénal. Finally, Lemkin had platform from which he could develop his young ideas on the Telieran and

¹⁵⁵ Ibid.

¹⁵⁶ Hersch Lauterpacht, "Revolutionary Propaganda by Governments," in *International Law, The Collected Papers: The Law of Peace, Vol. 3*, ed. Elihu Lauterpacht (Cambridge: Cambridge University Press, 1977).

¹⁵⁷ I thank Professor Gregory Stanton for confirming to me the likely validity of Lemkin's claim that the Polish Penal Code was the first in the world to outlaw propaganda intended to incite war and violence. Prohibitions of propaganda for war during the inter-war years were enacted through bilateral treaties, and found an expression in the League of Nations. See Michael Kearney, *The Prohibition of Propaganda for War in International Law* (Oxford: Oxford University Press, 2007). Raphaël Lemkin and Malcolm McDermott, trans. *The Polish Penal Code of Minor Offenses* (Durham, NC: Duke University Press, 1939).

Schwarzbard assassination trials that sovereignty had to be redefined so as to hold state leaders accountable for humanitarian crimes committed against populations, while incorporating his work on the Soviet penal code into his larger humanitarian interest in preventing the destruction of nations.¹⁵⁸ With the failure of the minority rights treaties and the rise of totalitarian regimes in Italy, the USSR, and in Germany, “now was the time to outlaw the destruction of national, racial and religious groups,” Lemkin wrote.¹⁵⁹ In 1933, he proposed that the League of Nations outlaw the crimes of “barbarism and vandalism.” The spirit of the crimes was based on a model of sovereignty that Lemkin had proposed to his university professors in 1921 when he wrote about the Telieran trial and argued that state sovereignty “cannot be conceived as the right to kill millions of innocent people,” but rather as “building schools [and] roads” for “the welfare of people.”

Lemkin’s proposal to outlaw barbarism and vandalism was a turning point in his intellectual development. Lemkin defined barbarism as the attempt to destroy minority groups through violence, discrimination, or economic disenfranchisement. Barbarism was the systematic and organized assault against whole populations, encompassing pogroms, massacres, mass rape, forced removal of populations, forced adoptions, and cruelties designed to humiliate the victims. Vandalism was the crime of destroying a group’s cultural works, including libraries and art, but also their unique rituals, ceremonies, and beliefs. The cultural creations, arts, and traditions of each nation and culture contributed to the enrichment of all humanity, and therefore belonged rightfully to all humanity, he

¹⁵⁸ Segesser and Gessler, “Raphael Lemkin and the International Debate on the Punishment of War Crimes (1919–1948).”

¹⁵⁹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 22.

reasoned.¹⁶⁰ Lemkin insisted the two crimes were intertwined, attacking the physical and spiritual existence of nations.

In one sense, the two laws looked back to Lemkin's earlier work on the Soviet and Italian penal codes. He felt that drafting international legislation could facilitate the project of peace and protect national minorities from brutal destruction and repression. But the laws were also the first time Lemkin attempted to connect legal and political theory to the active pursuit of peace through law. Lemkin, who lamented "selling my soul to the devil spirits of the law," was never comfortable considering himself only a lawyer, a jurist, or a professor for he also regarded himself a humanitarian.¹⁶¹ His proposal was not just an empirical or theoretical study of the law. It attempted to diagnose the shortcomings in international humanitarian law and the minority protections treaties that had grave consequences for millions of people, and to close that gap with new laws.

Lemkin and his colleagues began their efforts to outlaw these crimes just as Germany withdrew its membership from the League in 1933, dealing a crippling blow to the organization. In January, after Kurt von Schleicher's government collapsed, Hitler was named Chancellor of Germany. A month later, in February, Germany walked out of disarmament negotiations in Geneva; Japan occupied Manchuria, ignoring the League's demand to respect Chinese sovereignty; and the National Socialists burned down the Reichstag in Berlin, blamed the Communist Party, and suspended civil liberties and free speech in Germany. That same year, the Schutzstaffel (SS) opened the Dachau

¹⁶⁰ Raphael Lemkin, "Les Actes Constituant un Danger General (*interétatique*) Considérés Comme Delits du Droit des Gens," in *Actes de la Vème Conférence Internationale pour l' Unification du Droit Pénal*, eds. Jimenez de Asua, Vespasien Pella, and Manuel López-Rey (Madrid 14–20 Octobre 1933) (Paris: A. Pedone, 1935).

¹⁶¹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 69.

concentration camp to imprison asocial people and communists; the Nazi party instituted boycotts of Jewish businesses; Jews were banned from public service and from working in high profile careers; and laws were passed to prevent people with “hereditary diseases” from having children. Thousands of Jewish refugees attempted to flee Nazi Germany. By the summer, the German state was supporting National Socialist terror campaigns in Austria and Czechoslovakia. In *Totally Unofficial*, Lemkin wrote that the jurists in his circle privately discussed *Mein Kampf* and believed the German Chancellor intended to carry out pogroms against Jews and institute a regime of biological national purity.¹⁶²

In the fall of 1933, Lemkin prepared his proposal to outlaw the crimes “barbarism” and “vandalism,” which he intended to deliver to the Fifth Conference for the Unification of Penal Law in Madrid.¹⁶³ In his text, Lemkin credited his Romanian colleague Vespasien V. Pella with initially creating the concepts. The two were close associates, working together on a wide range of issues and it is quite possible that the idea for barbarism and vandalism emerged from within the conversations between the two jurists. While the terms appear in Pella’s own writings, Lemkin gave the words their content.¹⁶⁴ Outlawing these two acts, Lemkin wrote, would prevent the purposeful destruction of works of culture that represented the specific “genius” of national and religious groups, protecting the “physical and spiritual life” of nations and people.¹⁶⁵

¹⁶² Lemkin, *Autobiography*, “Introduction,” 21.

¹⁶³ Raphael Lemkin, “Les Actes Constituant un Danger General.”

¹⁶⁴ See Jimenez de Asua, Vespasien Pella, and Manuel López-Rey, eds., *Actes de la Vème Conférence Internationale pour l’ Unification du Droit Pénal* (Madrid 14–20 Octobre 1933) (Paris: A. Pedone, 1935). Lemkin also provides citations for Pella’s use of the term in his brief.

¹⁶⁵ Lemkin, *Autobiography*, “Introduction,” 21.

Vandalism, Lemkin wrote, was an attack targeting a collectivity taking the form of a systematic and organized assault against the heritage or unique genius and achievement of a collectivity. Barbarism was an act of attempted extermination of ethnic, religious, or social collectivities regardless of the motive, such as massacres, pogroms, or attempts to destroy the economic existence of the members of a collectivity. Lemkin also included in this category brutalities that attack the dignity of the individual in cases where the act of humiliation is part of a campaign to exterminate the collectivity in which the victim is a member.¹⁶⁶ Given that Lemkin in *Axis Rule* considered “forced impregnation” (i.e., rape) to be an act of genocide and lobbied the Nuremberg tribunal to include Nazi sexual crimes as crimes against humanity and genocide, it is possible that the language of Lemkin’s proposal to outlaw barbarism and vandalism could be interpreted to include rape as an act of barbarity. Although it is unlikely, this is not an unreasonable interpretation given that the 1899 and 1907 Hague Conventions, which Lemkin was intending to improve, prohibited violations of “family honour” during times of war, a euphemism for rape that was widely recognized as a mandatory prohibition against sexual violence.¹⁶⁷

When Lemkin wrote *Axis Rule* in the 1940s, he explicitly positioned his work as a cosmopolitan solution to preventing the attempt to annihilate cultural diversity in order to reshape society according to the specific interests of the perpetrators. In his work in the 1930s, this viewpoint was implicit in his belief that the crimes of barbarism and vandalism offered concrete humanitarian protection that were left ethereal by existing

¹⁶⁶ Raphael Lemkin, “Les Actes Constituant un Danger General.”

¹⁶⁷ Cherif Bassiouni, *Crimes Against Humanity in International Law* (Leiden: Martin Nijhoff, 1999), 348.

models of individual rights and group rights.¹⁶⁸ In the existing laws of nations, Lemkin wrote, there were three categories of humanitarian protections. The first category corresponded to attacks on individual human rights, and included “laws against slavery or the trade in women and children ... to protect the freedom and dignity of individuals and prevent them from being treated as commodities.” The second category of offenses “relates to the individual and the collectivity” and amounted to the troubled and impotent minority rights treaties. The third category concerned “the relationship between two or more collectivities” and encompassed “offenses against the laws of nations that seek to protect peaceful relations between collectivities, such as the outlawing of propaganda intended to incite wars of aggression, and have as their goal the maintenance of good economic and political relations between nations and groups.”¹⁶⁹

However, Lemkin had also spotted another type of violation, committed against individuals with the intention of destroying a collectivity. If slavery and the protection of minority schools were now matters of international law, protecting the individual and the collectivity, why should the Soviet arrest of a Jewish artist or the execution of a Catholic priest not be considered an international crime? In such cases, “the goal of the perpetrator is to harm an individual while causing damage to the collectivity to which the individual belongs. These type of offenses bring harm not only to human rights, but also undermine the foundation of the society.”¹⁷⁰ Yet, in these matters, international law was silent.

¹⁶⁸ Bartolomé Clavero, *Genocide or Ethnocide, 1933-2007: How to Make, Unmake, and Remake Law with Words* (Milan: Giuffr  Editore, 2008).

¹⁶⁹ Raphael Lemkin, “Les Actes Constituant un Danger General.”

¹⁷⁰ Ibid.

In his 1933 Madrid proposal, Lemkin grouped the crimes of barbarism and vandalism together with laws against state terrorism, piracy, slavery, pornography, narcotics trade, counterfeiting money, disrupting international communication, and spreading human, animal, and vegetable contagions. Many have found it unsatisfactory that Lemkin linked the crimes of barbarism and vandalism, and later genocide, to these other crimes.¹⁷¹ The criticism often hinges on the belief that genocide was a radical or unprecedented development in human history, and that the massacre of entire peoples and the destruction of cultural diversity are trivial in comparison to these other crimes. But Lemkin did not view barbarism, vandalism—or, later, genocide—as radical or unprecedented. He saw them as common, frequent acts in human history.

Whether Lemkin was using the terms barbarism and vandalism, or genocide, he felt the phenomenon was all too ordinary. The problem was not that the acts were so extreme that they could not be comprehended and therefore could not be handled by society; the problem was that they were so common that they were viewed as perfectly acceptable and legitimate. Barbarism and vandalism, and later genocide, Lemkin wrote, were seen as the inherent right of the sovereign state to do what it pleased with its populations—deporting entire nations, stamping out national and minority cultures, and even killing entire groups of people *en masse*.¹⁷² Without moral or legal grounds upon which these acts could be made illegitimate, he believed, they could not be suppressed.

¹⁷¹ Seyla Benhabib, “International Law and Human Plurality in the Shadow of Totalitarianism: Hannah Arendt and Raphael Lemkin,” in *Politics in Dark Times: Encounters with Hannah Arendt*, ed. Seyla Benhabib (Cambridge: Cambridge University Press, 2010).

¹⁷² For a different account, see Anson Rabinbach, “The Challenge of the Unprecedented—Raphael Lemkin and the Concept of Genocide,” *Jahrbuch des Simon-Dubnow-Instituts* 4 (2005): 397-42.

2.2 NATIONAL CULTURAL AUTONOMY AND NATIONS AS ‘FAMILIES OF MIND’

If Lemkin’s work on barbarism and vandalism followed in the tradition of the minority protection tradition, with the intention of safe-guarding vulnerable groups of people from wars of extinction, why did Lemkin and his colleagues not simply attempt to create a new form of groups rights?

There are two answers to this question, both of which cut across Lemkin’s emerging legal, political, and philosophical systems of thought.

The first explanation, which Lemkin provided, is quite possibly anachronistic. Lemkin in the 1940s argued that he proposed barbarism and vandalism to be criminal laws, not rights, because rights were hollow documents in states that did not have strong courts and independent judiciaries because the enforcement of rights would therefore depend upon the goodwill of the very states that were violating the rights of their citizens. Indeed, Lemkin in the 1940s might have been correct in describing his thinking in the 1930s. However, this position on the failure of the groups rights regime is a point that appeared in the legal theory of Hans Kelsen in the 1940s.¹⁷³ It is also a position that had much in common with Lauterpacht’s later indictment of the system of minority rights treaties which “failed to afford protection in many cases of flagrant violations and ... acquired a reputation for impotence, with the result that after a time the minorities often refrained from resorting to petitions in cases where a stronger faith in the effectiveness of the system would have promoted them to seek a remedy.”¹⁷⁴ While it is possible that

¹⁷³ Hans Kelsen, *Peace Through Law* (Chapel Hill: The University of North Carolina Press, 1944).

Lemkin believed this in the 1930s, it is much more likely that he developed this sentiment in the 1940s as he thought about how to adapt his thinking on barbarism and vandalism into his work on outlawing genocide at the United Nations.

The second answer to why Lemkin would have attempted to address the problem of massacres of national extinction through criminal law, rather than groups rights or minority protection treaties, requires an investigation of a school of political theory to which Lemkin was deeply indebted: national cultural autonomy. Whereas liberal thinkers, such as Woodrow Wilson or John Stuart Mill, saw nations as communities with concrete borders defined by blood, or language, the cultural autonomy theorists Lemkin was drawn to, Simon Dubnow, Otto Bauer, and Karl Renner, believed that nations were aspects of human consciousness that existed because people thought of themselves as belonging to a unified national community.¹⁷⁵

Lemkin's thoughts on what nations were, and how nations were destroyed "spiritually" and physically, was shaped most clearly by Dubnow, a Jewish Historian. Lemkin's thoughts on the legal and political solution to prevent the destruction of nations was, in turn, shaped by the Austrian Marxist theorists, Renner and Bauer, who proposed that national identity and nationality be removed as formal requirements for belonging in the political community of a state. By the 1940s, Lemkin explicitly framed his work on the UN Genocide Convention as an international form of Renner and Bauer's attempt to

¹⁷⁴ Hersch Lauterpacht, *An International Bill of the Rights of Man* (New York: Columbia University Press, 1945), 219.

¹⁷⁵ A. Dirk Moses writes that Lemkin seems to be indebted to national-cultural autonomy because "he believed in multiethnic states with minority protections rather than monocultural states tied to specific plots of land that oppressed minorities." Moses further suggests that Lemkin might have based his ideas on the works the Austro-Marxist jurist Karl Renner. See Moses, "Raphael Lemkin, Culture, and the Concept of Genocide," 24. A central thesis of this dissertation substantiates Moses's intuition.

remove the nation as a criteria of belonging in the state in order to solve the problem of national wars of extermination, both inside Eastern Europe and in European colonies. For Lemkin, Renner and Bauer's ideas on cultural autonomy, in an international form, could be the foundation of a truly cosmopolitan law necessary for guaranteeing peace and preserving every individual's rights to existence and to follow her own conception of the good by belonging to which ever nation, or however many nations, she wished.

What was Dubnow's influence upon Lemkin? Dubnow chronicled the Russian empire's attempt to remove Jews by forcing them to emigrate as colonists to Argentina and Palestine at the end of the nineteenth century. When these colonial projects failed to remove Jews in large enough numbers, Dubnow wrote, the empire tried to humble and decimate Jewish populations. The last stages of this tragedy were reminiscent of the inquisition, Dubnow argued. Jews were suppressed so that their presence "might escape public notice" and prohibited from serving on the Duma, the civil legislative bodies of the Russian federation.¹⁷⁶ Even in cities where Jews made up to seventy percent of the population, their interests were subordinated to the interests of a Christian minority in accordance with medieval Church canons. Not only were laws revived prohibiting Jews from using Christian and Russian names, but also laws stating that "a Jew living in a Christian country has no right to dispose of any property and must remain in slavish subjection to his Christian fellow-citizens."¹⁷⁷

Dubnow's analysis of the fate of the Jewish nation would influence Lemkin's analysis on the Nazi genocide in *Axis Rule in Occupied Europe*. For instance, Lemkin's

¹⁷⁶ Simon Markovich Dubnow, *History of the Jews in Russia and Poland, Vol. II (1825-1894)*, trans. I. Friedlaender (Philadelphia: Jewish Publication Society of America, 1916), 423-427.

¹⁷⁷ Dubnow, *History of the Jews in Russia and Poland, Vol. II*, 423-427.

focus in *Axis Rule* on the way the oppressed were made to finance their oppression found an antecedent in Dubnow's writings on Jewish businesses in the Russian Empire being subjected to special taxes that were used to fund police and government programs against them. Of further interest to Lemkin was a process Dubnow described, where it was made impossible for Jews to escape the conditions of their own destruction, as they were prohibited from living on farms and even from taking vacations in the countryside, keeping them concentrated in towns and cities where they were subjected to pogroms and repression.¹⁷⁸ And, when Lemkin set out to write his three-volume *History of Genocide* in the 1950s, his research note cards on the history of genocides committed against the Jewish nation relied primarily upon Dubnow's description of the physical and spiritual murder of the Jews in Russia and eastern Europe.¹⁷⁹

National autonomy was a common response to the situation of the Jews, advocating for Jewish national minorities in all states to fight for civil equality and the right to form autonomous Jewish communities with Jewish schools, language, and synagogues. For Dubnow, the movement for Jewish cultural autonomy explicitly rejected "any possibility of [the Jewish nation] aspiring to political triumph, of seizing territory by force or of subjecting other nations to cultural domination" as a matter of principle. The movement had one only one goal: "protecting [Jewish] national individuality and safeguarding its autonomous development in all states everywhere in the Diaspora."¹⁸⁰

¹⁷⁸ Simon Markovich Dubnow, *History of the Jews in Russia and Poland, Vol. III (1895 until the Present Day)*, translated by I. Friedlaender (Philadelphia: Jewish Publication Society of America, 1920), 1-25.

¹⁷⁹ I am referring to the many of Lemkin's research note cards contained in the Raphael Lemkin Collection in the American Jewish Historical Society archives in New York City.

¹⁸⁰ Quoted in Moses, "Raphael Lemkin, Culture, and the Concept of Genocide," 24. See Simon Dubnow, *Nationalism and History: Essays on Old and New Judaism*, ed. Koppel S. Pinson (Philadelphia: Jewish Publication Society, 1958), 97.

Dubnow's work was so important to Lemkin that Lemkin made a pilgrimage to the historian's house before fleeing Europe to seek his advice on how to proceed with his efforts to criminalize the physical and spiritual destruction of nations. In his autobiography, Lemkin wrote that Dubnow received his ideas warmly and celebrated the effort to outlaw the destruction of national cultural groups.¹⁸¹ The account is detailed in the following section on Lemkin's escape from Europe, but it should be noted here that Dubnow never provided his own account of the meeting. What is significant in Lemkin's recollection of their conversation is that Lemkin was essentially proposing to criminalize what Dubnow had described as the Russian state's "spiritual murder" of the Jewish people. A well-spring of Lemkin's ideas of genocide, Dubnow believed that the Russian state solved its Jewish and minorities questions through policies that ranged from the wholesale expulsion of Jews from Moscow, to banishing minority nations from institutions of higher learning. Reactionary Russian nationalism was spreading at the turn of the twentieth century, Dubnow wrote, until the state "set out to uproot the national-cultural intentions of the 'alien' races in Russia" by stamping out the foundations of Jewish, Polish, and Ukrainian "cultural life."¹⁸²

The Jewish socialist movement, which was perhaps a stronger political movement than cultural autonomy, borrowed from Dubnow's political position cultural autonomy. Although Lemkin never documented or shared his political positions—perhaps because he was a public prospector—the Jewish socialist movement shaped his life and work, at least tangentially. The movement maintained an economic focus, organizing strikes for

¹⁸¹ Lemkin, *Autobiography*, "Flight from Russia," 53-61.

¹⁸² Dubnow, *History of the Jews in Russia and Poland, Vol. III*, 143-164.

increased wages and more favorable working hours. By 1897, against the backdrop of a growing revolutionary movement in Russia, three years before Lemkin was born, the Jewish socialist societies were consolidated into the League of Jewish Workingmen of Lithuania, Poland, and Russia, known as the Bund. The Bund convened its first congress in Vilna, one month before the first Zionist Congress at Basle, and established secret party centers throughout Russia, publishing their periodical in Yiddish. At the 1901 congress in Bialystok, the Bund added to their platform national cultural autonomy for the Jewish people in the form of public rights to Jewish education and to speak Yiddish.¹⁸³

What we do know, as Professor Moses has asserted, is that Lemkin is best described as an “ecumenical cosmopolitan.”¹⁸⁴ The description is fitting, for Lemkin upheld a belief that nations generated unique existential experiences, but he did not believe that these differences were mutually exclusive. One individual could belong to many different nations at once, which meant that preserving national diversity not only enriched “world civilization,” Lemkin wrote, but it also protected the freedom of individuals who might benefit from experiencing different ways of thinking, different languages, or the teachings of different philosophies and religions, and the experience of beauty in new aesthetic traditions. For Lemkin, all nations in their spiritual difference were equal, sharing a common human experience—a foundational belief of the cultural autonomy position. The description of Lemkin as an ecumenical cosmopolitan is especially astute considering that Lemkin shared Dubnow’s fierce critique of reactionary

¹⁸³ Benjamin Pinkus, *The Jews of the Soviet Union: The History of a National Minority* (Cambridge: Cambridge University Press, 1989). Dubnow, *History of the Jews in Russia and Poland, Vol. III*, 56-57.

¹⁸⁴ See Moses, “Raphael Lemkin, Culture, and the Concept of Genocide,” 24-25.

nationalisms that sought to abolish cultural diversity in the name of political expediency, by destroying either the physical or spiritual vitality of a group. Where Dubnow linked the Russian attempt to “commit spiritual murder” against the Jews to a wider atavistic nationalism that sought to destroy the cultural life of all “alien” nations living in Russia, Lemkin likewise believed the Jewish experience of suffering in the nineteenth and twentieth centuries was not unique to the Jews alone, but part of a larger process of physically and spiritually annihilating minority national groups around the world for narrow political and economic gains.

Lemkin was also drawn to Renner and Bauer’s closely related work, articulated through a Social Democratic position. Scholars have suggested that Marx and Engels did not offer a coherent set of theories on how to handle the political problems arising from national identities and nationalism.¹⁸⁵ However, Marx and Engels did develop a theory on how to handle nationalism politically, which provided for two schools of thought within Marxism.¹⁸⁶ The first was a strategic socialist position articulated by people such as Rosa Luxemburg, who argued that socialism could never be reconciled with nationalism.¹⁸⁷ Luxemburg, the founder of the Social-Democratic Party of the Kingdom of Poland and Lithuania in 1893, opposed Polish independence, believing that independence would distract the proletariat into supporting bourgeois Polish nationalism.¹⁸⁸ The Renner and

¹⁸⁵ Richard Pipes, *The Formation of the Soviet Union* (New York: Atheneum, 1974); also see Michael Lowy, “Marxism and the National Question” in *Revolution and Class Struggle*, ed. Robin Blackburn (Hassocks: Harvester Press, 1978), 136-160.

¹⁸⁶ Alexander J. Motyl, *Sovietology Rationality, Nationality* (New York: Columbia University Press, 1990), 73-77.

¹⁸⁷ Stephen Eric Bronner, *Rosa Luxemburg: A Revolutionary for Our Times* (University Park: Pennsylvania State University Press, 1997), 17.

¹⁸⁸ Bronner, *Rosa Luxemburg*, p. 19.

Bauer position was the other school, arguing within a Marxist perspective for preserving national diversity as both a means towards advancing democratic socialism, and as an end in itself.¹⁸⁹ Luxemburg, who never equated national self-determination with liberation from oppression, staked out her position against Bauer, who insisted that socialism should respect the equality among nations and national cultures.

Bauer worked for the Austrian Social Democratic parliamentary party from 1907 until 1918, when he was named the foreign minister under Karl Renner's government after the monarchy collapsed. The Austro-Hungarian Empire was a dual monarchy with over 50 million people, and at least fifteen distinct national groups, including Germans, Magyars, Poles, Croats, Czechs, Slovenes, Ukrainians, Slovaks, Serbs, and Romanians. The state was unified in foreign policy, finance, and the military, but it operated with two autonomous parliaments that were granted autonomy in domestic matters.¹⁹⁰ As capitalist development drew people into urban centers from across the Austro-Hungary empire, nationalist loyalties and disputes derailed regional governments.¹⁹¹

The Bauer-Renner solution drew upon the thesis of Bauer's 1907 book, *The Question of Nationalities and Social Democracy*, which sought to address a crisis in the Austro-Hungarian Empire over the integration of national minorities into the multiethnic empire. Bauer argued that modern nations were "communities of character" that developed out of

¹⁸⁹ Motyl, *Sovietology Rationality, Nationality*, 73-77.

¹⁹⁰ Ephraim Nimni, "Introduction: The National Cultural Autonomy Model Revisited" in *National Cultural Autonomy and its Contemporary Critics*, ed. Ephraim Nimni (London: Routledge, 2005). Also see Bruce F. Pauley, *The Hapsburg Legacy* (New York: Holt, Rinehart, and Winston, 1972).

¹⁹¹ Ephraim Nimni, *Marxism and Nationalism: Theoretical Origins of a Political Crisis* (London: Pluto Press, 1994), 120-122.

“communities of fate.”¹⁹² For Bauer, nations were not derived territorially as liberal nationalism professed, nor were they the closed off and organic entities that reactionaries took them to be. National consciousness is, therefore, “by no means synonymous with the love of one’s own nation or the will for the political unity of the nation,” Bauer wrote: “national consciousness is to be understood as the simple recognition of membership in the nation.”¹⁹³ This meant that the content of national identity was always changing.¹⁹⁴ In fact, the belief that nations were maintained through a purity of blood was not a valid explanation for the national community of character, but a tautological metaphysical reinterpretation of the biological sciences, Bauer argued.¹⁹⁵

Marxist positions, and transcendentalist or neo-Kantian liberal thinkers, saw nations as categories, derived from either materialist or spiritual theories of history.¹⁹⁶ For Bauer, nations were not categories. Nations were processes.¹⁹⁷ Bauer’s definition of a nation as “a community of character formed out of a community of fate” does not locate the nation purely in the realm of psychological consciousness where communal bonds are formed through abstract notions of solidarity, nor does it locate the nation within materialist thinking. At the same time, because nations were historical processes constantly formed and reformed as new communities of fate formed new communities of character, nations could not be located by empirical theorists who defined the essential

¹⁹² Otto Bauer, *The Question of Nationalities and Social Democracy*, trans. Joseph O’Donnell, ed. Ephraim J. Nimni (Minneapolis: University of Minnesota Press, 2000), 7.

¹⁹³ Bauer, *The Question of Nationalities and Social Democracy*, 120.

¹⁹⁴ Bauer, *The Question of Nationalities and Social Democracy*, 21.

¹⁹⁵ Bauer, *The Question of Nationalities and Social Democracy*, 27.

¹⁹⁶ Nimni, *Marxism and Nationalism*, 162.

¹⁹⁷ Nimni, *Marxism and Nationalism*, 162-163.

characteristics of a nation in the abstract and then looked at the real world to see whether or not a given group constituted a nation.¹⁹⁸

Since the French Revolution, the general ideology of nationalism defined a nation as a sovereign people bound within a territorial state, usually speaking a shared language. However, in the multinational empires of Europe, the understanding of a nation derived from the French Revolution proved inadequate, if not totally irrelevant. These empires were made up of diverse groups of people who spoke different languages and held different identities as groups.¹⁹⁹ Bauer's definition of nationality held that the nation could not be reduced to a geographical territory, but existed within the individual people who considered themselves to belong to the nation, irrespective of lines on maps.²⁰⁰ Moreover, for Bauer, language was not a necessary condition for binding people together to form national groups. Rather, language was one of many different mediums for channeling the interactions between people that gave rise to a national character. For instance, Bauer argued, a Jewish nation clearly existed between individuals who lived all over the earth, had different ancestries, and spoke different language.²⁰¹

The liberal position on the nationalities question characterized national cultural autonomy as a form of groups' rights, and a fundamental violation of the principle of universal political equality for all citizens. What the liberal position concealed, Bauer and Renner argued, is that the modern state was an "atomistic" and "centralizing" entity, where the ethno-national identity of dominant groups became synonymous with the state,

¹⁹⁸ Nimni, *Marxism and Nationalism*, 161.

¹⁹⁹ See Eric Hobsbawm, *The Age of Empire: 1875-1914* (New York: Vintage Books, 1989), 147.

²⁰⁰ Hobsbawm, *The Age of Empire*, 148.

²⁰¹ Nimni, *Marxism and Nationalism*, 161.

to the economic, political, and cultural disadvantage of minority groups.²⁰² This political circumstance could be a source of tension and resentment, since the choice to assimilate was not a choice at all, but something that individuals of minority groups were forced to do if they wished to secure their individual economic and political well-being. Moreover, this assimilation was often enforced violently by the state's security forces. The "autonomy" in national cultural autonomy referred to preserving the autonomy of nations to manage their own cultural and social affairs. However, for Renner (not Bauer), the "autonomy" also signified a liberal principle of preserving the ability of rational autonomous individuals to choose which national groups they wish to belong to, and to follow their own conception of the good.²⁰³ The very notion that an individual must possess and express a certain national identity to enjoy the rights of citizenship was a restriction of individual freedom, Renner and Bauer believed. In order to counter-balance this atomizing and centralizing principle of the modern nation-state, they proposed reforms that would remove national identity as a formal requirement of belonging in the state, just as the state had been secularized in order to accept people of any religion as citizens.²⁰⁴

What was Lemkin's definition of a nation? Some scholars have criticized Lemkin's "national cosmopolitanism" as an "anachronistic return to 'medieval organic

²⁰² Nimni, *Marxism and Nationalism*, 177.

²⁰³ Geoffrey Brahm Levey, "National Cultural Autonomy and Liberal Nationalism," in Ephraim Nimni, ed. *National Cultural Autonomy and its Contemporary Critics* (London: Routledge, 2005), 150-177.

²⁰⁴ Nimni, *Marxism and Nationalism*, 177.

imagery,' or fundamental confusion."²⁰⁵ As Moses has argued, to escape this reductionist reading and fully understand *Axis Rule* and his earlier work at the League of Nations, it is necessary to consider Lemkin's later writings.²⁰⁶ In a particularly important part of his unpublished work, Lemkin provides a clear and succinct definition of those groups that make up the human cosmos: "Nations are families of mind," he wrote, quoting Henri Focillon's definition of "nation."²⁰⁷ In his unpublished manuscripts, Lemkin writes that he was drawn to Focillon, a philosopher of art history who used Medieval and Mesopotamian art to theorize that nations were constituted by a shared beliefs among individuals, which manifested through patterns of aesthetic taste, reoccurring tropes, and shared understandings of symbols.²⁰⁸ Moses has written that Lemkin believed that "nations comprise various dimensions: political, social, cultural, linguistic, religious, economic and physical/biological."²⁰⁹ This is true. But, above all, a nation according to Lemkin was a group who shared a collective "mind" and thought of themselves as belonging to the same group, with the help of shared languages, arts, mythologies, folklores, collective histories, traditions, religions and even shared ancestry or a shared geographical location.

²⁰⁵ On how scholars reads Lemkin, see Moses, "Raphael Lemkin, Culture, and the Concept of Genocide," 23. It was Stephen Holmes who criticized Lemkin for his "medieval organic" view of society. See Stephen Holmes, "Looking Away," *London Review of Books*, 12 November 2002.

²⁰⁶ Moses, "Raphael Lemkin, Culture, and the Concept of Genocide."

²⁰⁷ Raphael Lemkin, "Genocide," NYPL, Reel 4, Box 3, Folder 1-2, 1.

²⁰⁸ Henri Focillon, *Vie Des Formes* (Paris, Librairie Ernest Leroux, 1934). The review of Focillon's thesis is the one provided by Lemkin, which is close to the accepted interpretation of Focillon's work. See George Kubler, "Henri Focillon, 1881-1943," in *College Art Journal* 4 (1945): 71-74.

²⁰⁹ A. Dirk Moses, "Holocaust and Genocide," in Dan Stone, *The Historiography of the Holocaust* ed. Dan Stone (Houndmills: Palgrave MacMillan, 2004), 539.

With this “family of mind” definition of a nation, Lemkin echoes Giuseppe Mazzini’s dictum that geographical borders and language constitute “a populace, not a nation ... the Patria is the consciousness of the Patria.”²¹⁰ Mazzini, a triumvir of the Roman Republic that emerged from the 1848 Spring of Peoples, was especially appealing to Lemkin, who quoted Mazzini to argue that the uprisings of the 1848 revolutions were “the work which gives a people the right to citizenship in the world.”²¹¹ While the Spring of Peoples fell to reactionary forces throughout Europe and the monarchies were quickly reestablished, Lemkin saw in the 1948 movement a promise of creating a political structure across geographical borders that maintained the nationalist independence of each group of people while simultaneously providing a platform for what he called “an international federation of free nations” to provide this “world citizenship.”²¹² Lemkin believed his later work on genocide, and the UN Genocide Convention he helped write, followed this spirit, protecting cultural diversity through universal laws.

Lemkin’s idea that nations were families of mind with their own spirit was not novel, and cultural autonomy theorists were not the only ones to articulate such a position. The Völkerpsychologie theories, for instance, were prevalent in his milieu. Typified by the work of Moritz Lazarus and Heymann Steinthal, völkerpsychologie sought to analyze the psychologies of nations as concrete things, which were also the mental products of the individuals who belonged to them, recreated constantly through

²¹⁰ Quoted in Federico Chabod, “The Idea of Nation,” in *Nationalism in Europe: 1815 to the Present*, ed. Stuart Woolf, (London: Routledge, 1996), 133. My paragraph draws on Chabod’s essay.

²¹¹ Raphael Lemkin, “Introduction: The New Word and the New Idea,” NYPL, Reel 3, Box 2, Folder 2, 8.

²¹² Lemkin, “Introduction: The New Word and the New Idea,” 8.

the mental interaction of people.²¹³ Furthermore, the belief that nations had their own “personality” extended beyond this specific subfield of the social and psychological sciences. Tomas Garrigue Masaryk, the President of the Czechoslovak Republic, was a prominent sociologist whose writings Lemkin studied during the interwar years.²¹⁴ In his treatise on the future of the Czechoslovakian state after the war, *The Making of a State*, Masaryk argued that “chauvinistic-imperialism” brought the downfall of small states and wrecked great empires. By teaching the arts, philosophies and languages of German and Magyar national minorities in schools—along with Latin, Greek, French, English, Russian, and Italian—he believed Czechoslovakia could prevent “political, religious, racial, or class intolerance.” As the personality of the new nation could be created around a “positive nationalism” that was free of chauvinism.²¹⁵ In 1946 at the UN General Assembly, Lemkin told Masaryk’s son, Jan Masaryk, the Czech foreign minister, that he especially appreciated his father’s exposition on the importance of preserving the “cultural personality of nations.”²¹⁶

Indeed, the fact that Lemkin did not define nations in terms that fit into the definitions of nations in liberal political theory has troubled many scholars. Some have even argued that Lemkin’s idea of genocide is dangerously illiberal because it seeks to protect a vision of cultural nationalism derived from a Herderian or Romantic ontology of

²¹³ See Egbert Klautke, “The Mind of the Nation: The Debate about *Völkerpsychologie*, 1851-1900,” in *Central Europe* 8 (2010) 1-19. I am indebted to an anonymous peer reviewer from *The Journal of Genocide Research* for this point.

²¹⁴ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 127.

²¹⁵ Tomas Garrigue Masaryk, *The Making of a State: Memoires and Observations, 1914-1918*, trans. Henry Wickham Steed (New York: Frederick A. Stockes, 1927), 433-435.

²¹⁶ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 127.

groupism that is explicitly anti-liberal.²¹⁷ Lemkin admired Herder for his eighteenth-century defense of cultural diversity and his criticism of the European and colonial state as the destroyer of cultural pluralism.²¹⁸ However, Lemkin argued that the “Herderian Romantic approach” might have inspired emancipatory movements in the revolutions of 1848, but “it became culturally atavistic in the nineteenth century and politically aggressive in the late nineteenth and the first half of the twentieth centuries,” when it “coupled with the strive for power, aggrandizement, internal anxieties, and disrespect for minorities [to] create a climate ... for the perpetration of genocide.”²¹⁹ Lemkin’s idea of the nation was that of the school of national cultural autonomy, in a social democratic form, that actually meets the demands of liberal ideals.

Lemkin was resolute in his opposition to a relativistic, organic form of nationhood. This Romantic nationalism might have generated an appreciation for cultural diversity, but it was widely employed in the late nineteenth century by anti-Semitic and militarist thinkers such as Ernst Moritz Arndt, Heinrich von Treitschke, and Friedrich Ludwig, the philologist and theologian who felt Germany was humiliated by the Napoleonic victories and started a nationalist gymnastic movement to unify and strengthen the young men of the country.²²⁰ Troubled by this ideology that presents the

²¹⁷ See, Daniel Marc Segesser and Myriam Gessler, “Raphael Lemkin and the International Debate on the Punishment of War Crimes (1919–1948),” *Journal of Genocide Research* 7 (2005): 453–468. Thomas M. Butcher, “A ‘Synchronized Attack’: On Raphael Lemkin’s Holistic Conception of Genocide,” *Journal of Genocide Research* 15 (2013). On this debate, see A. Dirk Moses, “Moving the Genocide Debate Beyond the History Wars,” *Australian Journal of Politics and History* 54 (2008): 267. Seyla Benhabib has defended Lemkin against charges that he advocated a relativist nationalism of vulnerable peoples: Benhabib, *Dignity in Adversity: Human Rights in Trouble* (Cambridge: Polity Press, 2011), 51, 220 n. 24.

²¹⁸ Sankar Muthu, *Enlightenment Against Empire* (Princeton: Princeton University Press, 2003), 210–223.

²¹⁹ Raphael Lemkin, *Collective Frustrations as a Prelude to Genocide*, NYPL, Reel 3, Box 2, Folder 4, 4.

²²⁰ Lemkin, “Introduction: The New Word and the New Idea,” 8.

individual, the community, the nation, and the state as objective and organic wholes bound by language, blood and territory, Lemkin saw this nationalism as highly exclusionary, consolidating the idea of the nation—the Volk—into the service of an intolerant nation-state.²²¹

By defining nations as “families of mind,” with an individual’s national belonging constituted by the individual’s belief that she belonged to a nation, Lemkin rejected an organic and atavistic theory of the nation. Instead, over the next decade, Renner and Bauer’s thought would become an explicit foundation of Lemkin’s thought on genocide as the destruction of nations. In the last decade of his life, he was in communication with Renner. It is unclear how extensive the dialogue was. It may have just been one letter Lemkin wrote to him. But, in the letter, Lemkin heaped praise on the Austrian Chancellor: “Your books on the importance of national groups as being apart from States has inspired my work for many years, and finally led me to initiate the action to outlaw genocide.”²²² Lemkin likely was motivated to write the letter because he wanted a major world figure to support outlawing genocide. Nevertheless, there is substance to Lemkin’s message.

If these theorists were an explicit part of Lemkin’s later works, how do we know that National Cultural Autonomy shaped Lemkin’s early work on barbarism and vandalism? For one, Lemkin told Dubnow while he was fleeing Axis occupied Europe (before he coined the word genocide) that his ideas of barbarism and vandalism were

²²¹ Douglas Irvin-Erickson, “Genocide, the ‘Family of Mind’ and the Romantic Signature of Raphael Lemkin,” *Journal of Genocide Research* 15 (2013): 275.

²²² Raphael Lemkin to Karl Renner, March 29, 1950, Raphael Lemkin Papers, American Jewish Archives, Box 1/15.

intended to outlaw the types of national destruction that Dubnow described, and that he would revive his legal efforts given the dire situation of national minorities with the Soviet and German conquest of Europe. What is more, his early studies on the Soviet Penal code reflected these principles of cultural autonomy. Where Dubnow wrote that the Russian empire criminalized Jewish life and set out to physically and spiritually murder the Jewish nation, Lemkin likewise came to see the USSR under Lenin and Stalin as criminalizing minority nations and setting out to destroy them physically and spiritually. In fact, Lemkin's belief that Soviet state terror was channeled through the penal code in order to criminalize and destroy counterrevolutionary forms of national consciousness—sometimes by attempting to kill every member of the nation—was the crucible through which his ideas on genocide developed, serving as the primary lens through which he interpreted the Nazi party's actions and the Axis occupation of Europe after 1939.

2.3 SOVIET TERROR AND TOTALITARIANISM

If Lemkin would come to define genocide as the “destruction of national patterns,” then it matters that Lemkin did not understand nations in the same way that the prevailing liberal ideologies of his day understood nations. Like Dubnow, Renner, and Bauer, Lemkin did not believe that nations were sealed-off, and closed entities, with boundaries established by language, blood, heritage, or geography. Nations were forms of human consciousness, for Lemkin. A nation was therefore capable of shifting, adapting, evolving, and changing through time. An individual person might belong to several nations in the course of her life, and to many nations at once. It was this understanding of a nation that allowed Lemkin to view the destruction of a library as just as deleterious to

the existence of a nation as the attempt to massacre all of the individuals who belonged to the nation—although he never confused the two as equally horrendous.

In the history of ideas, it also matters that Lemkin's thinking on genocide formed, in its earliest stages, from within the debate on the protection of minorities and the question of nationalities in Eastern Europe. By the age of 30, Lemkin was already an expert on Soviet terror, the Soviet nationalities policies, and totalitarianism legal systems. As such, no investigation of his writings on barbarism and vandalism would be complete without discussing his intellectual milieu, especially regarding what his contemporaries thought about Soviet terror and the nationalities question. This helps situate Lemkin's thinking within an intellectual context to reveal what he would have meant when he wrote about "nations" and "totalitarianism" and, ultimately, what he meant when he wrote that barbarism and vandalism, and genocide, was the destruction of nations. The task also helps us to see that Lemkin's idea of genocide was neither immanent in history—as if it were a natural phenomenon waiting to be named—nor in the writings of various thinkers in his milieu, who might have identified the essential concept but failed to name it.²²³

What was the historical context from which Lemkin approached barbarism and vandalism?

In his 1914 essay, *The Right of Nations to Self-Determination*, Lenin attacked Luxemburg for ignoring the political reality of nationalism. He also distanced himself from Bauer by arguing that the nation-state represented historical progress while the multinational state was backwardness. Lenin maintained with Luxemburg that class

²²³ Quentin Skinner, "Meaning and Understanding in the History of Ideas," *History and Theory*. 8 (1969).

struggle and socialism were the primary concerns of the world socialist movement. However, the Bolshevik party, Lenin wrote, would recognize the right of all nations to self-determination. That changed after the Bolsheviks won the Russian revolution and Lenin was faced with ruling a multi-national empire of 170 million people, of which nearly 100 million were Poles, Ukrainians, Belarusians, Finns, Latvians, Estonians, Lithuanians, Georgians, Armenians, Turks, and peoples of central Asia, including Uzbeks, Kazaks, Tatars, Kalmyk, Azerbaijanis, and many others. Each had their own languages, traditions, and indigenous forms of political organization. The First World War had unleashed their nationalist sentiments. While Lenin had promoted national self-determination before the revolution to gain the support of these groups, he had to prevent the Russian state he inherited from disintegrating.²²⁴ Finland, Poland, and the Baltic territories were already lost. With his Commissar of Nationalities Joseph Stalin, Lenin set out to preserve the rest of the former Russian empire under Bolshevik rule by suppressing nationalist ambitions.

The force of the new state, Lenin argued in party pamphlets, could support the proletariat revolution by crushing counter-revolutionary enemies and forcing the peasantry and petty bourgeois into the new socialist economy. But force alone was not sufficient for fashioning class solidarity and a socialist sense of self among the state's citizenry. The party had to supply the revolutionary consciousness the masses lacked.²²⁵

In 1919, the party congress officially endorsed a policy of shaping revolutionary

²²⁴ Vladimir I. Lenin, "The Right of Nations to Self-Determination," in *The Lenin Anthology*, ed. Robert Tucker, (New York: Norton, 1975), 153-180.

²²⁵ See Vladimir I. Lenin, "A Strong Revolutionary Government, 19 May 1917," in *Lenin: Collected Works Vol. 24*, trans. Isaacs Bernard, (Moscow, Progress Publishers, 1964), 360-361; also see Lars Lih, *Lenin Rediscovered: "What is to be Done?" in Context* (New York: Haymarket, 2008).

consciousness with “tools” such as the theater, literature, painting, film, and the press. By 1920, the party established the Main Political Education Committee to oversee the reeducation efforts.²²⁶ The revolution ultimately depended on producing *homo soveticus* – the New Soviet Man, who held within him or herself the Soviet identity and revolutionary consciousness that was missing amongst the masses. This new Soviet subject would hold no allegiances to previous national identities, but exist with a consciousness amenable to the socialist program. As Stalin would later claim, failure to do this would mark the failure of the revolution.

Stalin was named General Secretary of the USSR in 1922. After Lenin’s death in 1924, he replaced the New Economic Policy with a policy of “socialism in one country.” Stalin’s policy, drafted by Nikolai Bukharin, acknowledged that the defeat of communist revolutions in Europe meant that the working class of the world was not ready to support a worldwide socialist revolution. Socialism would be first built inside of the USSR, and then brought worldwide one country at a time. This time, the concessions he believed Lenin gave to counter-revolutionary peasants and national minorities would no longer be tolerated. The policy laid the groundwork for Stalin’s genocides to come. The “affirmative action empire,” as one scholar refers to the young USSR, found that fostering the growth of national consciousness among minority populations allowed the party to dictate the content of their cultures, guiding the creation of new national identities that were sympathetic to the revolution.²²⁷ When non-Russians voiced their

²²⁶ David Brandenberger, *Propaganda State in Crisis: Soviet Ideology, Indoctrination, and Terror under Stalin, 1927-1941* (New Haven: Yale University Press, 2011), 11.

²²⁷ Terry Dean Martin, *The Affirmative Action Empire: Nations and Nationalism in the Soviet Union, 1923-1939* (Ithica, New York: Cornell University Press, 2001).

national-cultural aspirations in political terms, however, their nationalist claims were interpreted as threatening the foundation of the state, and the state would crush them.²²⁸

Lemkin's argument in his works on the Soviet penal codes—that the Soviet Penal code criminalized undesired forms of national consciousness—was prescient, especially in regards to Stalin's response to the problem of peasant nationalist resistance, which was perhaps the greatest stumbling block to Bolshevik power. Under Lenin, the party had given the peasantry ownership of the lands they farmed as a means of earning peasant support in the 1917 revolutions. But, by 1918, the right to ownership was revoked so the party could seize the peasant's grain to feed party cadres and those loyal to the regime. With hundreds of thousands starving, peasant uprisings began emerging throughout Russia. Millions of peasants died either from fighting in the first Bolshevik-peasant war, or from being caught in the cross fire of the civil war between Red Bolshevik forces and the anti-Bolshevik coalition White army, which included nationalist groups seeking independent states.²²⁹

There was also an ideological aspect to the peasantry's threat to the party, which would cause the USSR to kill millions more peasants. The peasantry's attachment to local customs—religiosity, national identity, and pre-capitalist forms of social organization—was well suited to resisting the Bolshevik project of industrializing and modernizing the USSR. Stalin presented the effort to collectivize the peasantry and destroy “counter-revolutionary” forms of nationalism and national identity as necessary for preserving the Socialist revolution. The peasant problem and the question of nationalities were thus

²²⁸ Motyl, *Sovietology Rationality, Nationality*, 85-86.

²²⁹ Andrea Graziosi, *The Great Soviet Peasant War: Bolsheviks and Peasants, 1917-1933* (Cambridge: Harvard University Ukrainian Research Institute, 1996).

intricately wrapped up in each other. As Stalin told the Yugoslavian Communist party in 1925, “the peasant question after all constitutes the basis and intrinsic essence of the national question.” Furthermore, Stalin continued, “the peasantry represents the main army of the national movement; that without the peasant army, there is not nor can there be a powerful national movement.”²³⁰ Stalin meant this literally and metaphorically, as the peasantry made up the fighting force for national movements but was also the main body through which national identity was carried. By the late 1920s and early 1930s, Stalin would solve his nationalist and peasant problems through acts Lemkin named “barbarity” and “vandalism” and, later, “genocide.”

In 1928, Stalin introduced his Five-Year Plan to industrialize the USSR and surpass the major European powers and the US in industrial capacity. In the plan, the state would seize land from the peasantry, take ownership over agricultural products, and transform the peasants into farm laborers who worked in shifts. By 1930, sixty million people across the USSR were forced into collective farms.²³¹ As the collectivization began disrupting the agricultural production process, the central party blamed grain shortages on “kulaks,” a term used to designate farmers resisting the socialist revolution. In December 1929, Stalin announced a policy of “liquidating the kulaks as a class.” A month later, in January, the Party issued a resolution “On Measures for the Elimination of Kulak Households in Districts of Comprehensive Collectivization.”²³²

²³⁰ Joseph Stalin, “The National Question in Yugoslavia,” in *Marxism and the National and Colonial Question*, trans. I. Tovstukha, (Moscow: Co-operative Publishing Society of Foreign Workers in the U.S.S.R., 1939), 200-205.

²³¹ Norman Naimark, *Stalin's Genocides* (Princeton: Princeton University Press, 2010), 54.

²³² Robert Conquest, *The Harvest of Sorrow: Soviet Collectivization and the Terror-famine* (Oxford: Oxford University Press, 1986), 117.

The word kulak, meaning *fist*, was used officially to refer to peasants who were “tightfisted” and hoarding money and grain at the expense of the others who were working to support collectivization. A process that Hinton terms “manufacturing difference” marks genocides throughout history, where the boundaries of an imagined community are created or redrawn so that the imagined victim group is seen as being outside the community, dangerous, and must therefore be annihilated.²³³ The kulaks were just such an imagined enemy.²³⁴ They were officially defined as peasants who owned land or animals, who stole grain, were rich, or exploited laborers. But only one percent of all farms in the 1920s employed paid workers, and the average “kulak” earned between 170 to 400 rubles a year per household. A tiny sum, this income was not enough to feed or clothe a family, and was lower than the average salary of the rural Bolshevik officials who were persecuting kulaks as a wealthy class.²³⁵ Instead of designating any empirical class of people, the kulak became synonymous with “bloodsuckers,” “oppressors,” and “parasites.” The families of village priests were often designated as kulak peasants because they owned land, and entire villages were frequently labeled kulak villages so that they could be destroyed in whole.²³⁶ Even poor peasants who owned nothing could be classified as kulaks if they were religious, in order to legitimate their removal.²³⁷

²³³ Alexander Laban Hinton, *Why Did They Kill?: Cambodia in the Shadow of Genocide* (Berkeley: University of California Press, 2005), 212-213. Also see Alexander Laban Hinton, “The Dark Side of Modernity: Towards an Anthropology of Genocide,” in *Annihilating Difference: The Anthropology of Genocide*, ed. Alexander Laban Hinton (Berkeley: University of California Press, 2002).

²³⁴ Naimark, *Stalin's Genocides*, p. 56.

²³⁵ Conquest, *The Harvest of Sorrow*, 118.

²³⁶ Naimark, *Stalin's Genocides*, 56.

²³⁷ Conquest, *The Harvest of Sorrow*, 119.

As Norman Naimark argues, Stalin's dekulakization policy constituted genocide, conducted under slogans such as "shoot the kulak breed," "we will make soup of kulaks," or "our class enemy must be wiped off the face of the earth." Moreover, Stalin did not define kulaks as individuals, but as families. This meant that if a particular peasant was identified as a kulak by a local cadre, the entire family would be deported or executed. Between 1929 and 1932, over ten million kulaks were relocated, arrested, deported to labor camps, or executed either at the direction of Moscow, local cadres, or even unorganized gangs.²³⁸ Over two million had been sent to gulags, and at least a quarter of a million died as a consequence of being exiled. At any given time, there were over two million peasant families across the USSR that could be legally classified as kulaks, designated as class enemies, and executed at the arbitrary discretion of local officials. Yet there was a rational end for this seemingly irrational practice. The policy allowed local officials to use arbitrary definitions to identify and eliminate the members of the peasantry who were leading the peasants against the collectivization project, while the fear of being defined as a "kulak" arbitrarily forced the survivors into quiet obedience.²³⁹

In the beginning of 1931, party leaders reported on the success of dekulakization. Soviet social scientists asserted that the kulaks who were deported and sent into labor camps had lost their essential features as a class, and were no longer "exploiting" hired labor or renting out draft animals and workshops.²⁴⁰ While it might seem obvious that they could no longer perform these basic economic functions—because they had been

²³⁸ Naimark, *Stalin's Genocides*, 57.

²³⁹ Conquest, *The Harvest of Sorrow*, 118-119.

²⁴⁰ Conquest, *The Harvest of Sorrow*, 120.

dispossessed of everything they owned or shipped off to gulags—Marxist ideology held that economic conditions determined social consciousness. The Soviet regime therefore believed the essence of the kulaks as a group could be destroyed, Robert Conquest points out, when the economic basis for their consciousness was eliminated.

In *Marxism and the National Question*, written in 1913 before Lenin selected him to serve as Commissar of Nationalities, Stalin provided a five-part definition of a nation. First, nations were historically constituted and emerged as capital development drew people out of their feudal, tribal, or racial spheres into larger, more stable, political communities. National allegiances thus transcend all other particular allegiances, such as ethnic, cultural, or racial identities. But not all political communities constituted nations. Nations, secondly, shared a common language. Political communities do not need a common language, Stalin wrote, but nations do because nations are—thirdly—constituted through lengthy, intergenerational relationships that depend on written or spoken words. Language was therefore crucial to the formation of a nation through history, allowing for an economic life and the unique community of culture that emerges from that shared economic life. The fifth necessary characteristic of a nation, Stalin wrote, was territory.

In Stalin's thought, the peasantry's economic way of life generated forms of social consciousness that were anti-Socialist in essence; and their rootedness in one particular territory transformed their nationalism into a nation whose economic and ideological interests were opposed to the socialist, industrial, urban revolution of the party. In a public address to the Tenth Congress of the Russian Communist Party in 1921, Stalin publically supported Lenin's vision of a federated union of Soviet republics "based on common military and economic affairs" that "embrace[s] the various social, cultural

and economic conditions of the various nations and peoples.” But Stalin added the caveat that the federation of Soviet republics would offer cultural autonomy as a “transition stage” to “that supreme unity of the toilers of all countries in a single world economic system” that would generate a world-wide class consciousness and abolish all previously existing national identities.²⁴¹ Those Marxist thinkers supporting national cultural autonomy, such as Renner and Bauer, were advocating an admixture of socialism and fantasy, Stalin later wrote. Their theory was a chimera: “Where are the magic hoops to unite what cannot be united?” Stalin asked. “National autonomy is contrary to the whole course of development of nations,” he continued. Its solution to the nationalities question “mechanically squeezes nations into the Procrustes’ bed of an integral state.”²⁴²

In a 1930 report delivered to the sixteenth Congress of the USSR Communist Party, Stalin described the crushing of nations as a form of social protection, just as Lemkin had suggested in his studies of the Soviet penal code. Stalin asserted that the USSR would promote the national cultures so long as they were “national in form but socialist in content.” The national cultures that were amenable to the “proletarian dictatorship in one country” would be “permitted to develop and expand and to reveal all their potential qualities, in order to create the conditions necessary for their fusion into a single, common culture with a single, common language.” Those who “deviate towards local nationalism” in the “formerly oppressed nations” do so out of “dissatisfaction” with

²⁴¹ Joseph Stalin, “Theses on the Immediate Tasks of the Party in Connection with the National Problem: Presented to the Tenth Congress of the Russian Communist Party, Endorsed by the Central Committee (1921),” in *Marxism and the National and Colonial Question*, trans. I. Tovstukha (Moscow: Co-operative Publishing Society of Foreign Workers in the U.S.S.R., 1939), 93-94.

²⁴² Joseph Stalin, “Marxism and the Nationalities Question,” in *Marxism and the National and Colonial Question* trans. I. Tovstukha, (Moscow: Co-operative Publishing Society of Foreign Workers in the U.S.S.R., 1939), 31.

the current Soviet regime, Stalin wrote. “The task of the Party” was to “wage a struggle” and “create the conditions necessary” for preventing the “deviations towards local nationalism” from arising in the first place.²⁴³

Nowhere was this policy more visible than in the Ukrainian SSR, where Moscow conducted purges of the arts, literatures, and language dictionaries, and carried out systematic attacks on political elites, intellectuals, artists, the church, and the peasantry. The object was to destroy the Ukrainian nation and stamp out every last vestige of an independent Ukrainian culture. In the Ukraine, as elsewhere, Stalin’s attacks on the foundations of local nationalism began in the offices of the Joint State Political Directorate (OGPU), Stalin’s secret police. The OGPU was directed to attack the intelligentsia which formed the “national center” of the Ukrainian nation.

In 1953, Lemkin spoke on Ukrainian genocide at a commemoration of the Ukrainian Great Famine, known as the Holodomor. The speech is important because it shows that, even at the end of his life, Lemkin continued to think that Soviet terror and the Soviet treatment of minority groups was germane to the idea of genocide he developed. Lemkin’s idea that genocide was the destruction of “families of mind” is reflected in his speech, where he said that the genocide committed against the Ukrainian nation was intentionally and systematically targeting Ukrainian national consciousness. But the speech also harkens back to his political and legal analysis of the Soviet regime that he developed in the early 1930s, around the same time he was attempting to outlaw barbarism and vandalism, as the atrocity now known as the Holodomor was occurring.

²⁴³ Joseph Stalin, “Deviations on the National Question: A Report Delivered at the Sixteenth Congress of the C.P.S.U., June 1930” in *Marxism and the National and Colonial Question*, trans. I. Tovstukha, (Moscow: Co-operative Publishing Society of Foreign Workers in the U.S.S.R., 1939), 261-263.

While most scholars now consider the famine as the genocide, Lemkin considered Stalin's attempt to starve the peasantry as the most brutal technique of genocide—a third prong in a “four-pronged” assault on the Ukrainian family of mind.²⁴⁴ “The first blow” of the genocide was “aimed at the intelligentsia, the national brain, so as to paralyze the rest of the body,” he wrote. “In 1920, 1926 and again in 1930-33, teachers, writers, artists, thinkers, political leaders, were liquidated, imprisoned or deported ... 51,713 intellectuals were sent to Siberia in 1931 alone... At least 114 major poets, writers and artists, the most prominent cultural leaders of the nation, have met the same fate.”²⁴⁵

The attempt to destroy the Ukrainian nation widened to include to the liquidation of the Ukrainian Orthodox Church and Catholic churches. In Lemkin's analysis, this constituted the second prong of the genocide:

Going along with this attack on the intelligentsia was an offensive against the churches, priests and hierarchy, the “soul” of Ukraine. Between 1926 and 1932, the Ukrainian Orthodox Autocephalous Church, its Metropolitan (Lypkivsky) and 10,000 clergy were liquidated. In 1945, when the Soviets established themselves in Western Ukraine, a similar fate was meted out to the Ukrainian Catholic Church. That Russification was the only issue involved is clearly demonstrated by the fact that before its liquidation, the Church was offered the opportunity to join the Russian Patriarch at Moscow, the Kremlin's political tool.²⁴⁶

Simply “for the crime of being Ukrainian,” Lemkin stated:

the Church itself was declared a society detrimental to the welfare of the Soviet state, its members were marked down in the Soviet police files as potential “enemies of the people.” As a matter of fact, with the exception of 150,000 members in Slovakia, the Ukrainian Catholic Church has been

²⁴⁴ Roman Serbyn, “The Ukrainian Famine of 1932-1933 as Genocide in the Light of the UN Convention of 1948,” *The Ukrainian Quarterly* 62 (2006): 181-194.

²⁴⁵ Lemkin, “Soviet genocide in the Ukraine,” NYPL, Reel 3, Box 2, Folder 16, p. 1. See Roman Serbyn “Lemkin on Genocide of Nations,” *Journal of International Criminal Justice* 7 (2009): 123-130. Also see Irvin-Erickson, “Genocide, the ‘Family of Mind’ and the Romantic Signature of Raphael Lemkin.”

²⁴⁶ Lemkin, “Soviet genocide in the Ukraine,” 3.

officially liquidated, its hierarchy imprisoned, its clergy dispersed and deported.²⁴⁷

The Soviet attacks on the Ukrainian clergy and intellectuals were “attacks on the Soul” of the people that, Lemkin wrote:

will continue to have a serious effect on the Brain of Ukraine, for it is the families of the clergy that have traditionally supplied a large part of the intellectuals, while the priests themselves have been the leaders of the villages, their wives the heads of the charitable organizations. The religious orders ran schools, and took care of much of the organized charities.²⁴⁸

The attempt to destroy the Ukrainian nation, however, polarized society and generated resistance along nationalist lines. In 1930, Stalin’s dekulakization program had nearly succeeded in breaking the organizational structure of anti-Soviet peasant movement in Ukraine. Yet, even after thousands of arrests, deportations, and executions, Ukrainian peasants still resisted forced collectivization. They armed themselves with farm tools and were killed in large numbers, often while singing the Ukrainian national anthem or chanting the slogans of the liberation movements that the OGPU had destroyed.²⁴⁹

Historian Liudmyla Hrynevych has shown that factory workers around the country watched the secret police target peasants as “kulaks” or members of the bourgeoisie, but certainly understood that the desolate farmers were hardly members of an upper class in any sense. When urban workers broke ranks with the Communist party and joined the peasantry under the banner of Ukrainian national independence, Moscow and the Soviet

²⁴⁷ Lemkin, “Soviet genocide in the Ukraine,” 4.

²⁴⁸ Lemkin, “Soviet genocide in the Ukraine,” 4.

²⁴⁹ Liudmyla Hrynevych, “Stalins’ka ‘Revoliutsiia Zhory’ ta Holod 1933 r. iak Factory Polityzatsiï Ukraïns’koï Spil’noty,” in *The Holodomor Reader: A Sourcebook on the Famine of 1932-1933 in Ukraine*, eds. Bohdan Klid and Alexander J. Motyl (Edmonton: Canadian Institute of Ukrainian Studies Press, 2012), 15.

Ukrainian leaders were caught off guard. From Stalin's perspective, the situation was a crisis.

The dekulakization purges and forced collectivization shattered the Ukrainian farming infrastructure and led to poor harvests in Ukraine, Siberia, and Kazakhstan.²⁵⁰ In a letter written the following summer to Lazar Kaganovich, a functionary overseeing the grain confiscation and collectivization campaign, Stalin referred to the situation in Ukraine as "terribly bad," not because people were beginning to starve, but because fifty district committees had cited the prospect of famine in speaking out against the collectivization process. "What does it sound like?" Stalin asked Kaganovich. "It's no longer a party, it's a parliament." "We could lose Ukraine," Stalin warned, not because of the onset of famine, but because Ukrainian officials were growing weary of confiscating food. Instructing Kaganovich to take control of the Ukrainian Party, Stalin ordered him to replace the leader of the OGPU, and "spare no effort" in transforming Ukraine "into a true fortress of the USSR, into a truly exemplary republic."²⁵¹

The director of the Ukrainian division of the OGPU, Vsevolod Balytsky, wrote that the regime ordered that "the fist of the OGPU hit out in two directions," first "at the kulak and Petliurist elements in the villages" and secondly "at the leading centers of nationalism."²⁵² Stanislaw Kosior, the General Secretary of the Ukrainian Communist Party and one time Deputy Prime Minister of the USSR, felt that the Soviet regime

²⁵⁰ Nicolas Werth, *La Terreur et le Désarroi. Staline et Son Système* (Paris: Librairie Académique Perrin, 2007).

²⁵¹ Nicolas Werth, "The Great Ukrainian Famine of 1932-23," in *The Holodomor Reader: A Sourcebook on the Famine of 1932-1933 in Ukraine*, eds. Bohdan Klid and Alexander J. Motyl (Edmonton: Canadian Institute of Ukrainian Studies Press, 2012), 41.

²⁵² Ibid.

orchestrated its deadly famine against the Ukrainian peasantry as a continuation of a larger assault on the Ukrainian nation because “nationalist deviation in the Communist Party of the Ukraine” was growing stronger.²⁵³

Stalin’s solution to Ukrainian nationalism was to starve the peasantry. Lemkin called this the third prong of the Soviet attack, “aimed at the farmers, the large mass of independent peasants who are the repository of the tradition, folklore and music, the national language and literature, the national spirit, of Ukraine.” He added that “the weapon used against this body is perhaps the most terrible of all—starvation.” The death of nearly 5,000,000 peasants, Lemkin wrote, was the “highpoint of Soviet cruelty” that was calculated to advance “a Soviet economic policy connected with the collectivization of wheat-lands.” But the famine also served a larger purpose: “the Ukrainian peasantry was sacrificed” to “eliminate that nationalism, to establish the horrifying uniformity of the Soviet state.”²⁵⁴

As Lemkin asserted, Stalin’s decision to destroy the Ukrainian nation by starving the peasantry was not implicit in his initial desire to destroy the nation, but was nevertheless a systematic and intentional act. A decree in December 1932 officially classified peasants and advocates of Ukrainian culture as bourgeois nationalists, class enemies. In January 1933 Stalin closed the borders of the Ukrainian SSR and North Caucasus Territory, making it illegal for peasants to cross into neighboring countries. Peasants were banned from riding the railroad, and a new law on internal passports prohibited rural populations from entering urban areas. When Stalin cut off grain, all

²⁵³ Ibid.

²⁵⁴ Lemkin, “Soviet Genocide in the Ukraine,” page 4-5.

three combined to prevent starving peasants in the Ukraine from leaving in search of food.²⁵⁵ More than two hundred thousand people were arrested attempting to leave the Ukraine. Twenty percent were sent to gulags. Eighty percent were returned back home, where there was no food.²⁵⁶ When foreign governments offered aid, Moscow denied there was a famine.²⁵⁷ In a letter to the Mikhail Sholokhov, Stalin addressed the novelist's horror at witnessing the mass starvation very simply: "These people deliberately tried to undermine the Soviet state. It is a fight to the death Comrade Sholokhov!"²⁵⁸

The Holodomor killed almost four million people. In the spring of 1933, so many peasants had died that the Soviet military rounded up people in urban areas and shipped them off to the Ukrainian countryside. Nicolas Werth describes a cable written by the Italian consul in Kharkiv who reported that 20,000 people were mobilized to the countryside in one week alone. "The day before yesterday," the consul wrote, "they surrounded the market, seized all able persons, men, women, and adolescents, transported them to the station under GPU guard, and shipped them to the fields."²⁵⁹ The forced resettlement of non-ethnic Ukrainians into Ukraine was the fourth prong of the attack on the Ukrainian nation, Lemkin believed, solidifying the fragmentation and destruction of Ukrainian cultural life.²⁶⁰

²⁵⁵ Roman Serbyn, "The Ukrainian Famine of 1932-1933."

²⁵⁶ David R. Marples, *The Great Ukrainian Famine of 1932-23* (Saskatoon: Heritage Press, 2011).

²⁵⁷ Naimark, *Stalin's Genocides*, p. 73.

²⁵⁸ Quoted in Naimark, *Stalin's Genocides*, 75.

²⁵⁹ Quoted in Nicolas Werth, "The Great Ukrainian Famine of 1932-23," 47.

²⁶⁰ Lemkin, "Soviet Genocide in the Ukraine," 6.

At the party convention of 1934, Stalin claimed “the only major danger” to the USSR and the party was the “deviations [towards local nationalism]” which the party “has ceased to fight and has thus enabled to grow into a danger to the state.” He presented the Ukraine as an illustration of his point. “The deviation towards Ukrainian nationalism did not represent the major danger” until the party “ceased to fight it.” Once it reached a critical danger, and “joined forces with the interventionists,” the state had an obligation to create the conditions for preventing Ukrainian nationalism from rising in the first place.²⁶¹ As Stalin indicated in his 1934 congress report, the old friendship among nations was not possible. He told delegates that the assault on Ukrainian national consciousness was only one part of a necessary process aimed at eliminating the “enemy nations” resisting integration into the USSR or the Central Communist Party.

Between 1932 and 1933, at the same time Stalin accelerated his plan to erase the Ukrainian nation, half a million Poles and Germans were arrested and deported to camps and gulags.²⁶² Nearly seventy thousand Germans were detained in one round of arrests; more than half were put to death. With the Poles, Stalin fretted endlessly about phantom agents of Pilsudski infiltrating the Party and the country, waiting to strike from the inside when Polish forces began their invasion. Historians do not consider Pilsudski and his clandestine agents to have been threats. Yet “the Polish threat” in Stalin’s mind was as large, if not larger, than the Ukrainian threat. As Soviet officials described Stalin’s

²⁶¹ Joseph Stalin, “Deviations Towards Nationalism: Report on the Work of the Central Committee of the C.P.S.U. Delivered at the Seventeenth Party Congress, January 26. 1934,” in *Marxism and the National and Colonial Question*, trans. I. Tovstukha (Moscow: Co-operative Publishing Society of Foreign Workers in the U.S.S.R., 1939), 268.

²⁶² Naimark, *Stalin’s Genocides*, 83-84.

orders, the Poles were to be completely destroyed.²⁶³ In the context of Stalin's genocides, which claimed nearly thirty million lives, entire Polish families were arrested and sent to gulags and over one hundred thousand Poles were shot.²⁶⁴

At annual conferences of the International Association of Genocide Scholars, the International Network of Genocide Scholars, and the American Political Science Academy, some scholars have suggested that Lemkin would not have known about the Ukrainian famine in the 1930s. The argument, which has never been published, rests on the belief that the Ukrainian genocide was always a forgotten case of genocide. The collective act of forgetting, however, began in the 1940s. In the 1930s, Stalin's policies were publically debated across Europe and accounts of the horror were disseminated in newspapers around the world.²⁶⁵ Furthermore, another revenge killing made national headlines across Poland in October 1933 when Mykola Lemyk was sentenced to life in prison for assassinating a Soviet official in the consulate in Lwów, Alexei Mailov, for his role in the attempted destruction of the Ukrainian nation. Interwar Poland, moreover, contained the largest Ukrainian community outside the Soviet Union, with more than five million Ukrainians in Galicia, Volhynia, and Polisia. The terror and Great Famine of 1932–33 were reported widely throughout the Galician Ukrainian press, and the horror was one of the major political concerns in Poland at the time, and the subject of much

²⁶³ Naimark, *Stalin's Genocides*, 85.

²⁶⁴ Kurt Jonassohn and Karin Solveig Björnson, *Genocide and Gross Human Rights Violations in Comparative Perspective* (New Brunswick: Transaction Publishers, 1998). And see Niccolo Pianciola, "Famine in the Steppe: The Collectivization of Agriculture and the Kazakh Herdsmen, 1928-1934," *Cahiers du Monde Russe* 45 (2004), 189.

²⁶⁵ Alexander Laban Hinton, "Critical Genocide Studies," *Genocide Studies and Prevention* 7 (2012).

public debate.²⁶⁶ The Organization of Ukrainian Nationalists took credit for assassinating Mailov as an act of solidarity with the people of Ukraine. And, while the Polish government went to great lengths to prevent the trial from being used to publicize the Holodomor, the press and public discourse largely saw the assassination as an appropriate response to the famine occurring just across the border.²⁶⁷

Writing on the Ukraine, the public intellectual Malcolm Muggeridge described the North Caucasus and Ukraine 1933 as a “battlefield [as] desolate as in any war,” only much wider, stretching over vast parts of the USSR:

On the one side, millions of peasants, starving, often their bodies swollen with lack of food; on the other, soldiers, members of the G.P.U. carrying out the instructions of the dictatorship of the proletariat. They had gone over the country like a swarm of locust and taken away everything edible; they had shot and exiled thousands of peasants, sometimes whole villages; they had reduced some of the most fertile land in the world to a melancholy desert. The conquest of bread, like the conquest of glory, seemed a vain pursuit.²⁶⁸

Stepan Baran, the editor of the Ukrainian National Democratic Party’s newspaper between 1914 and 1918, published articles on the famine in 1933 in the Lwów newspaper *Dilo*. Gareth Jones, a journalist and adviser to Great Britain Prime Minister David Lloyd George, traveled through Russian and Ukraine in 1933 and reported on Soviet policies of forced starvation of peasants, hundreds of orphans wandering Ukrainian cities, and

²⁶⁶ Myroslav Skhandrij, “Ukrainianization, Terror and Famine: Coverage in Lviv’s *Dilo* and the Nationalist Press of the 1930s,” *Nationalities Papers* 40 (2012), 432. I am indebted to Jim Fussell for calling the assassination to my attention.

²⁶⁷ Skhandrij, “Ukrainianization, Terror and Famine,” 443.

²⁶⁸ Malcolm Muggeridge, “The Soviet’s War on the Peasants,” in *The Holodomor Reader: A Sourcebook on the Famine of 1932-1933 in Ukraine*, eds. Bohdan Klid and Alexander J. Motyl (Edmonton: Canadian Institute of Ukrainian Studies Press, 2012), 107-109. The article was published the London newspaper, *Fortnightly Review* in 1933.

children who were hailed as heroes for betraying their parents as class enemies.²⁶⁹ In later pieces, Jones provided an account of a communist cadre commenting on a headline in a newspaper announcing that ninety children had died of hunger and disease on a train while being transported to Siberian labor camps. Proudly, the cadre boasted, “we must be strong and crush the accursed enemies of the working class ... Let them suffer now. We have no place for them in society.”²⁷⁰

One might doubt that Lemkin’s formulation of barbarism and vandalism was written with the Soviet terror in mind because he did not mention it explicitly. To dispel this doubt, one only need be reminded that Lemkin could not have expected such a law to be enshrined in the League of Nations if it explicitly named either Soviet atrocities or the actions of the Nazi regime on the rise in Germany. With the weight of all the evidence that the unfolding catastrophe in Ukraine was one of the major political issues in public discourse in Poland—and given that many intellectuals and observers believed Stalin was attempting to starve the Ukrainian peasantry through force to solidify the revolution of the proletariat—it is simply unimaginable that Lemkin did not know what was happening in the nearby Soviet republics. Not only was he a jurist living in Warsaw who worked on international humanitarian law, but he was a Jewish Pole and the Ukrainian tragedy on the whole was widely seen at the time as a Jewish catastrophe. Even the Yiddish

²⁶⁹ See Gareth Jones, “Famine in Russia. Englishman’s Story. What he Saw on a Walking Tour,” *Manchester Guardian*, 30 March 1933. The story can be found in Bohdan Klid and Alexander J. Motyl, eds., *The Holodomor Reader: A Sourcebook on the Famine of 1932-1933 in Ukraine* (Edmonton: Canadian Institute of Ukrainian Studies Press, 2012), 101-102.

²⁷⁰ Gareth Jones, “Reds Let Peasants Starve. Famine Found Even in Large City in Ukraine,” in *The Holodomor Reader: A Sourcebook on the Famine of 1932-1933 in Ukraine*, eds. Bohdan Klid and Alexander J. Motyl (Edmonton: Canadian Institute of Ukrainian Studies Press, 2012), pp. 105. The article was published in the *New York American* and the *Los Angeles Examiner*, 14 January 1935 and syndicated in Hearst newspapers.

language newspaper in far away New York, *Jewish Daily Forward*, published accounts of the famine in Ukraine and covered Soviet attacks on national minorities and Soviet Jewry. It was “much more than expunging religion,” the author wrote: it meant “smashing” the traditions of local Jewish life, both in society and in the home. Jews had to declare themselves before Soviet authorities in the Ukraine as “bezbozhnik,” or godless and shameless. Jewish schools were forced to adopt a Stalinist line, and whole families were forced to assemble before every Jewish holiday to hear party propaganda against the world Jewish movement.²⁷¹

What is more, given that Lemkin was already an expert on the Italian and Soviet penal codes, and their fascist and totalitarian solutions to deviant forms of national consciousness, it is clear that Stalinist terror placed a central role in shaping his crimes of barbarism and vandalism. But just as Lemkin’s ideas on what nations were and how nations were destroyed built on the works of Dubnow, Renner, and Bauer and cultural autonomy, his writings on Soviet terror were not novel either. Theory of totalitarianism permeated Polish intellectual circles during the interwar years, reaching their height in the 1930s. Totalitarianism as a theoretical concept—and the related terms “totalism” and “total war”—coincided with the mass mobilizations of the First World War and the subsequent political upheavals in Europe.²⁷² While it would be unwise to reduce Lemkin’s ideas to their sociological context, his juridical analysis of the totalitarian

²⁷¹ Harry Lang, “A Trip to the Jewish Kolkhozy of Ukraine and White Russia,” in *The Holodomor Reader: A Sourcebook on the Famine of 1932-1933 in Ukraine*, eds. Bohdan Klid and Alexander J. Motyl, (Edmonton: Canadian Institute of Ukrainian Studies Press, 2012), 123. The article appeared in the New York newspaper *Jewish Daily Forward* on 30 December 1933.

²⁷² Jeffery C. Isaac, *Arendt, Camus, and Modern Rebellion* (New Haven: Yale University Press, 1994).

Soviet criminal code and the law's deathly consequences was similar to the works of other Polish jurists and sociologists.

The term "totalitarianism" was likely coined by the Italian anti-fascist Giovanni Amendola, who denounced the intolerance of fascists whose political procedures constituted a "sistema totalitario" that claimed "absolute" and "unrestricted rule in the sphere of communal politics and administration."²⁷³ Within a few months, Giovanni Gentile used the term approvingly to describe Mussolini's fascist movement.²⁷⁴

Economists in Poland, such as Stanisław Starzyński and Eugeniusz Jarra, joined the debate in the 1930s, arguing that the economic program of totalitarian regimes in Italy, the USSR, and Germany were all orientated towards subordinating economic life in the country to an ideological system. Starzyński and Jarra both echoed a belief that the regimes justified and perpetuated these ideologies by preventing their citizens, press, and academics from engaging in free reflection and criticism.²⁷⁵ An innovative thesis was pioneered by the jurist Antoni Wereszczyński, who argued that the totalitarian regimes of Europe did not arise from military coups, but from revolutionary upheavals with a social basis. Once in power, the revolutionary organization "relies on the apotheosis of the state, on a belief in its almost miraculous might, on a strict connection between the state and the victorious organization or its leader, and on the elimination of the rest of the

²⁷³ Quoted in Jens Petersen, "The History of the Concept of Totalitarianism in Italy," in *Totalitarianism and Political Religions Volume 1: Concepts for the Comparison of Dictatorships*, trans. Jodi Bruhn, ed. Hans Maier (New York: Routledge, 1996), 6.

²⁷⁴ A. James Gregor, *Giovanni Gentile: Philosopher of Fascism* (New Brunswick: Transaction Publishers, 2004).

²⁷⁵ Kornat, "Polish Interpretations of Bolshevism and Totalitarian Systems (1918-1939)," 83.

population from having any influence at all.”²⁷⁶ Of course, many of these theories of totalitarianism carried an air of approval by their authors.

In arguing that the totalitarian state was the apotheosis of the modern state, Wereszczyński had found common ground with Franz Neumann’s work a decade later. In *Behemoth*, Neumann argued that National Socialism was a state-less state that lacked modern political institutions necessary for reining in the power struggles of competing groups whose only common ground was hatred, propelling the state towards uncontrolled violence and expansionary war.²⁷⁷ In contrast, Wereszczyński believed “the populace is merely a means of satisfying the goals of [the state].” The legal system eliminates individual rights and asserts state control over the life and property of the ruled, collapsing the state and “the people” into a single institution where political enemies are repressed violently, leaving only an “unthinking grey mass, a mob whipped along in the direction indicated by the almighty rulers.”²⁷⁸ While Lemkin’s legal theory would, in later years, share many similarities with Neumann’s, it is clear that Lemkin did not consider totalitarianism to be the apotheosis of the modern state, or a state-less state, like Wereszczyński believed. Nor did he equate totalitarianism with “mob rule.”

In 1941, Lemkin delivered lectures at Stockholm University on the clearing and exchange policies of totalitarian regimes. The lectures appear to follow the work of the economist Feliks Młynarski, whose central thesis claimed the totalitarian state

²⁷⁶ Antoni Wereszczyński, *Państwo Antyczne I Jego Renesansy: Przyczynki do Reformy Ustroju Polski* (Lwów: Wydaw Zakł, 1928). Quoted in Kornat, “Polish Interpretations of Bolshevism and Totalitarian Systems (1918-1939),” 84.

²⁷⁷ Franz L. Neumann, *Behemoth: The Structure and Practice of National Socialism, 1933-1944, 2nd edition* (New York: Oxford University Press, 1944).

²⁷⁸ Wereszczyński, *Państwo Antyczne I Jego Renesansy*. Quoted in Kornat, “Polish Interpretations of Bolshevism and Totalitarian Systems (1918-1939),” 84.

strengthened bureaucratic institutions and financial systems while weakening institutional constraints. This maximized the economic reach of the state while removing institutional limitations.²⁷⁹ Another jurist whose work shared an affinity with Lemkin was Wacław Komarnicki, who argued that the dictatorship of the proletariat in the USSR was a form of fascist rule of the minority over the majority, rejecting a separation of state powers and condemning parliamentarianism as a matter of principle.²⁸⁰ For Komarnicki, the total state was not simply a state that sought to eliminate all sources of political opposition and infiltrate the private lives of citizens. The total state sought to transform society and subordinate social life to ideology with the goal of creating a “new human.”²⁸¹ While these theorists do not appear in Lemkin’s footnotes, Lemkin’s writings on barbarism and vandalism, and in *Axis Rule*, borrowed from these writings, either explicitly without citing them or implicitly through the discourse of his contemporaries.

Although the Poles did not systematically engage in thinking about totalitarianism during the interwar years, the theories of totalitarianism in Polish writings were often intrinsically wrapped up within the nationalities question. Not only was the nationalities question the burning issue of the day, but the USSR’s violent solution to the problems caused by minority nations hung like a specter over Polish intellectuals. Władysław Leopold Jaworski, a major figure in Polish legal philosophy, published a study of the new

²⁷⁹ Feliks Młynarski, *Totalizm czy Demokracja w Polsce* (Warszawa: Wydawn Klubu Społeczno-Politycznego, 1938). Quoted in Kornat, “Polish Interpretations of Bolshevism and Totalitarian Systems (1918-1939),” pp. 83.

²⁸⁰ Wacław Komarnicki, “Nowy Ustrój Związku Sowieckiego,” *Racznik Prawniczy Wileński* 10 (1938): 169-208.

²⁸¹ Kornat, “Polish Interpretations of Bolshevism and Totalitarian Systems (1918-1939),” 83; Komarnicki, “Nowy Ustrój Związku Sowieckiego,” 169-208.

forms of constitutional law in Europe in 1928.²⁸² Jaworski argued that totalitarianism as a political movement had now manifested itself in the legal codes of totalitarian states, facilitating the state's project of controlling every aspect of human life by dissolving the legal distinction between the public and the private. The legal innovation allowed Italian Fascism and Bolshevism to direct the physical and moral force of the law towards the eliminating of political opposition. But it also gave the state unprecedented access into controlling the social make up of the nation-state, so as to remove social and political opponents by barring them from public life in Italy, or physically annihilating them in the USSR.²⁸³

A year later, Leopold Caro wrote about a concept that had just been introduced by the German jurist Carl Schmitt with his 1927 book *The Concept of the Political*. Caro argued that the Bolshevik regime constructed a legal apparatus that gave it full discretion to eliminate enemies of the nation.²⁸⁴ Thus Soviet law gave the regime the full freedom to intervene in the lives of individuals under the justification that "there can be no tolerance of those who think differently."²⁸⁵ It obliged the entire structure of the Soviet bureaucracy and the party cadre to consider "thinking differently" as act against the state.

Jaworski's analysis of how Italian Fascism sought to eliminate political opponents from public life, while Soviet Bolshevism physically annihilated counterrevolutionary social elements, bears a close similarity to Lemkin's work. It is unclear just how much

²⁸² Władysław Leopold Jaworski, *W Sprawie Nowej Konstytucji* (Cracow: Frommer, 1928).

²⁸³ Ibid. See Kornat, "Polish Interpretations of Bolshevism and Totalitarian Systems (1918-1939)," 83.

²⁸⁴ Leopold Caro, "Idee Przewodnie Ustawodawstwa Sowieckiego," *Ruch Prawniczy, Ekonomiczny I Socjologiczny* 9 (1929), 205-223.

²⁸⁵ Cited in Kornat, "Polish Interpretations of Bolshevism and Totalitarian Systems (1918-1939)," 84.

theoretical influence Lemkin's ideas would have had on his contemporaries—probably little since he was so young—but his texts were the only Polish translations of Soviet law available after 1927.²⁸⁶ It seems reasonable to assume that Polish scholars studying Soviet law in translation would also have read Lemkin's translations, and likely his commentaries contained in the book. Yet, it is far more likely that Lemkin was shaped by this discourse of totalitarianism. For Lemkin, reflecting Jaworski's thesis, the defining characteristic of the law in totalitarian and fascist states was that the law conceptualized the state and society as one entity. This allowed the law to conflate the protection of the state's interests with social interests and, by extension, moral and ethical justice. The Soviet criminal code established safeguards to protect the Bolshevik Party and Lenin's revolutionary program, Lemkin argued, while legitimizing violence against people who harbored counter revolutionary ideologies and national identities in Soviet society.²⁸⁷

The works of Młynarski and Komarnicki also color the intellectual context through which Lemkin's ideas emerged. The constellation of these Polish jurists, including Lemkin, had learned that totalitarian regimes sought to alter the social fabric of the societies they rule through force. What set Lemkin apart was that—with his proposals on barbarism and vandalism—he articulated a critique of totalitarianism that denounced totalitarianism for destroying national and cultural diversity, in addition to condemning it for its assault on individual rights. Here is where we can locate the influence of cultural

²⁸⁶ At numerous points in his autobiography and personal papers, Lemkin claims his translations were the first in Polish. The author has not found evidence otherwise.

²⁸⁷ Rafał Lemkin, "Ustawodawstwo Karne Rosji Sowieckiej, Kodeks Karny, Procedura Karna," *Encyklopedji Podrecznej Prawa Karnego*, Vol. 25, ed. by Waclaw Makowski (Warszawa: Warszawiej, 1938), 7. Quoted from Kornat, "Polish Interpretations of Bolshevism and Totalitarian Systems (1918-1939)," 98.

autonomy upon Lemkin's thinking. But, this moral critique of the totalitarian state would also emerge in the work another towering figure, the jurist and sociologist Florian Znaniecki, whose work in the late 1920's bares a likeness to Lemkin's critique of barbarism and vandalism, and later genocide.

For Znaniecki, the 1848 Spring of Nations had demonstrated two competing tendencies within modern nationalism. The first tendency was the ideal to which nationalism should aspire: that each nation brought into the world a unique culture and, with it, unique cultural specializations. This diversity animated the world, meaning that each nation's own existence and own capacity to thrive depended on the existence and well-being of other nations. This ideal looked towards a "higher civilization" than the nation-state. But "racial imperialism" and the "nationalism of the masses" were forms of nationalism that made the state the highest value and therefore destroyed the potential of making this "higher civilization" a cultural, social, and political reality.²⁸⁸ If Jaworski seems to have provided the seeds of Lemkin's idea of genocide, then Znaniecki's thought formed the beginning of Lemkin's moral critique.

Lemkin's ideas also shared a second important point of confluence with Znaniecki's landmark study, *The Fall of Western Civilization: A Sketch at the Border of Philosophy, Culture, and Sociology* published in 1921.²⁸⁹ For Znaniecki, Bolshevism was a social phenomenon first, which then established itself as a political system. Znaniecki argued that Bolshevism was derived from "social movements" that were part of a new

²⁸⁸ Elzbieta Hałas, *Towards the World Culture Society: Florian Znaniecki's Culturalism* (Frankfurt: Peter Lang, 2010), 175; Florian Znaniecki, *Upadek Cywilizacji Zachodniej: Szkic z Pogranicza Filozofii, Kultury I Socjologii* (Warszawa: Nakł. Komitetu Obrony Narodowej; skł. gł.: Gebethner i Wolff, 1921).

²⁸⁹ Florian Znaniecki, *Upadek Cywilizacji Zachodniej*.

“social process” in all of modern Europe.²⁹⁰ This social process was part of a destructive modern process of exalting one’s own ethnic distinctions, which often found its expression in both “racial imperialism” and the nationalism of the masses.²⁹¹

Karl Mannheim is thought of as innovating the theory on the connection between totalitarianism and the phenomenon of the mass society. However, Mannheim had found an antecedent in Znaniecki’s sociology of the Polish peasantry and the psychological phenomenon of social sublimation.²⁹² While we should resist positioning Lemkin within a particular school of the theory of totalitarianism, he shared with Znaniecki and Mannheim a sentiment that totalitarianism—as well as barbarism and vandalism, and genocide—were sociological processes connected to political interests.²⁹³ This belief grounded Lemkin’s juridical argument that incorporating universal, or monist, legal norms into the domestic legal codes of individual states could alter the social practices within those societies, preventing barbarism and vandalism, and genocide. Yet, there were considerable differences between Lemkin’s views and Znaniecki’s and, for that matter, Mannheim’s. Namely, Mannheim’s position was grounded in a positivist sociology that conceptualized totalitarianism as a series of individual events that arose out of particular circumstances within local national societies. Thus, for Mannheim, “totalitarianism loses its unique meaning as a threat, a warning to all modern

²⁹⁰ Florian Znaniecki, *Upadek Cywilizacji Zachodniej*.

²⁹¹ Elżbieta Hałas, *Towards the World Culture Society*, 175.

²⁹² See Karl Mannheim, *Man and Society in an Age of Reconstruction* (New York: Routledge, 1960), 118 n. 1. And see Mannheim’s bibliographic guide on p. 396.

²⁹³ Raphael Lemkin, “The Concept of Genocide in Sociology,” NYPL, Reel 3, Box 2, Folder 3.

societies.”²⁹⁴ In Lemkin’s thought, in contrast, the destruction of nations and entire social groups was possible in all societies, not just in totalitarian regimes. This position distinguished Lemkin from his contemporary Polish theorists during the interwar years, as well as other scholars later on in the 1940s and 1950s who were studying Nazi atrocities.

The theory of totalitarianism in the 1920s and early 1930s centered around a belief that the total state altered the social fabric of society to eliminate the basis of political opposition, or to create a “new man” in order to facilitate the ideological goals of the regime. Lemkin, on the other hand, would eventually disaggregate the concept of “totalitarianism” from the practice of altering the social fabric of society through violence and coercion. In Lemkin’s foray into this theory, he used the terms “barbarism” and “vandalism” to refer to the destruction of nations. This allowed him to argue that the annihilation of minority national groups and their cultures was as old as human history, and was as much a characteristic of the liberal democratic nation-states as it was of the total regimes in Germany and the USSR. As such, “barbarism” and “vandalism” represented a confluence of his thinking on national cultural autonomy and Polish theories of totalitarianism. The “racial imperialism” and “nationalism of the masses” that Znaniecki saw in totalitarian regimes, Lemkin saw as a modern form of an old practice. Thus, barbarism and vandalism, and later genocide, were concepts separate from totalitarianism that, while closely related, were not intrinsic to each other.

²⁹⁴ David Kettler and Volker Meja, *Karl Mannheim and the Crisis of Liberalism* (New Brunswick: Transaction Publishers, 1995), 167.

2.4 UNIVERSAL JURISDICTION, LEGAL MONISM, LEGAL POSITIVISM, AND THE THEORY BEHIND BARBARISM AND VANDALISM

Because the destruction of entire nations was possible in any human society under any type of government, Lemkin believed that the new crimes of barbarism and vandalism should be grouped together with crimes that had a longstanding legal precedent as crimes with universal jurisdiction, such as slavery, piracy, and the trade in pornography. Practically speaking, the principle of universal repression would mean that the perpetrators of barbarism and vandalism—like a pirate—could be brought to justice *forum loci deprehensionis*, in the place where he was apprehended. The place where the crime was committed would not have mattered, nor would the nationality of the offender. The law would apply equally if the offender was a private citizen or head of state. If passed in 1933, Lemkin's laws would have allowed any state's domestic courts to prosecute perpetrators of barbarism and vandalism that occurred in any region of the world, even if they were state-sanctioned offenses, just as any state had the right to prosecute a pirate who committed crimes anywhere in the world.²⁹⁵

Universal jurisdiction was not just about arresting perpetrators of barbarism and vandalism when they left the protection of their home states and traveled abroad. Lemkin had also noticed that crimes with universal jurisdiction shared a special place in the conscience of statesmen and the world public. People did not necessarily view these crimes as especially horrendous, but as acts that were dangerous enough to pose a material threat to the interests of the entire world. The USSR and the US, for example, if they wanted to sabotage underwater cables or spread vegetable diseases, would have to

²⁹⁵ Lemkin, "Les Actes Constituant un Danger General," 48–49.

conduct the deeds clandestinely lest they provoke world-wide condemnation and incur the sanctions of other states. But both states could openly deem entire groups of people as unwanted and dangerous, such as Native Americans or Ukrainians and Kazaks—or Jews—and then openly seek the wholesale subjugation and destruction of these minority nations. If world conscience was already aligned through international law to universally criminalize slavery, the trade in women and children, narcotics, the circulation of obscene publications, piracy, and even the destruction of submarine cables, then certainly international law should criminalize barbarism and vandalism.²⁹⁶ “Is not the destruction of a religious or racial collectivity more detrimental to mankind than the destruction of a submarine or robbing a vessel?” he asked. “When a nation is destroyed, it is not the cargo of the vessel which is lost, but a substantial part of humanity with a spiritual heritage, in which the whole world partakes.”²⁹⁷

Lemkin’s work on barbarism and vandalism reflects a larger debate that took shape during the interwar years between three leading European jurists, Carl Schmitt, Hans Kelsen, and Franz Neumann. The conservative, Nazi theorist Schmitt and Kelsen had squared off against each other, with Kelsen directly challenging Schmitt’s “theology of the state” and his disregard for normative law. Schmitt pointed to Kelsen as proof of liberalism’s inability to reconcile the law with political expediency while undermining the liberal principles it seeks to uphold. For Neumann, a Social Democrat, both Schmitt and Kelsen were mirror images of each other. While Neumann supported Kelsen’s political goals and sympathized with his intellectual refutation of the fascist rule of law,

²⁹⁶ Raphael Lemkin, “Akte der Barbarei und des Vandalismus als *Delicta Juris Gentium*,” *Anwaltsblatt Internationales* Vol. 19 (November 1933).

²⁹⁷ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 22.

he argued in the 1940s that Kelsen thought of the law as separate from sociology, politics, and ethics, and was thus unable to judge the law against illiberal forms of law. This was nothing but an extreme form of relativism, Neumann argued, which allowed thinkers like Schmitt to flourish and their ideas to animate the totalitarian Nazi regime.

Lemkin's juridical affinities to Neumann are detailed below—and there are many, even if Lemkin would have rejected Neumann's main thesis that monopoly capitalism led to the rise of National Socialism. Nevertheless, there are three aspects of Kelsen's thought that Lemkin upheld in his own work beginning with barbarism and vandalism, which Neumann rejected. For these reasons, Lemkin must be considered a student of Kelsen's particular vision of liberalism and legal monism even if Kelsen would never have accepted Lemkin as a student. Firstly, Lemkin wanted to use international humanitarian laws as a vehicle for enshrining universal principles into the domestic legal codes around the world in order to effect a normative change towards peace. Secondly, contrary to Neumann's criticism, Kelsen believed that international law could be used as a political tool for structuring world peace. This idea became a cornerstone of Lemkin's work in the 1940s. And thirdly, in Lemkin we find echoes of Kelsen's critique that nation-state sovereignty's most violent product is martial law and the state of emergency.²⁹⁸ Most significantly, Lemkin's work in the 1930s proposed outlawing crimes of barbarism and vandalism as part of a concerted effort to redefine state sovereignty under the banner of humanitarian law and the laws of nations.

²⁹⁸ Ernst Bloch, *Natural Law and Human Dignity*, trans. Dennis J. Schmidt, (Cambridge, MA: Massachusetts Institute of Technology, 1986), 148.

Kelsen, however, was not enthusiastic about Lemkin. From his work on Soviet and Italian penal codes, Lemkin demonstrated a keen awareness of the way the law was shaped by and shaped economics, politics, and society. Sensing this dynamic in *Axis Rule*, Kelsen authored a scathing review of Lemkin's book, dismissing it as a work of politics masquerading as legal theory.²⁹⁹ Yet, it is still worth tracing Kelsen's juridical thought in order to isolate affinities between his highly influential work and Lemkin's thought. For Kelsen, state sovereignty is a legal norm that cannot be derived from any other source, except from the idea that sovereignty exists. Thus sovereignty presents itself as indivisible and derived from the state but, in actuality, it is not inviolable. Sovereignty is whatever people think it is, Kelsen believed, and so it can be reimaged and redefined. This was a crucial insight for Lemkin.

In his 1920 book *The Problem of Sovereignty and International Law*, Kelsen unveiled a monist vision of law in contrast to the prevailing structure of international law after the First World War, upholding the autonomy of the domestic legal system of states. Legal monism posits a belief that all systems of law, from the local level to the international, constitute a single human legal system rather than a set of distinct traditions. While there are variations in the degree to which monists interpret the unity of the world's laws, the legal theory is underpinned by a belief that, at some level, there is no such thing as a system of laws that exists without reference to outside influences. This interrelatedness of all human legal systems can be formed either through ethical movements, such as the diffusion of human rights norms, or through power hierarchies. This vision of international law was a cosmopolitan project that rejected visions of legal

²⁹⁹ Hans Kelsen, "Review of *Axis Rule*," *California Law Review*, 34 (1946): 271-272.

and cultural pluralism which divided humanity legally and culturally into independent, sovereign states and societies. International law could therefore integrate the world in a cosmopolitan sense that constituted the inverted image of imperialism.³⁰⁰

For Kelsen, however, the project to find the unity of all laws was an epistemological question: a Kantian question of transcendental knowledge.³⁰¹ To follow a Kantian approach and chart a pure theory of law meant that his legal theory could not include elements of positive and natural law theory, nor could it hinge on considerations of morality and fact.³⁰² In *The Pure Theory of Law* Kelsen sought to establish a scientific study of law that was free of psychological, economic, political, or moral explanations of the law.³⁰³ At the center of Kelsen's jurisprudence was a belief that the law was a system whose meaning was not self-evident or universal, but derived through interpretation and social contexts. While espousing a vision of legal monism, Kelsen nevertheless identified himself as a positive law jurist.³⁰⁴ When human actions are obliged from legal norms, it is not because the words or concepts of law are universally valid as such, but because a higher legal norm bestowed legitimacy upon it, Kelsen argued. Ultimately, all legal norms are made valid by a higher legal norm until, finally, there is a norm that has not

³⁰⁰ Hans Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts: Beiträge zu Einer Reinen Rechtslehre* (Tübingen: Verlag von J.C.B. Mohr, 1922), 319-320.

³⁰¹ Hedley Bull, "Hans Kelsen and International Law," in *Essays on Kelsen*, eds. William Twining and Richard Tur (Oxford: Clarendon Press, 1986), 321-336.

³⁰² Stanley L. Paulson, "The Neo-Kantian Dimension of Kelsen's Pure Theory of Law," *Oxford Journal of Legal Studies*, 12 (1992), 311-332.

³⁰³ Hans Kelsen, *Pure Theory of Law*, 2nd edition, trans. Max Knight (Clark, NJ: The Lawbook Exchange, Ltd., 2005). In the first edition published in 1934, Kelsen was optimistic about the possibility of international law subsuming national law. In the second edition, published after the Second World War, Kelsen's optimism faded.

³⁰⁴ Legal positivism understands laws as man-made, obliging people to act and granting rights within historical and social contexts, through which the law is interpreted. Natural law, by contrast, conceives of rights as inherent, granted by god, nature, or self-evident reason.

been granted authority by a higher norm. This can be the constitution of a modern state, or a religious law, or the decree of an individual vested with political or symbolic authority. In every legal system, there is a point where the norm that authorizes all other legal norms is not authorized by a higher power, but is presupposed.³⁰⁵ This, for Kelsen, was the “basic norm” that all systems of law share in all societies. The basic norm of all legal systems was a human universal, granting legitimacy to norms that people followed and lived by.³⁰⁶ The basic norm was therefore transcendental, in a Kantian sense.³⁰⁷

Even Immanuel Kant, who refuted the idea that peace could be achieved through a balance of power between sovereign states, was forced to admit that replacing the system of state sovereignty with a world state governed by cosmopolitan law was unrealistic. For Kant, one had to work towards the cosmopolitan goal from within the framework of state sovereignty largely by promoting republican sovereign states.³⁰⁸ But Kelsen had shown jurists and legal scholars that there was no abyss between international law and national law, that international legal systems did not contradict the laws of the sovereign state.³⁰⁹ Sovereignty, as it formed in the European system of states after Westphalia, was a holdover of absolutism—a “theology of the state”—that was used to justify the state as the ultimate source of law, which therefore stood beyond the law.

³⁰⁵ Hans Kelsen, *General Theory of Law and State*, Anders Wedberg, trans. (New York: Russell & Russell, 1945), 108-112.

³⁰⁶ See Paulson, Stanley L., “Introduction,” in *Introduction to the Problems of Legal Theory*, Oxford: Clarendon Press, 2002. p. xvii,

³⁰⁷ Hans Kelsen, “The Pure Theory of Law and Analytical Jurisprudence” *Harvard Law Review*, Vol. 55 No. 1, pp. 44-0 (1941), 67. See Paulson, “The Neo-Kantian Dimension of Kelsen’s Pure Theory of Law.”

³⁰⁸ Immanuel Kant, “Perpetual Peace: A Philosophical Sketch,” in *Kant: Political Writings*, 2nd ed., ed. Hans Reiss, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 2009), 93-130.

³⁰⁹ Ervin Hexner, “The Timeless Concept of Law: Observations on Hans Kelsen's Law and Peace in International Relations,” *The Journal of Politics* 5 (1943), 55, n21.

Sovereignty could therefore never guarantee true peace because it was built on a premise that the violence of the state, and wars between states, stood beyond the sanction of laws. But, as Kelsen argued, the doctrine of sovereignty was not the ultimate source of the law; sovereignty was nothing except a legal norm authorized by the “basic norm.”³¹⁰

Since the basic norm was how all legal systems authorized their norms, Kelsen claimed to have found a universal category that existed outside of moral, political, social, economic, or natural considerations, upon which all laws in every societies were based. The claim that the state was the source of all law was therefore an illusion that legitimized the state and the violence the state was built upon. It was now possible, Kelsen believed, to eliminate a “theology of the state,” and promote a true and perpetual world peace through world law.³¹¹ The sovereign state’s claims, such as Carl Schmitt’s state of exception, were therefore the product of a normative order. This meant that “we” can “actually define sovereignty as we please,” for “we derive from the concept of sovereignty nothing else than what we have purportedly put into its definition,” Kelsen wrote.³¹²

The innovation gave jurists the belief that states and individuals acting with the sanction of states could be treated as subjects of international law.³¹³ There was now a vision that states, and the heads of states, could be tried for committing humanitarian

³¹⁰ Petra Gúmplová, *Sovereignty and Constitutional Democracy* (Berlin: Nomos Publishers, 2010), 16-17; 83-87. See also Lars Vinx, *Hans Kelsen’s Pure Theory of Law: Legality and Legitimacy* (Oxford: Oxford University Press, 2008).

³¹¹ Hersch Lauterpacht, “Kelsen’s Pure Science of Law,” in *International Law, The Collected Papers: The Law of Peace, Vol. 2*, ed. Elihu Lauterpacht (Cambridge: Cambridge University Press, 1975), 404-430.

³¹² Hans Kelsen, *Peace Through Law*, 41.

³¹³ Danilo Zolo, “Hans Kelsen: International Peace through International Law,” *European Journal of International Law*, 9 (1998). Available from <http://www.ejil.org/article.php?article=1492&issue=48>

crimes against people, not just in times of war, but always. It was Lemkin and his colleagues working at the League of Nations, and later the UN, who attempted to translate much of this vision into the machinery of international law. The most notable, earliest indication of this sentiment in Lemkin's work can be found in his proposal that barbarism and vandalism be considered humanitarian crimes against populations, committed by private individuals or state leaders, during times of war or times of peace.

Genocide scholars have interpreted Lemkin as inheriting the legacy of natural law theorists such as Bartolomé de las Casas and Francisco de Vitoria, who formulated critiques of imperialism and European colonial violence.³¹⁴ Lemkin held on to universal claims that seem steeped in natural law: that nations and the cultures are worthy of protection as ends in themselves. However, Lemkin was not a natural law theorist. In drafts of the UN Genocide Convention a decade later, Lemkin even crossed out lines that justified the law against genocide as a law of nature.³¹⁵ While humanitarian law always implied natural rights, he believed, the sentiments were historically produced. As in the case of homicide, he wrote, the natural right of existence for individuals is implied. Likewise, when barbarism and vandalism, and genocide, are outlawed, the natural right of existence for nations is implied, he wrote. However, Lemkin concluded, it is through the "formulation of genocide as a crime" that "the principle that every national, racial and

³¹⁴ Moses, "Lemkin, Culture, and the Concept of Genocide," 27.

³¹⁵ Raphael Lemkin, "Sixth Committee Debates and Revisions, UN Doc. A/C/6/Sub.3/w.1, December 5, 1946." Raphael Lemkin Papers, Rare Book and Manuscript Library, Columbia University Library, New York, (Hereafter CUL), Box 5, Folder 18.

religious group has a natural right of existence is claimed.”³¹⁶ The entire history of genocide, he added elsewhere:

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.³¹⁷

As Moses writes, the quote indicates that the roots of the genocide idea lie in a five-hundred year tradition of natural law critiques of imperialism that Lemkin engaged intellectually.³¹⁸ The quote also reveals that Lemkin believed that the tenants of natural law did not exist anywhere in nature—and were thus not natural, but social, political, and historical. Rights and values had to be imagined and created. The purpose of inventing legal concepts, Lemkin wrote, was to create new moral categories through the institution of the law that would serve to abolish the destruction of nations from the repertoire of human actions.³¹⁹

Like Kelsen, Lemkin’s legal monism affirmed the existence and validity of different systems of national and international laws, while affirming the inherent connectedness between human systems of laws. Lemkin, too, sought to deny the doctrine of state sovereignty was the source of all law. Throughout his whole life, Lemkin’s proposals for redress always involved adopting international norms into the domestic penal codes in order to facilitate peace. As demonstrated above, many of Lemkin’s

³¹⁶ Raphael Lemkin, “Genocide,” *The American Scholar* 15 (1947), 229.

³¹⁷ Raphael Lemkin, “Proposal for Introduction to the Study of Genocide,” NYPL, Reel 3, Box 2, Folder 1.

³¹⁸ Moses, “Raphael Lemkin, Culture, and the Concept of Genocide,” 27.

³¹⁹ Raphael Lemkin, “International Law and Relation,” NYPL, Reel 3, Box 2, Folder 4.

contemporaries believed this was impossible when dealing with totalitarian regimes, which they saw as either apolitical and ruled through terror or violence, or the apotheosis of the modern state, lacking the institutional safeguards necessary for preventing the mob and the state from collapsing into one entity. But Lemkin saw that the political and legal institutions of totalitarian states were working perfectly well. Lemkin saw his challenge as creating universal norms guaranteeing the protection of national cultural autonomy and institutionalizing these protections in the domestic laws and societies of states. Barbarism and vandalism were his first steps.

2.5 BARBARISM AND VANDALISM DEFEATED

As he prepared for the conference in Madrid, Lemkin knew his ideas were not popular. His proposed laws could hold heads of state guilty of crimes against their own citizens, inside or outside of the state's sovereign borders while extending the laws of war to protect all people from state violence during times of peace. In his autobiography, Lemkin wrote that he was expecting a "big fight." To build support for his ideas, he published and circulated his proposal before he arrived. But the attempt to build support backfired. The *Gazet Warszawska*, an influential anti-Semitic Warsaw newspaper, found Lemkin's paper and came out strongly against his proposal to outlaw barbarism and vandalism. The paper accused Lemkin of acting for the protection for his own race and not on behalf of his government and nation, a supposed ethical breach given that Lemkin was attending the conference in his official capacity as a public prosecutor. At the time, Poland was seeking non-aggression pacts with the USSR and Germany. Wishing not to antagonize the two powers, the Polish government blocked Lemkin from attending the

conference. In what appears to be a blatant case of anti-Semitism, Lemkin was denied a passport and prevented from presenting his ideas.³²⁰ Without his presence, the proposal to enshrine barbarism and vandalism into the laws of nations was tabled without debate.

Lemkin had taken a risk in proposing that the destruction of nations be considered crimes. Within weeks, he was forced to resign from his public posts. From the end of 1933 to 1939, Lemkin taught law at Tachkomi College in Warsaw and cultivated his private practice. Although no longer a public figure, Lemkin remained an active writer, authoring a book in 1933 that would dramatically shape judicial procedures in Poland, *The Criminal Judge Faced by Modern Criminal Law and Criminology*.³²¹

Four years later, the opportunity arose again for Lemkin to present his ideas to the world. In 1937, Lemkin attended the Fourth International Conference of the Association for Criminal Law. Rather than proposing his crimes of barbarism and vandalism again, Lemkin delivered a report entitled “Protection of International Peace Through Domestic Penal Law.” In the paper, he returned to his previous work and argued that European states were increasingly moving towards war, and that conflicts between these states could be eased through domestic penal laws. Catastrophes could be prevented by placing the responsibility for averting war on the people themselves, not only on governments, he

³²⁰ Why Lemkin was prevented from going to Madrid is disputed. For varying accounts see William Korey, *An Epitaph for Raphael Lemkin* (New York: Jacob Blaustein Institute for the Advancement of Human Rights, 2001); Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002); and Ryszard Szawłowski, “Raphael Lemkin’s Life Journey: From Creative Legal Scholar and Well-to-do Lawyer in Warsaw until 1939 to Pinnacle of International Achievements During the 1940s in the States, Ending Penniless Crusader in New York in the 1950s,” in *Rafał Lemkin: A Hero of Humankind*, ed. Agnieszka Bienczyk-Missala and Sławomir Debski (Warsaw: The Polish Institute of International Affairs, 2010).

³²¹ Rafał Lemkin, *Sędzia w Obliczu Nowoczesnego Prawa Karnego i Kryminologii* (Warsawa: Wydawnictwo Instytutu Kryminologicznego Wolnej Wszechnicy Polskiej, 1933).

argued in Kantian fashion.³²² International law, he continued, should not be thought of as preventing war and conflict by maintaining a balance of power and collective security among states. Instead, he argued, domestic laws of states should be organized through international treaties and conventions to prevent domestic societies within states from participating in the mobilization of war. Again Lemkin's ideas were ignored. Still stung from his defeat with the ideas of barbarism and vandalism, Lemkin did not work in international law until 1939, but spent the years publishing his theories of how penal law could secure international peace,³²³ and conducting two massive studies on criminal fiscal law and the regulation of international payments and financial exchanges.³²⁴

Axis Rule in Occupied Europe is often referred to as Lemkin's "mature" work, implying that barbarism and vandalism were the product of a theorist whose thinking had not yet been fully formed. Yet, clearly, Lemkin's system of legal and political philosophy was already evident in 1933. If anything was to mature, it was one, his ability to integrate social and political theory into his legal theory; and two, his ability to convince diplomats and states people to listen seriously to his ideas and enact his laws. When he introduced his ideas on genocide to the UN, ten years later, Lemkin had learned through his previous failures, and knew how to build coalitions within an institution. Lemkin would be vindicated. On September 22, 1946 during the Sixth Committee of the UN, the delegate

³²² Raphael Lemkin, "La Protection De La Paix Par Le Droit Penal Interne," *Revue Internationale de Droit Penal* 1(1938):95-126.

³²³ Raphaël Lemkin, "La Protection de la Paix par le Droit Penal Interne," *Revue Internationale de Droit Penal* 1 (1938): 95-126.

³²⁴ Rafał Lemkin, *Prawo Karne Skarbowe: Komentarz: Przepisy Związkowe z Objasneniami, Orzecznictwo, Okólniki* (Kraków: Księgarnia Powszechna, 1938);

Raphaël Lemkin, *La Règlementation des Paiements Internationaux* (Paris: A. Pedone, 1939).

from Great Britain called for world support of the Genocide Convention, lamenting that six million people had been “exterminated” since a 1933 League of Nations conference in Madrid defeated “a proposal to punish crimes now included under the heading of genocide.”³²⁵

2.6 ESCAPE FROM AXIS OCCUPIED EUROPE

When German forces invaded Poland in September 1939, “the meaning of the Blitz was brought to the mind of every Pole not through a definition in the dictionary, but through the falling ceiling of the state and private life over his head,” Lemkin recalled in his autobiography. On September 6, Lemkin followed an evacuation order. Burning houses lit the way “like candles.” At the train station, babies cried themselves to sleep. People repeated the names of others quietly, imploring god to keep them alive, saying last goodbyes. In the morning, Lemkin’s train lurched forward, “slowly and cautiously, like a tired old man.” Gardens in the suburbs slipped into villages with golden rye fields. But within minutes the train suddenly split into two pieces and the locomotive collapsed like a “dead black horse.” The sound of German planes droned off into the distance. The passengers streamed from the windows into the tree line to escape the planes returning to strike again. Lemkin and the survivors set off “to live with the animals in the forest,” except that “nobody planned to kill all the animals at once.”³²⁶

With the annexation of Poland and Czechoslovakia, Germany was faced with the prospect of adding at least two million Jews, twenty million Poles, and six million Czechs

³²⁵ Quoted from Raphael Lemkin, Summary of Activities of Raphael Lemkin, page 3. New York Public Library, Reel 2.

³²⁶ Lemkin, *Autobiography*, “The Flight,” 2-3.

to the ranks of German citizens—which would have made Nazi Germany Europe’s second largest multi-national empire, next to the USSR, had Germany not denied them the right of German citizenship and expelled them. The Soviet secret police, which, had a decade of experience in “Sovietizing” minority national groups, began a similar campaign to clear the undesired nations from their frontiers, Lemkin wrote. On September 17th, when Soviet forces invaded eastern Poland to fulfill their pact with Hitler, hundreds, possibly thousands, of Polish intellectuals and elites were arrested and executed. Hundreds of thousands were sent to labor camps.³²⁷ Over ninety-seven percent of all Polish prisoners of war were executed. Their families were tracked down, arrested, and shot.³²⁸

For the Nazis, on the other hand, the occupation of Poland was the regime’s first attempt at Germanizing conquered European territories. Later, in the 1950s, Lemkin researched the genocides committed by the German state in colonial Africa and considered these to be a training ground for the horrors unleashed in the Holocaust. In *Axis Rule*, however, Lemkin wrote that the existence of minority national groups in the newly expanded German state threatened the basic assumptions of the Germany ideology of racial purity, which saw the German state as the political expression of a biological nation. Soviet ideology, by contrast, he believed, viewed national essence as form of consciousness and mutable, not in fixed biological terms. Thus, Lemkin wrote, the Soviets began yet another familiar campaign to “Sovietize” the Polish territories by killing elites and “re-educating” the masses through forced labor. The German state, on

³²⁷ Rudolph Joseph Rummel, *Lethal Politics: Soviet Genocide and Mass Murder Since 1917* (New Brunswick: Transaction, 1990).

³²⁸ Snyder, *Bloodlands*, 140.

the other hand, was learning to “Germanize” their territory in a biological sense. In October, Hitler named his chief of the SS Heinrich Himmler as the Reich Commissar for the Strengthening of Germandom, who instituted a program to remove the native population and replace them with Germans. Purifying Poland for Germandom, the Nazis began their practice of euthanasia by killing patients in Polish psychiatric hospitals, where they used carbon monoxide gas for the first time.³²⁹ The faculty of the University of Cracow was sent to a concentration camp, and statues of the Polish poet Adam Mickiewicz were torn down. A special arm of the security police, the Einsatzgruppen, was given an execution list with the names of over sixty thousand educated Poles, and instructed to use terror to force Jews into Soviet territory.

Lemkin’s life was in danger on both sides of the new boarder dividing Poland, in a region he once called home, simply because he was both Jewish and an educated Pole. Exhausted, pained, and hungry after the bombing of the train, Lemkin fell asleep in the forest and awoke at dusk. Unsure if the horizon was set a flame by the sun or the burning of the city, Lemkin saw a column of smoke in the distance. Reason said flee; hunger impelled him. As he approached, a middle age man called out, “one more empty stomach, sit down, we will feed you too.” The man, his wife, and daughter, sat with small group cooking potatoes from the field. “We felt instinctively that the conversation of the hungry should not be too serious,” Lemkin wrote.³³⁰

As they ate, the conversation turned to the question of where to go. Stay close to Warsaw? The Nazis would soon retreat when France and England declare war, some

³²⁹ Snyder, *Bloodlands*, 131-132.

³³⁰ Lemkin, *Autobiography*, “The Flight,” 4.

argued. Lemkin objected. He told his companions that, during the Munich crisis, he had dined with Lord Simon, the Chancellor of the Exchequer in Neville Chamberlin's cabinet. The dinner was the night after Chamberlin met with Hitler in Godesberg. Lord Simon reported to the dinner party that Britain could not match Germany's military challenge and would attempt to negotiate with Hitler. There would be no English or French liberation of Poland, Lemkin told the refugees. But they could not go south to Romania or France, where antisemitism was just as rampant and where there would also be war. Lemkin invited them to cross into Lithuania, and then Sweden, where he could solicit the help of a friend, the former Swedish Minister of Justice, Karl Schlyter. A few stood to join him. They thanked the group for the food and set off, avoiding large roads and railroads, traveling by night to avoid strafing airplanes.³³¹

Throughout his autobiography, Lemkin introduced dialogues between the peasants and the wanders displaced by the war. These dialogues may be grounded in actual conversations, but they are so idealized that Lemkin likely embellished them in order to advance larger themes within the book. In fact, the discussants in the narrative often take on positions that represent aspects of Lemkin's own thinking on genocide. For instance, Lemkin writes that a peasant woman complained about "how stupidly our Government has behaved these years." She goes on to express anger at the failure of the League of Nations that mirrored Lemkin's own anger when he was prohibited from attending the 1933 Madrid conference because the Polish government did not wish to offend Nazi Germany. In the words of the peasant in Lemkin's autobiography: "In the League of Nations we helped break up the system of collective security; we made a non-

³³¹ Lemkin, *Autobiography*, "The Flight," 6.

aggression pact with the Germans; we helped dismember Czechoslovakia; we spoiled our relations with Lithuania. We remained without friends.”³³² The conversation is indicative of a change in Lemkin’s opinions of the Polish government which, he believed, had all but invited Germany to invade by perusing policies of appeasement and undermining potential Eastern European allies in an attempt to expand Polish territories and power.

While he reached adulthood enamored with a Poland that established itself as an inclusive, multi-national state, Lemkin was now aware that these promises of multi-national pluralism were never realized. Poland’s energies were soon diverted to suppressing Jews, Ukrainians, and the White Russians, Lemkin wrote through the voice of the peasant woman: “We introduced a ghetto in our Universities for Jewish students and obliged them to sit on special benches in the lecture halls. All this we were doing instead of working day and night for our defense, for the consolidation of our nation, and for improving our international position.” Poland became charged with a dangerous “love of national liberty” and “we proved to the world that we are a nation of musicians and generals,” “allowed Pilsudski to establish his dictatorship,” and “did not prove much that we love also individual liberty.” Pilsudski was a man of “good intentions,” the peasant woman says reflecting Lemkin’s own early admiration of the liberation hero, but he became “a god to himself.” “We sacrificed our courts to him” and allowed him “to throw the leaders of the opposition party in jail and to condemn them for sedition,” she concludes: “we are now a nation on the road, like the wandering Jew, whom we used to blame for all evils.”³³³

³³² Lemkin, *Autobiography*, “The Flight,” 27.

³³³ Lemkin, *Autobiography*, “The Flight,” 27.

A week before the invasion of Poland, Lemkin was a well-known jurist. But now “I was a man without a tomorrow,” he wrote.³³⁴ Walking for weeks, Lemkin took the advice of peasants to avoid German columns. Several times he learned he had barely avoided massacres. While making his way towards Lithuania, he decided to visit his parents. But first he had to cross a bridge and pass a checkpoint where Soviet soldiers were stopping people who appeared to be capitalists or city dwellers.

Emphasizing a certain human connection between the soldier and his target, Lemkin tells how Russian troops would interrogate people moving across the country with questions about their professions and past activities. Dressed as a peasant, without glasses, and speaking a dialect of “White Russian” he learned as a child, Lemkin gathered his courage and approached the bridge. Those who wanted to cross would be asked simple questions about their past, and their answers would be cross-referenced through a ruthless examination of their physical being. Eyeglasses, shoes, and clothing could be symbols of a capitalist passing as a peasant. Even the hands of people crossing checkpoints were examined. Those who were deemed proletarian were allowed to pass. Those who were not were taken away.³³⁵ While it is now commonplace to see dehumanization processes as part of the genocidal process, Lemkin believed it was one’s humanity that could get one into trouble, not one’s inhumanity. After all, it was the refugees the Nazis were trying to kill all at once, not the forest animals.

Narrowly passing the Russian checkpoint, Lemkin hid in the province of Polesie, where the peasants and townspeople “could not define their ethnic origins or nationality,”

³³⁴ Lemkin, *Autobiography*, “The Flight,” 8.

³³⁵ Lemkin, *Autobiography*, “The Flight,” 31.

but simply referred to themselves as “we are from here.”³³⁶ This simple geopolitical awareness would be their greatest means of survival, Lemkin wrote. But it was also quite maddening to Lemkin, who filled his autobiography with reflections on the myopic trust in fate held by the Jewish families in the region—the shopkeepers and bakers who were senselessly punished by economic sanctions and anti-Semitism, yet could not understand why anyone would target them. They refused to believe that either Hitler or Stalin would carry out their promises to destroy them.

After learning that the trains in Poland were still operated by Polish crews, Lemkin decided it was safe to see his family. Arriving late, he crept through the shadows of the streets during the night, avoiding the Russian curfew patrols. He arrived at his family home, ate breakfast, and slept. When he woke he told his parents that he planned to seek asylum in Sweden, hopefully securing passage to the US, where his uncle Isadore had settled some years before. He informed his family that he intended to revive his work on barbarism and vandalism, given the impending war. Too old and too sick to travel, Lemkin’s parents’ stayed behind. His brother Elias remained too. Fearing he would lose his clothing store because he was Jewish, Elias turned his shop to a friend and back-registered himself as an employee.³³⁷ It would be the last time Raphael saw his mother and father, who died along with every one of his family members except for Elias’s family and two uncles. Bella and Joseph’s fateful day would occur in June of 1941. Elias had gone with his wife Lisa and their children to visit Lisa’s family, leaving behind the Lemkin parents. While Elias was away, Germany invaded Russia. Elias and his family

³³⁶ Lemkin, *Autobiography*, “The Flight,” 30.

³³⁷ Lemkin, *Autobiography*, “The Flight,” 30.

were saved by the trip. But Raphael never knew how his parents died. Their names have since been found on a list of those who died at Treblinka.³³⁸

Lemkin arrived in Vilnius in October 1939 before the USSR transferred the city to Lithuania in exchange for establishing military bases in the country. A smuggling route from Warsaw brought hundreds of Polish refugees carrying tales of horror, one of whom was Lemkin. While there are many popular accounts that claim Lemkin joined Polish guerilla forces and was wounded fighting either the Nazis or the Soviets, there is no evidence to support this claim. After arriving in Vilnius after two weeks of walking across Europe, Lemkin spent his time visiting friends and former colleagues and trying to arrange his escape from Europe. In Vilnius, he visited the house of a friend, Bronisław Wroblewski, a criminologist and a well-known painter. Bronisław and his wife divided their food amongst themselves and the dog, and the three reflected on the violence that marked the formal peace. After the war, Lemkin inquired about the fate of the Wroblewskis. Bronisław was killed by the dog, mad with hunger.

Lemkin also sought help in obtaining a Swedish visa from Karl Schlyter, as well a Belgian visa from a colleague Carton de Wiart, the former president of the League of Nations. He contacted his longtime publishers, Pedone. A mother and daughter, the Pedones agreed to speed the publication of a manuscript he had submitted before fleeing Poland, and aided Lemkin's communication with Schlyter and another friend at Duke University in the US, Malcolm McDermott, who had collaborated on the English translation of Lemkin's Polish penal code. While Schlyter and de Wiart worked on securing visas for Lemkin, McDermott arranged a letter of invitation from Duke

³³⁸ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 72.

University, which he would need to enter the US. In the meanwhile, Pedone published *La Reglementation des Paiements Internationaux (The Regulation of International Payments)*, and sent copies of the book to Schlyter and McDermott. The work took up the international foreign exchange legislation between fifty-four countries, and suggested that economic nationalism would conflict with economic internationalism as domestic finance laws created conflicts between states. True to his life cause, Lemkin proposed amendments to domestic finance laws and treaties to ease these tensions.

Soon Lemkin left Vilnius for Kaunas to be closer to the Swedish embassy. “I became a refugee,” Lemkin remarked, “threatened with the disintegration of my personality through idleness, apathy, loss of self-esteem and assertiveness, and, last but not least, constantly eating at somebody else’s table.”³³⁹ The refugee was a “state of mind,” in which a person “becomes a ghost,” a “broken pencil,” unable to “reunite the lost values of the past with the confused and hostile values of his present state of dispossession.” The twentieth century “is the paramount century of the refugee, living with one lung and one kidney” in a state of “permanent impermanence” while “gnawing uncertainty and longing for normalcy gradually ravage their souls.” “There were three things I wanted to avoid in life,” Lemkin wrote: “to wear eyeglasses, to lose my hair, and to become a refugee. Now all three things had come to me in implacable succession.”³⁴⁰

The galley proofs of his book soon arrived in Kaunas. “It was like a ship with food supplies to a starving demon,” Lemkin remembered. Pedone also sent him copies of his 1933 Madrid proposal on barbarism and vandalism. In Lemkin’s words, he

³³⁹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 67.

³⁴⁰ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 68.

immediately started to improve the text, which “resulted in new proposals to outlaw genocide, which I made in 1944 in my book *Axis Rule in Occupied Europe*; in 1945 at the London Conference of Prosecutors, when I included genocide in the indictment at the Nuremberg trials; and since 1946 before the United Nations General Assembly.”³⁴¹

Lemkin was ready to resume his life work.

Late in 1939, Lemkin made a trip to visit Simon Dubnow at his home in Riga, Latvia. Lemkin told Dubnow of his plans to revive his work on barbarism and vandalism and criminalize the destruction of national cultural groups.³⁴² Speaking about Lemkin’s ideas, Dubnow remarked that “in all the four thousand years of Jewish history there was never such horrifying moments as now.” Barbarism and vandalism were evident and “must be discussed openly,” the historian agreed, because “the most appalling part of this type of killing is that in the past it ceased to be a crime when large numbers were involved and when all of them happened to belong to the same nationality, or race, or religion.” Lemkin tells us that Dubnow encouraged him to continue working to outlaw the cultural and physical destruction of nations in order to “let the nations take their choice whether they want to belong to the civilized world community.”³⁴³ While Dubnow and Lemkin both secured visas to Sweden, Dubnow remained in Riga. In the summer of 1941, Dubnow’s library was confiscated and he was shot.

In February 1940, Lemkin was finally granted his Swedish visa, and flew to

³⁴¹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 68.

³⁴² Lemkin, *Autobiography*, “Flight from Russia,” 53-61.

³⁴³ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 72.

Stockholm from Riga on his pre-war Polish passport.³⁴⁴ A Belgian visa was waiting for Lemkin in the Stockholm consulate, courtesy of de Wiart. From Belgium, Lemkin hoped to travel to the US, but his appointment letter from Duke had not arrived. The delay probably saved his life. In April 1940, Germany invaded Denmark and Norway. By May, Hitler captured Belgium and Holland swiftly. Less than a month later, the USSR annexed Lithuania, Latvia, and Estonia. Germany captured Paris, dictating the terms of the Franco-German armistice which established Vichy France. With Axis governments firmly in control of all Atlantic routes to the US, Lemkin was trapped in Sweden. In the meanwhile, his book *The Regulation of International Payments* was reviewed positively in Sweden, and Schlyter arranged for Lemkin to give lectures at the University of Stockholm. Learning Swedish through newspaper articles and a dictionary, Lemkin was fluent enough within five months to lecture at the University. In the lectures, Lemkin attempted to identify how states used clearing and exchange regulations to undermine the vitality of foreign states. He published the lectures in 1941, and incorporated much of the analysis into *Axis Rule in Occupied Europe*.

“To me this linguistic victory meant a great deal,” Lemkin wrote about his experience lecturing in Swedish. “It gave me intellectual self-assurance, and helped me to rise spiritually from the ‘refugee’ fall of modern man. But most of all I rejoined in being able to add the understanding of a new culture to my intellectual treasury.” The experience of learning the language and culture of Sweden takes up a significant portion of his memoirs, as he expounds on the protocols of seating at dinner, and the rituals of drinking. An avid reader of the popular anthropology of his day, Lemkin fashioned whole

³⁴⁴ Szawłowski, “Raphael Lemkin’s Life Journey.”

portions of his autobiography as if he were writing ethnographic field notes. He reflected on his mistake of asking if the Swedish toast was a remnant of a Viking tradition of drinking from the skulls of the defeated. He marveled at how the Swedes created long titles to describe their professional and social status, and on the seriousness with which his hosts announce: “we are going to have fun.”³⁴⁵

Sweden was not a happy country, Lemkin wrote. “Bombs did not fall on heads, but nerves were shattered constantly by bad news.” With central and western Europe almost entirely controlled by Germany, “a New European Order was proclaimed.” Hitler had announced his intentions to colonize Europe in *Mein Kampf*, Lemkin wrote. “Yet the statesmen of the democracies either did not read him or did not believe him.”³⁴⁶ As a neutral country whose government was not resisting Axis powers, Sweden proved advantageous for Lemkin to begin researching the Axis occupation. He asked his friends in Swedish corporations to use their branches in foreign cities under Axis rule to gather official gazettes.³⁴⁷ In the Stockholm University library, he found official policy directives from the Nazi Party. Of particular value to him were the German publications *Reichsgesetzblatt* (*Reich Legal Code*) and *Heeresgruppen-Verordnungsblatt für die Beseizien Gebiete* (*Army Group Ordinances of the Occupied Territories*), as well as *Moniteur Belge* published in Belgium and *Monitorul Oficial* from Romania, and the French publication *Officiel de la République Française*. He also gathered sources from the League of Nations and the Public Information Bureaus of various occupied countries.

³⁴⁵ Lemkin, *Autobiography*, Chapter XX, 65-66.

³⁴⁶ Lemkin, *Autobiography*, Chapter XX, 66-67.

³⁴⁷ Many of these gazettes survive in the Raphael Lemkin Papers, CUL, Boxes 1-3.

What struck Lemkin was that the Nazi regime, with their Axis collaborators, began almost every occupation with policies banning the cultural practices of undesired groups, which was accompanied by policies transferring the property and wealth of Jewish citizens to more favorable citizens or settlers. To Lemkin, these social and economic policies—as early as 1939—demonstrated that Nazi ideology believed that “one can Germanize only the soil, not the people.” This was different than Soviet ideology, he wrote, which believed that the people could be “Sovietized.”³⁴⁸ In 1941, Lemkin had gathered a significant number of Nazi policy directives, government ordinances, and decrees to produce an extensive body of evidence that he would use to write a book that was, in his own words, the first analysis of the intentions of the Axis governments to follow through on Hitler’s deathly promises made in *Mein Kampf*. The study, published in the US in 1944 under the title *Axis Rule in Occupied Europe*, coined the word genocide to consolidate his thinking and name the process that was unfolding.

Caught between Russia and Germany, watching the destruction of European peoples unfold on pieces of paper from the Stockholm library, Lemkin was powerless to stop the genocide. He did not have the opportunity to write, nor did he have a position from which he could lobby statesmen. Instead, Lemkin spent the winter of 1940-1941 giving lectures and studying. He began research on the Mongol invasions of Europe in 1241, and the Mongolian administrative techniques in the occupied territories. In his autobiography, he wrote that the case showed him that the Allies and friendly neutrals “had to be made to see that this war was being waged by the Nazis not only for frontiers, but mainly for the alteration of the human element within these frontiers.” This

³⁴⁸ Lemkin, *Autobiography*, Chapter XX, 67.

“alteration” meant that “certain peoples were to be annihilated and supplanted by Germans.” The destruction would be irrevocable, Lemkin wrote, “not only because the dead cannot be revived, but also because their cultures were being erased for ever.”³⁴⁹

Early in 1941, Lemkin’s appointment at Duke University finally came through. In the US, Lemkin would be safe from a possible German invasion of Sweden, but he was not heading towards a stable position and a comfortable salary. The university agreed to employ him only if his funding could be obtained from outside sources. McDermott had worked tirelessly to find grants and sources of funding for Lemkin’s professorship, but Lemkin was repeatedly denied because the granting agencies considered him to be a lawyer not a professor, and because he was still located in Europe. Two of Lemkin’s distant relatives in the US eventually gave Duke \$1,200 to fund a two year appointment with a salary of \$50 a month.³⁵⁰ The only problem was getting there.

With an Atlantic route closed, Lemkin’s contacts in the Polish legation in Stockholm contacted the exiled Polish government in London and discovered that the USSR was negotiating a rapprochement with the allies. Lemkin received a Swedish passport for stateless persons, and secured a Russian and Japanese travel visa for a Pacific voyage to the US. The Japanese council in Lithuania, Chiune Sugihara, was gaining valuable intelligence on German and Soviet relations by rewarding escaped Polish officials with Japanese passports. Lemkin’s travel documents were not arranged by Sugihara but, it is safe to say, Lemkin benefitted from the close interwar cooperation

³⁴⁹ Lemkin, *Autobiography*, Chapter XX, 71.

³⁵⁰ Szawłowski, “Raphael Lemkin’s Life Journey.”

between the Japanese and Polish governments.³⁵¹ In the winter of 1941, Lemkin flew to Moscow and boarded the Trans-Siberian Railway to Vladivostok.

When the train stopped in Birobidjan, Lemkin was struck by the station's inscription in both Russian and Jewish letters, the first of its kind he had seen. The USSR established several autonomous Jewish republics, but Lemkin had reached the famous autonomous Jewish Republic which Stalin designated with the special status of Zion, the Jewish homeland. Stalin believed that establishing Jewish autonomous republics would solve the "Jewish question" and the problem of anti-Semitism simultaneously—by removing the troublesome Jews from cities where they "instigated" anti-Semitism. But the goal of relocating Jews to Birobidjan on the Siberian frontier was not to preserve Jewish identity. In his autobiography, Lemkin writes that Stalin, while serving as the Soviet Commissar of Minorities, had planned to concentrate Jewish life in this area in order to transform the bulk of the urban Jewish population into agrarian Soviets. The goal was to eliminate Jewish national identity, purge Jews of their petty bourgeois and religious tendencies, and integrate Jewish people into socialist society as workers and proletarian farmers.³⁵²

Fabricating a new Jewish Zion had its advantages for Stalin. For one, populating the border region could protect against Chinese and Japanese incursions. But Soviet propaganda also claimed that the republic would provide Jews with an opportunity to become ideal socialist subjects. From this perspective, the experiment was a failure for

³⁵¹ On Sugihara and Japanese-Polish intelligence cooperation, see Timothy Snyder, *Bloodlands: Europe Between Hitler and Stalin* (New York: Basic Books, 2010), p. 143.

³⁵² Sabrina P. Ramet, *Religion and Nationalism in Soviet and East European Politics* (Chapel Hill: Duke University Press, 1989), 13.

Birobidjan never became a thriving Soviet utopia.³⁵³ But the republic also allowed Stalin to claim credit for establishing the first Jewish homeland which, conveniently enough, he used as a test for Jewish loyalty to the USSR. Encouraging the entire Soviet Jewry to move to the region where their false consciousness would be educated away, Stalin frequently claimed the Jews who refused to move were counter-revolutionary. At one point later on, Stalin even exiled the wife of Foreign Minister Vyacheslav Molotov on the pretext that during a party she exhaled Israel over his own Zion.³⁵⁴

Stalin saw world Jewry as monolithic, with one culture and one insidious goal, dangerous because they were European outsiders inside Europe.³⁵⁵ By the 1950s, just before his death, Stalin circulated an open letter known as the Jewish Statement. While the letter was never published and the originals are lost, scholars reconstructed the text in which Stalin asserts that “there is no anti-Semitism in the Soviet Union” because “racism is constitutionally forbidden and simply does not exist.” Any charges that the USSR was trying to commit genocide against Jews by sending them to labor camps in Kazakhstan and Birobidjan, Stalin continued, was “American and Zionist propaganda” designed to “deflect world criticism from the issue of American anti-Semitism in the Rosenberg case and American genocidal intentions against the Negro populations in the U.S.” Rather, the USSR had only been trying “to protect the Jewish people” over the last two decades “by dispatching them to the developing territories in the East” to be “employed in useful

³⁵³ Robert Weinberg, *Stalin's Forgotten Zion: Birobidzhan and the Making of a Soviet Jewish Homeland* (Berkeley: University of California Press, 1998).

³⁵⁴ Ramet, *Religion and Nationalism in Soviet and East European Politics*, 13.

³⁵⁵ Stephen Eric Bronner, *A Rumor About the Jews: Antisemitism, Conspiracy, and the Protocols of Zion* (Oxford: Oxford University Press, 2000), 51.

national labor.”³⁵⁶ The republic was solving the Jewish question for Stalin, Lemkin reflected, while allowing Stalin to portray their destruction under humanitarian slogans.

Birobidjan was a Siberian marshland near the Chinese border with “a handful of displaced people, cut off from their roots,” Lemkin wrote.³⁵⁷ He could not have known that in January 1940, Adolf Eichmann suggested Germany solve its Jewish problem in Poland by offering to give all of Poland’s Jews to Birobidjan, but that Stalin had refused.³⁵⁸ Yet Lemkin did know the history of the autonomous republic. Getting out to stretch his legs, he found two men in the station carrying a Jewish newspaper, *The Voice of Biro-Bijan*. Looking shabby, with high boots and caps pulled low on their foreheads and speaking Yiddish, the two captured Lemkin’s interest and brought to mind a Dylan Thomas poem about a “common hunger for social contact” and the “pleasures people derive from hanging around stations and watching trains.”³⁵⁹ At the beginning of the century, “the melancholy of railroad stations is almost universally the same,” Lemkin wrote, describing the refugees who rode towards new lands while those who could not leave looked on. The republic and its train station, Lemkin felt, encapsulated the spirit of what the interwar years felt like to people who belonged to groups of national minorities deemed troublesome by the state in which they lived. The Jews of Stalin’s Zion, Lemkin believed, were in a homeland concocted to destroy them as a nation but leave them alive. And now they had come to the station out of “curiosity” and loneliness, “eager to see

³⁵⁶ Louis Rapoport, *Stalin’s War Against the Jews* (New York: The Free Press, 1990), 18.

³⁵⁷ Lemkin, *Autobiography*, 78.

³⁵⁸ Snyder, *Bloodlands*, 144.

³⁵⁹ It seems Lemkin mistook the poem.

people from the outside world.”³⁶⁰

The Trans-Siberian Railway expired at the Russian coast. At Vladivostok, Lemkin boarded a ship for a three-day journey to the port of Tsuruga, Japan, over stormy seas with a mass of other refugees bailing water out of the boat and pressed against each other in “close proximity to running noses and other physical expressions of angry humanity.” Arriving in Tsuruga at the height of the blossom season, Lemkin contrasted the mass of refugees seeking asylum to the aesthetics and cherry blossoms of Japan, only weeks before the bombing of Pearl Harbor. Lemkin traced the way this beauty manifests in various aspects of Japanese life, forming the traditions and rituals of the culture: “For the Japanese, seasons are so much a part of the cultural and religious life that hardly a conversation starts, or letter begun, without mention of the seasons,” he observed. In Kyoto he marveled at the blossoms, Buddha shrines, and kimonos that dotted the city, patterned according to the rules of aestheticians: that repetition must be avoided.³⁶¹

Enchanted, Lemkin walked out of the theater and into the Kyoto night, where he gained his first glimpse into what he called the “duality of Japanese culture.”³⁶² The streets came alive in the geisha quarters, where women kissed the men goodbye. And he began to reflect on the country’s path towards war. Lemkin, after all, was working intimately with the League of Nations during the 1930s when Japan rebuked the League and expanded its colonial empire. The Japanese military had orientated the state towards aggressive imperial expansion with the blessing of Japanese elites, in a manner that far

³⁶⁰ Lemkin, *Autobiography*, 77-78.

³⁶¹ Lemkin, *Autobiography*, 79-81.

³⁶² Lemkin, *Autobiography*, 82.

outpaced the moderate colonial expansion of the Meiji period between 1868 and 1912.

The Meiji policies of promoting population growth and rapid industrialization left Japanese leaders in the 1920s with two specific and concrete problems: they needed food and they needed raw materials. But the rice production in the colonial governments of Korea and Taiwan proved so successful that the price of Japanese agricultural products collapsed, creating an entirely new problem of rural poverty.³⁶³ As early as 1918, Prime Minister Konoe Fumimaro denounced the Versailles peace settlements as using humanitarianism and democracy as covers for expanding British and American control over the vast majority of the world's territory and resources.³⁶⁴ The phrase "Versailles system" entered the Japanese lexicon as an idiom for the self-interested and predatory nature of the capitalist and liberal international order, which had been imported into Japan during the Meiji period and had to be expunged from Japanese society.³⁶⁵

The colonization of Manchuria in the 1930s was legitimized on the grounds that it would provide an outlet for resettling Japanese peasants. The Nazi ideology of *Lebensraum*—seeking "living space" for the superior races through conquest—became a popular Japanese slogan. At the same time, Western powers were backing away from promoting global free markets, favoring regional trading blocs, whether it was the British system of preferential trading with British dominions or Roosevelt's discourse on creating a Pan-American economic union. Japanese elites saw these protectionist trading

³⁶³ Peter Duus, "Introduction: Japan's Wartime Empire: Problems and Issues," in *The Japanese Wartime Empire, 1931-1945*, ed. Peter Duus, Ramon Myers and Mark Peattie (Princeton: Princeton University Press, 1996), xv. And see Ramon Myers and Yamada Saburo, "Agricultural Development in the Empire," in *The Japanese Colonial Empire, 1895-1945*, ed. Ramon Myers and Mark Peattie (Princeton: Princeton University Press), 1984, 420-454.

³⁶⁴ Duus, "Introduction: Japan's Wartime Empire: Problems and Issues," xxiii.

³⁶⁵ Duus, "Introduction: Japan's Wartime Empire: Problems and Issues," xxiv.

blocs as exclusionary, cutting off their access to international markets and resources. By the end of the 1930s, the “problem” of overpopulation, rural poverty, the breakdown of the free trade system, and a growing dependency of resources, coalesced to create broad support for a program of military expansion into East and Southeast Asia.³⁶⁶ Lemkin intended to write about the development of Japanese genocides from the 1930s through the end of the war, and his papers housed at Columbia University contain extensive research notes on the case of Japanese genocides.³⁶⁷

With sadness Lemkin departed Japan, a place, it seems, he would have preferred to have stayed if he did not have to get to his new position at Duke. On April 18, 1941, he arrived in the US in Seattle on the Pacific coast. After three more days he arrived in Durham, North Carolina. By the end of the year, the Japanese bombed pearl harbor and the US entered the Second World War. In June 1942, Lemkin received a telegram from the Board of Economic Warfare in Washington offering him an appointment as a chief consultant. He accepted.

The chairman of the board was Vice President Henry Wallace, whom Lemkin attempted to warm up by discussing Wallace’s work on the Tennessee Valley Association, building hydroelectric dams to provide electricity to poor farmers. The vice president, an Iowa corn farmer, lit up when the conversation shifted from politics, war, and peace, to Lemkin’s stories of growing up poor on a farm. “A farmer never becomes a purely cerebral and extrovert type,” Lemkin remarked. “The cornfields of Iowa seemed to cling to him in all gatherings in the capital ... as if he had not yet fully emerged from the half-

³⁶⁶ This paragraph is drawn from Duus, “Introduction: Japan’s Wartime Empire: Problems and Issues,” xvii-xviii.

³⁶⁷ See Lemkin’s research notes, Raphael Lemkin Papers, CUL, Box 4.

dreaming contemplation in which a field farmer is constantly held.”³⁶⁸ Lemkin’s autobiography is ambiguous, but it seems he suggested that the TVA’s success in integrating an immense geographical area economically could be repeated in countries that shared a common river to provide a common infrastructure base and ease tensions and between competing states. Nevertheless, as the conversation turned to politics, Wallace’s face turned cold. At dinner, he again tried to explain his idea of outlawing the destruction of nations through international treaties. But again Lemkin “could not penetrate the friendly fog of his lonely dreams that evening.”³⁶⁹

Getting nowhere with Wallace, Lemkin wrote a memo to Roosevelt urging the Allies to protect the existence of minority nations and demand that the rule of international law should be more than a propaganda slogan. “To have an ethical and political force,” Lemkin explained describing his memo, “the rule of law must be given content in accordance with grim reality. How could the restoration of the rule of law be taken seriously when the destruction of nations and races and religious groups was not yet established as a crime under the laws of nations?” Several weeks later, Roosevelt replied. There was danger in adopting such a treaty, the president wrote, urging patience and promising to issue a warning. Leaving his office on Constitution Avenue, Lemkin watched “the cars moving slowly, as if at a funeral.” “How strange to feel the body alive while the soul was being carried to the grave,” Lemkin wrote describing Washington, as thousands of statesmen and bureaucrats headed “to their suburban homes for drinks and relaxation before dinner.” This was “a conflict not between the Jewish people and the

³⁶⁸ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 113.

³⁶⁹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 114.

German, but between the world and itself.” That night, Lemkin wrote, “I realized I was following the wrong path ... where the lives of entire nations are involved, I should not rely on statesmen alone ... They lived in perpetual sin with history. But the people are different.”³⁷⁰ Lemkin looked over to the corner of the room where his valises sat, piled high with his documents on Nazi decrees of occupation from Stockholm University and the Library of Congress. “All over Europe the Nazis were writing the book of death with the blood of my brethren,” he recalled thinking: “Let me now tell this story to the American people.”³⁷¹

³⁷⁰ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 115.

³⁷¹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 116.

CHAPTER 3: *AXIS RULE IN OCCUPIED EUROPE* IN INTELLECTUAL CONTEXT, 1941-1944

Like a wounded animal, the earth in my town of Wolkowysk cried out for having been desecrated for the third time in this century. The blood of men and of animals is red; the blood of a town is yellow-brown winged with blue, and it mounts skyward, as if complaining to God of the folly of men.

—Raphael Lemkin, *Totally Unofficial*³⁷²

3.1 GENOCIDE AS THE DESTRUCTION OF NATIONS

In 1944, the Carnegie Endowment of International Peace published *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. The book is now famous for introducing the neologism genocide. Lemkin had finished writing the book in 1943, but a contract dispute delayed the publication for a year. The timing proved convenient. The book gained maximum exposure, having been released in November 1944, just after Soviet forces liberated the Majdanek, Belzec, Sobibor, and Treblinka camps, and just before the liberation of Auschwitz.

Lemkin derived genocide from the Greek word *genos* (*race, family, tribe*) and the Latin *cide* (to kill). In a footnote, he added that genocide could equally be termed “ethnocide” with the Greek *ethno*, meaning “nation.” He likened the new formation of “genocide” to other words, such as tyrannicide, homicide, and infanticide. Genocide signified the attempt to destroy a national, racial, or religious group but, “it did not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation.” Instead, genocide signified “a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves.” The objective of

³⁷² Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 110

such a plan, Lemkin added, was the “disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.”³⁷³

“New conceptions require new terms,” Lemkin wrote in *Axis Rule*: “By ‘genocide’ we mean the destruction of a nation or an ethnic group.”³⁷⁴ His thesis held that governments in Axis occupied Europe were committing genocide, cooperating to aid the Nazi program of physically and spiritually annihilating the non-German human element within the frontiers of the occupied territories. Many have taken this quote as proof that Lemkin’s concept was newly minted to describe the Axis occupation of Europe, often taking the meaning of genocide as synonymous with the image of the death camps and mass killing.³⁷⁵ Lemkin, however, tells us that the concept of “genocide” synthesized the crimes of barbarism and vandalism. He was convinced that these earlier laws failed to take hold because people could not grasp the significance of the moral and legal concepts the words signified.³⁷⁶ “Genocide” would be the neologism Lemkin had been searching for, “coined by the author to denote an old practice in its modern development.”³⁷⁷

The only serious book-length study of Lemkin argues that the experience of the Holocaust was *the* formative moment in Lemkin’s idea of genocide rather than *a*

³⁷³ Lemkin, *Axis Rule*, 79.

³⁷⁴ Lemkin, *Axis Rule*, 79.

³⁷⁵ Hinton, “Critical Genocide Studies,” *Genocide Studies and Prevention* 7 (2012); and see Moses, “Raphael Lemkin, Culture, and the Concept of Genocide.”

³⁷⁶ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 64 and 68

³⁷⁷ Lemkin, *Axis Rule*, 79.

formative moment.³⁷⁸ Lemkin's formulation of genocide sometime between 1942 and 1943 is explained as a "quantum leap" from his work during the 1930s. Further distancing Lemkin's idea of genocide from his work in the 1930s, this position also suggests that Lemkin's 1933 proposals to outlaw barbarism and vandalism were not international in focus, but were intended to rectify conditions in Poland.³⁷⁹

The argument that Lemkin invented the concept of genocide in response to Nazi atrocities rests on a belief that the Holocaust was a "novel situation and Lemkin's answers were [therefore] equally novel."³⁸⁰ Thus, there can be little to no connection between Lemkin's work on the Soviet and Italian penal codes of the 1920s, his proposal to criminalize barbarism and vandalism in 1933, and his work on genocide in 1943, because the rise of National Socialism marked a transition between two fundamentally different epochs. Some have even speculated that Lemkin told people he invented the word genocide in 1933 to "set forth a narrative in which the concept of 'genocide' antedated and anticipated the murder of European Jewry" so that "Lemkin could disassociate the origin of the term from his personal experiences as a Jew and a Pole."³⁸¹

There is a reasonable basis for the claim that Lemkin might have been distancing his ideas from his experiences and his identity. Many discredited Lemkin because he was Jewish and Polish. A *New York Times* book review in 1945 by Otto Tolischus credited Lemkin's concept of genocide as tracing "the contours of the monster that now bestrides

³⁷⁸ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 4.

³⁷⁹ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 4.

³⁸⁰ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 4.

³⁸¹ Anson Rabinbach, "The Challenge of the Unprecedented—Raphael Lemkin and the Concept of Genocide," *Jahrbuch des Simon-Dubnow-Instituts* 4 (2005): 397-42.

the earth” in “the semblance of authority and spurious legality which leave the individual helpless.” But, after celebrating the concept of genocide, the reviewer suggested Lemkin was promoting “Nazism-in-reverse,” allowing his prejudice to influence his portrayal of Germans as possessing “innate viciousness.”³⁸² Lemkin would eventually convince Tolischus to support the UN Genocide Convention in print. Other reviewers were less than sympathetic, and based their criticism of Lemkin on his Polish and Jewish heritage. A review in the *American Journal of Sociology* dismissed *Axis Rule* as a “prosecutor’s brief,” not science or philosophy. The author then accused Lemkin of bias because of his suffering as a Pole and a Jew, writing a book of victor’s justice under the cloak of humanitarianism when the allies were as atrocious as the Germans.³⁸³

Lemkin was surely aware of this thinly veiled anti-Semitism. However, it is not possible to know if Lemkin was trying to distance himself from his Jewish or Polish identity to lend credibility to his work. What we do know is that Lemkin’s work on *Axis Rule* was explicitly built on his ideas on barbarism and vandalism. The two concepts, he wrote, “would amount to the actual conception of genocide.”³⁸⁴ Barbarism was the crime of oppressing or destroying members of national, racial, or religious groups; vandalism the crime of destroying works of art and culture of such groups. Genocide was the crime of oppressing or destroying both members of a group and the social and cultural structures of that group, to destroy the group as a group. Moreover, *Axis Rule in Occupied Europe* draws its analysis from the laws and policies of the Axis-controlled

³⁸² Otto D. Tolischus, “Twentieth-Century Molach: The Nazi-Inspired Totalitarian State, Devourer of Progress – and of Itself,” *New York Times Book Review*, 21 January 1945, 1, 24.

³⁸³ Melchior Palyi, “Review Essay on *Axis Rule in Occupied Europe*,” *American Journal of Sociology* 51 (1946): 496-497.

³⁸⁴ Raphael Lemkin, *Axis Rule*, 91.

governments dating back to 1938, and the 1935 Nuremberg law.

Lemkin intended genocide to signify the destruction of nations, not as a group of individual people, but as a human group itself. A colonial practice, genocide was “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.”³⁸⁵ It had two phases: “One, the destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor.”³⁸⁶ “Directed against the national group as an entity,” “the actions involved” in committing genocide “are directed against individuals, not in their individual capacity, but as members of the national group.” This definition of genocide distanced the concept from the already existing term “denationalization,” which had been used to denote the deprivation of citizenship or the removal of national groups from geographical territories. In Lemkin’s words, genocide and denationalization were not synonyms because the latter did not connote the destruction of a national pattern to replace it with the national pattern of the oppressor.³⁸⁷

As a professional jurist, Lemkin was neither obliged to lay bare his ontology of genocide, nor to define his concept of a “nation” in more detail. He did so in his social scientific works that he left unfinished when he died in 1959.³⁸⁸ It is no surprise that scholars writing about Lemkin have tended to assume that Lemkin defined nations in *Axis Rule* in accordance with the geographical and social grouping of the nation-state, or

³⁸⁵ Raphael Lemkin, *Axis Rule*, 79.

³⁸⁶ Lemkin, *Axis Rule*, 79. On Lemkin and genocide as a colonial practice, see Moses, “Empire, Colony, Genocide: Keywords and the Philosophy of History.”

³⁸⁷ Lemkin, *Axis Rule*, 79-80.

³⁸⁸ Steven L. Jacobs, “The Papers of Raphael Lemkin: A First Look,” *Journal of Genocide Research*, 1 (1999): 105-114.

a Herderian organic community. This interpretation, however, ignores Lemkin's own definition of a nation, which should not "be confused with the idea of nationalism."³⁸⁹ A nation "signifies constructive cooperation and original contributions, based upon genuine traditions, genuine culture, and a well-developed national-psychology," Lemkin wrote. Nations "are essential elements of the world community," and the "destruction of a nation ... results in the loss of its future contributions to the world."³⁹⁰ Nevertheless, it is clear that the definition of a nation that Lemkin provided in *Axis Rule* is insufficient, failing to exclude the very geographical and social groups of the nation-state that he was trying to exclude. As Moses put it, Lemkin's readers are consequently "left at sea only if they do not recall Lemkin's conception of nationhood."³⁹¹

There is a primordial aspect to Lemkin's belief that nations, or "families of mind," were the central groupings of all social life and the "essential elements of the world community."³⁹² Yet, this concept of a nation is not synonymous with the concept of the nation generally put forth in nationalist ideology—a point that Lemkin stated explicitly in *Axis Rule*. Emphasizing that the idea of genocide should not be interpreted solely through the lens of twentieth ideologies of nationalism, Lemkin wrote that, "the Genocide Convention grew out of the experiences of the dim past not necessarily of the last war."³⁹³ For much of history before the rise of the nation-state, the "fury or calculated hatred" of genocide was directed "against specific groups which did not fit into the

³⁸⁹ Lemkin, *Axis Rule*, 91 n. 51.

³⁹⁰ Lemkin, *Axis Rule*, 91.

³⁹¹ Moses, "Holocaust and Genocide," 539.

³⁹² Raphael Lemkin, *Axis Rule*, 90-91. I take this point from Shaw, *What is Genocide?* (Cambridge: Polity, 2007), 24.

³⁹³ Lemkin, "The Nature of Genocide," American Jewish Historical Society (AJHS), Box 2, Folder 2, 14.

pattern of the state [or] religions community or even in the social pattern” of the oppressors. “A human group is an organic entity,” Lemkin wrote. The organic groups most frequently the victims of genocide were “religious, racial, national and ethnical” and “political” groups. But genocide victims could also be other organically forming families of mind “selected for destruction according to the criterion of their affiliation with a group which is considered extraneous and dangerous for various reasons.” These other groups could even be “those who play cards, or those who engage in unlawful trade practices or in breaking up unions.”³⁹⁴

Ernst Bloch had read into the idea of genocide this very notion, without ever reading Lemkin. The penal law of modern states was a “tragedy,” orientating the state towards the negation of crime while relying upon a naturalized image of the criminal in the man, Bloch wrote. The nature of the individual is thereby blamed while society and the economic order are absolved. Thus “the fascist state presumptuously assumed, as no state before, the right to punish as total elimination” while the liberal state “distinguished between occasional offenders and recidivists” but “looked for a way of punishing both” where the goal was, like the totalitarian state, “the *protection* of society, not *retaliation*.”³⁹⁵ Against the “unsurpassable constitution” of the “criminal,” Bloch wrote, “genocide is almost as obvious as neutralization by means of punishment as a prevention as a security measure.” The modern state constructs a system of lifelong imprisonments

³⁹⁴ Lemkin, “The Nature of Genocide,” 14.

³⁹⁵ Bloch, *Natural Law and Human Dignity*, 259.

under extreme conditions of corporal suffering to remove people from society and preserve “the homogeneity of interests of a ‘society as a whole.’”³⁹⁶

Genocide, Lemkin also reasoned, could be conducted against criminals. Like Bloch, Lemkin derived this point from his study of the penal codes of totalitarian regimes, where the total state conceptualized cultural diversity and differences in thinking as crimes against the nation. The principle, Lemkin felt, was evident in the construction of Soviet penal codes that criminalized counterrevolutionary organizations and attempted to alter the fabric of society by using force to create the new Soviet man. It was also evident in the Nazi ideology that defined criminals and enemies of the state in biological racial terms and set about the task of removing these “threats” from society.

The specific intellectual contribution that *Axis Rule* made to political, legal, and social theory cannot be fully appreciated without understanding that Lemkin saw nations as families of mind—types of communities imagined into existence through human consciousness, that share common beliefs and sentiments, and whose identities were plastic.³⁹⁷ Because genocide was about destroying nations as families of mind, genocide could be achieved without making recourse to violence. After the war, Lemkin explained his ideas on culture destruction and genocide by citing anthropologists James Frazer and Bronisław Malinowski’s theories of cultural functionalism, a theory that culture was necessary for maintaining the physical well-being of people because it integrated social institutions and coordinated practices, beliefs, and actions to allow people to peruse and

³⁹⁶ Bloch, *Natural Law and Human Dignity*, 262.

³⁹⁷ Irvin-Erickson, “Genocide, the ‘Family of Mind’, and the Romantic Signature of Raphael Lemkin.”

sustain their biological needs.³⁹⁸ As Lemkin wrote after the war in his unpublished manuscript *Introduction to the Study of Genocide*, all human beings “have so-called derived needs which are just as necessary to their existence as the basic physiological needs.” These derived needs “find their expression in social institutions,” Lemkin wrote, citing Frazer. He concluded that, “if the culture of a group is violently undermined, the group itself disintegrates and its members either become absorbed into other cultures which is a wasteful and painful process or succumb to personal disorganization and, perhaps, physical destruction.”³⁹⁹

This did not mean, however, that Lemkin believed the destruction of culture was genocide. Firstly, nations and culture were two different concepts, a crucial point for interpreting *Axis Rule*. Nations were “families of mind.” Culture integrated nations. The “destruction of cultural symbols is genocide,” Lemkin wrote, when “it implies the destruction of their function” and subsequently “menaces the existence of the social group which exists by virtue of its common culture.”⁴⁰⁰ Cultural institutions and cultural symbols, which could range from epic poems and paintings to particular cultural methods of adjudicating conflicts, were necessary for sustaining human societies, which themselves were necessary for sustaining human life. Thus the destruction of culture was closely associated with the destruction of nations, as well as the attempt to physically destroy a nation. But the simple changing of culture—the “deculturation” of a people—did not, by itself, constitute genocide.

³⁹⁸ This point is taken from Moses, “Lemkin, Culture, and the Concept of Genocide,” 25-26.

³⁹⁹ Lemkin, “The Significance of Cultural Genocide,” NYPL, Reel 3, Box 2, Folder 3.

⁴⁰⁰ Raphael Lemkin, “The Concept of Genocide in Anthropology,” NYPL, Reel 3, Box 2, Folder 3.

3.2 *AXIS RULE* AND THE THEORY OF THE “USURPATION OF SOVEREIGNTY”

Axis Rule has puzzled observers who wonder why Lemkin chose not to explain his concept of genocide until the last chapter of part one of the book, on “German Techniques of Occupation.” At first glance, it seems that Lemkin considered genocide to be simply another technique the German regime employed to occupy Europe, or that he considered “genocide” to be ancillary to the larger project of *Axis Rule*. As Schabas points out, even the author of the book’s foreword, George Finch, did not mention the word genocide, suggesting that he too missed the significance of Lemkin’s neologism.⁴⁰¹ However, Samantha Power observes, Lemkin structured the book by taking into account the sentiments and biases of his readership. When *Axis Rule* was being written, “denial was still the prevailing sentiment in the United States” and Lemkin constantly found himself surrounded by disbelievers in the US War Department who could not (or refused to) comprehend the cruelty and ruthlessness of the Nazi attempt to totally annihilate entire nations.⁴⁰²

The ninth chapter on genocide is the most theoretically sophisticated chapter of *Axis Rule*, and marks the culmination of Lemkin’s earlier work on totalitarianism and the humanitarian law. Beginning the book with the principle of genocide, however, would have immediately alienated a readership predisposed to disbelieve that such atrocities was occurring. Anticipating this, Lemkin began by presenting chapters titled simply,

⁴⁰¹ William Schabas, “Introduction to the Second Edition by the Lawbook Exchange, LTD,” *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, 2nd edition (Clark, NJ: Lawbook Exchange, LTD, 2008), vii-xvi.

⁴⁰² Samantha Power, “Introduction to the First Edition by the Lawbook Exchange, LTD,” *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, 2nd edition (Clark, NJ: Lawbook Exchange, LTD, 2008), xvii-xxiii.

“Administration,” “Police,” “Law,” “Courts,” “Property,” “Finance,” “Labour,” “Legal Status of the Jews” and then, ninth, “Genocide.” His goal was to document how the Nazi party ruled before presenting the thesis that genocide was the guiding principle of the occupation. The short, five-page chapter on the legal status of the Jews serves to introduce the chapter on genocide by showing how the Nazi Jewish laws structured the actions of bureaucracies and individuals at almost every level of the Axis occupation. The process was institutional and normative, shaping a legal and social definition of Jews and how they should be treated. Thus a banker, a store owner, a judge, and a police officer would all be compelled to treat Jews in a certain way according to their individual duties and social roles, ensuring a processes of reification where Jews become the imagined other that Nazi policies took them to be. Moreover, the Jewish laws directed the regime towards a systematic suppression of those people who were understood to be Jew. When taken individually, none of these separate actions compelled by the law—whether they were the actions of a functionary doing his or her job or a racist individual—constituted a genocidal scheme to dismantle an entire Jewish nation’s social structure. It was only when they were taken together, in the whole, that the policies themselves could show genocidal intent and constitute the genocidal action.⁴⁰³ In the eighth chapter on the Jews, the concept of genocide is fully implicit even though Lemkin does not mention the word. After demonstrating this process, Lemkin introduced the concept of genocide explicitly to his readers in the following chapters.

If the chapter on the legal status of the Jews was a transition to his chapter on genocide, his chapter on genocide was a transition into the second part of the book, which

⁴⁰³ Bartolomé Clavero, *Genocide or Ethnocide*, 32.

sustains an exhaustive analysis of the techniques of occupation in each of the occupied territories. The third part of *Axis Rule* includes nearly four hundred pages of translations of statutes, directives, and decrees that Lemkin began collecting in Stockholm. Lemkin organized these documents alphabetically by country, dedicating a chapter to Albania, Austria, The Baltic States (Lithuania, Latvia, and Estonia), Belgium, Czechoslovakia, Danzig, Denmark, the English Channel Islands, France, Greece, Luxemburg, the Memel Territory, the Netherlands, Norway, Poland, the Union of Soviet Socialist Republics, and Yugoslavia. In each of these chapters, Lemkin sorted the documents by region and province, and disaggregated them according to which administration was the occupying power, Germany, Italy, Vichy France, Bulgaria, or Rumania. Organizing his study this way allowed him to isolate the juridical differences of each occupying administration while presenting a dynamic account of how the occupying administrations, regionally and historically, participated in conducting genocide.

From his analysis of Axis laws, Lemkin demonstrated that the various occupying administrations were engaged in a systematic attack on enemy “elements of nationhood” in every occupying Axis administration across Europe. Though systematic, the genocide was not conducted uniformly throughout Axis occupied Europe. Instead, Lemkin identified eight distinct “techniques of genocide” being employed across the occupation. He introduced these techniques in his chapter on genocide, before analyzing the laws of occupation. Lemkin did not intend these eight techniques to be a typology for all genocides, but the specific ways the Axis genocide was structured.

The first of these techniques was politics. In the minds of most people, the mention of the Nazi Holocaust conjures up images of Auschwitz or Treblinka. But, for

Lemkin, mass killing was not the primary field through which genocide was committed. To be clear, he knew of the existence of the concentration and extermination camps, and was very well informed about the horrors of Nazi ghettos and summary executions. He unequivocally considered these horrors to be the height of Nazi brutality and cruelty. However, for Lemkin, the nexus of the Axis genocide rested in the political field.

It was no accident that Lemkin gave primacy to politics in his analysis of the Axis genocide. While he could use hundreds of laws and decrees to prove that the genocide was mediated through the Axis laws of occupation, laws and decrees cannot be conduits of genocide if they do not compel action. Likewise, the ruthless efficiency of the camps began with orders that were followed. Politically, Lemkin argued, the Germans prepared for genocide by destroying the local institutions of self-government in the incorporated areas, such as western Poland, Eupen, Malmédy and Moresnet, Luxemburg, and Alsace-Lorraine. They subsequently replaced the political institutions with “German patterns of administration.” Thus the German regime and the Axis occupational authorities did not constitute stateless states, nor dual states, nor the rule of nobody, to characterize the most prominent positions of some of the classic theorists of National Socialism discussed below. The regime ruled through the “usurpation of sovereignty,” Lemkin wrote, where German sovereignty replaced the sovereignty of the previous states. The usurpation of sovereignty was achieved by shattering existing legal orders and instating new juridical orders, channeled through those most likely to be loyal in each region.

The usurpation of sovereignty was done through a combination of conquest, introducing German administrative systems, changing local laws to German laws, changing customs borders, and establishing German courts to rule in the name of the

German nation, not justice, Lemkin wrote. Connecting means to ends, the usurpation of sovereignty also divided the social world into the component categories through which genocide would be mediated. There is a Weberian element to Lemkin's analysis where he traces the laws and decrees that demonstrated how local elites or local officials were bureaucratically forced into upholding the Nazi party line. But actions were also compelled by constructing incentives for people to follow the new regime, Lemkin felt.⁴⁰⁴ He showed that functionaries and officials were rewarded for excelling in their jobs. And, he found statues that offered incentives to local populations to view these laws and actions as legitimate. Of course, where incentives and legal legitimacy failed, force succeeded. Yet the construction of favors was an efficient political tool, dividing a group of people by forcing individuals of a collectivity into competition with each other for privileges, or even for life itself. These political techniques, Lemkin wrote, broke the bonds of solidarity within a group, weakening potential sources of resistance against the Nazi party while helping to dissolve the targeted group as a "family of mind."⁴⁰⁵

Nazi control over political administrations had social consequences. Inscriptions on buildings and streets, and the names of communities, were changed to German forms.⁴⁰⁶ Nationals in Luxemburg were forced to Germanize or change their names.⁴⁰⁷ Special Commissioners for the Strengthening of Germanism were attached to local

⁴⁰⁴ Lemkin, *Axis Rule*, 13.

⁴⁰⁵ Lemkin, *Axis Rule*, 82-90.

⁴⁰⁶ Lemkin, *Axis Rule*, "Order concerning the use of German Language in Luxemburg, August 6, 1940," 440.

⁴⁰⁷ Lemkin, *Axis Rule*, "Order concerning the Change of First and Family Names in Luxemburg, of January 31, 1941," 441. See also *Axis Rule*, "Duty of Registration for All Persons Engaged in Creating or Transmitting Cultural Values in Luxemburg", 441.

administrations, tasked with coordinating “all actions promoting Germanism” and supporting the German inhabitants who formed the so-called fifth column. The fifth column was not just a force of saboteurs, Lemkin believed, but “the nucleus of Germanism.”⁴⁰⁸ In Poland the *Volkliste* was established to register German minorities and issue special identification cards that granted them favorable rations and employment opportunities, while ethnic Germans were given positions to supervise the enterprises of the local populations.⁴⁰⁹ The German regime even created laws intended to divide families with the goal of “disrupt[ing] the national unity of the local population,” such as allowing non-Germans married to Germans to be included in the *Volkliste*.⁴¹⁰

Daniel Feierstein has argued that Lemkin in *Axis Rule* was dedicated towards showing that the Nazi genocide manufactured social differences between people, divided the social fabric of a society into imagined parts, and then set out to restructure society so as to exclude the undesired.⁴¹¹ Lemkin saw genocide as a process of social reorganization, to borrow Feierstein’s phrase, that could be achieved through terror and violence. But genocide was also committed in more subtle ways. For example, Lemkin documented a linguistic element to the Nazi administration’s attempt to assert German sovereignty by dividing the social fabric of the occupied Poland: all legal decrees issued

⁴⁰⁸ Lemkin, *Axis Rule*, 83.

⁴⁰⁹ Lemkin, *Axis Rule*, “Order concerning the Introduction of a Certificate for Persons of German Origin in the Government General, October 29, 1941,” 552.

⁴¹⁰ Lemkin, *Axis Rule*, 83.

⁴¹¹ Feierstein, *El Genocidio Como Práctica Social*.

in Polish territory contained the adjective “former” in all references to the Polish State, as in legislation on the “property of the citizens of the former Polish State.”⁴¹²

The adjective “former” was another example of how the Nazi regime connected the means and ends of genocide. The German administration wanted to incorporate Poland into the German nation. To do this they had to preserve those who were appropriately German while eliminating those who were nationally and racially inferior. The German Nationalities Code was used to divide the people living in Poland and shape the destruction of Poland like the Jewish laws shaped the destruction of the Jews. The code recognized two nationalities suitable for citizenship. The superior type of nationality, *Bürger*, was granted citizenship in the German nation, conferring rights of active participation in political life of the nation and the state. The second, *Staatsangehörige*, was reserved for people of non-German blood who were citizens of the Reich, and granted the right to a passport, legal documentation, and a basic set of civil rights. Those who fell outside of these categories were not legally entitled to the protection and rights of the German nation and state, Lemkin wrote.

When combined with the legal distinction between people, adding the adjective “former” to every mention of Poland ensured that administratively those who were non-German could no longer appeal to a nation or state for rights and guarantees of life by virtue of the fact that their nation and state no longer existed.⁴¹³ The one word “former,” Lemkin wrote, ensured that these people were subjected to a bureaucratic process that excluded them politically, socially, and biologically from the German nation—in regions

⁴¹² Lemkin, *Axis Rule*, 13.

⁴¹³ Lemkin, *Axis Rule*, 83.

and cities and towns that they had called home their entire lives. “Germans” living in the incorporated “former” territories, on the other hand, simply became German citizens and could appeal to the German state and nation for rights and privileges.

While the occupation divided people between Germans and non-Germans, the non-German peoples were divided into seemingly infinite administrative sub-categories. The “system of multiple administrative divisions” across occupied Europe, along with the citizenship laws, were intended to weaken the “resistance of the controlled nations by dividing their populations into small groups which are prevented from communication by artificial boundaries.”⁴¹⁴ The broadest administrative division was the designation of territories incorporated into the Reich, and non incorporated territories. In non-incorporated regions such as Norway, the Netherlands, and central Poland, Lemkin used Axis laws and decrees to demonstrate a chain of command where Reich Commissioners and governors were placed in charge of civil affairs. In incorporated regions to be absorbed into the German Reich, Commissioners for the Strengthening of Germanism were attached to the district administrations (*Gauleiters*) where National Socialists Party district heads served as district governors. In a third category, military commands directly responsible to the Führer were installed in Belgium, Vichy France, parts of Yugoslavia and Greece through a series of decrees issued in 1940.

This process of administrative division was replicated within individual occupied countries by placing different regions under the authority of different occupying administrations. In Yugoslavia, for example, a puppet government was installed in Serbia to facilitate the persecution of ethnic Serbs while German and Italian minorities were

⁴¹⁴ Lemkin, *Axis Rule*, 8.

given privileges. Then, in order to suppress a unified Slavic resistance movement across Yugoslavia, the Axis powers divided the region into German, Italian, Albanian, Hungarian, and Bulgarian administrative zones, making it as difficult as possible for Slavic nationalist groups to form a collective resistance under the banner of Yugoslavia.⁴¹⁵ On both the micro and macro levels, Lemkin documented all of this by tracing who issued juridical orders to whom across the Axis territories. He concluded that these administrative divisions cut off the legal and bureaucratic channels of communication between the occupied countries preventing them from coordinating with each other. This strengthened the Nazi usurpation of sovereignty while maintaining the position of Germany and the Nazi party at the center of the new Axis empire.⁴¹⁶

Lemkin writes that the Nazi party was also adept at identifying segments of the population most likely to be loyal and concentrating authority into those bodies. Lemkin showed that in Denmark, where Hitler held the full cooperation of the King, Axis directives were communicated directly to established authorities. In the Netherlands and Belgium, the Nazi party delegated authority to secretary generals and established headless governments run by subcabinets. In Lithuania, Estonia, and Latvia, the position of secretary general was abolished and replaced by councilors and directors. However, in territories where political elites resented Axis rule, such as in Poland and the occupied territories of the former Russian Empire, policy directives were channeled through minor and low level authorities and officials.⁴¹⁷

⁴¹⁵ Lemkin, *Axis Rule*, 241-266.

⁴¹⁶ Lemkin, *Axis Rule*, 8.

⁴¹⁷ Lemkin, *Axis Rule*, 83.

Lemkin does not go so far as to suggest that everyday Germans were “willing executioners” like Daniel Goldhagen argued.⁴¹⁸ But he was certainly far from the belief, like Arendt argued in *Eichmann in Jerusalem*, that the Axis genocide occurred because officials were simply following orders, committing themselves to a genocidal movement in order to gain an existential sense of belonging without thinking critically about their role in the social process.⁴¹⁹ Lemkin did not equate genocide with the final solution—but rather saw the final solution as part of the Nazi genocide. Nevertheless, it is important to note that he insisted that the laws and decrees of the Axis government made it clear that “all important classes and groups of the population have voluntarily assisted Hitler.”⁴²⁰ It was not just a matter of a few ghastly laws and decrees being mindlessly followed that concerned Lemkin. Rather, millions of people had been led to support a program of genocide, each for their own reasons. One had to understand that genocidal orders existed within an entire constellation of other decrees and laws intended to benefit the peoples in whose name the genocide was being conducted, Lemkin argued. While these incentives were not directly involved in the destruction of an entire nation of people, they still constituted part of the genocidal program.

Lemkin believed the ideological architects of the genocide, such as Hitler and Alfred Rosenberg, held the destruction of enemy nations as the end goal of their policies, even if their desire to use mass murder developed later. These policies of genocide, he insisted, were not motivated by elite hatred so much as they were dictated according to the

⁴¹⁸ Daniel Jonah Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (London: Little, Brown, 1996).

⁴¹⁹ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: The Viking Press, 1963).

⁴²⁰ Lemkin, *Axis Rule*, xiii.

principles of “administrative expediency and the desire for territorial aggrandizement.”⁴²¹

The local level administrators, officials, and populations carrying out these policies would not have had to connect the grand genocidal vision to their individual roles in the unfolding catastrophe, Lemkin argued. Instead, the people in whose name the genocide was being conducted were often motivated by short-term monetary, political, social, and emotional rewards offered to them.⁴²²

3.3 THE EIGHT TECHNIQUES OF THE AXIS GENOCIDE

In addition to the “political field,” Lemkin identified seven other “techniques of genocide” that the Nazi regime employed to orchestrate the Axis genocide. The second technique of genocide, the “social technique,” followed from the first. In fact, Lemkin believed that the goal of political genocide was “the destruction of the national pattern in the social field.”

Indeed, Lemkin saw political and social techniques of genocide as interrelated. The German usurpation of sovereignty in the occupied territories instituted the legal structures required to carry out the genocide, he wrote, removing the “local law and local courts” and replacing them with “German law and courts” as a first step destroying the “vital” social structures of the nation. After replacing the local legal structures and “Germanizing” the judicial language and the bar, the focal point of the laws of occupation and the Nazi decrees was “the intelligentsia, because this group largely

⁴²¹ Lemkin, *Axis Rule*, 8.

⁴²² Lemkin, *Axis Rule*, 7-9.

provides national leadership and organizes resistance against Nazification.”⁴²³ This was especially the case in Poland and Slovenia, Lemkin wrote, where “the intelligentsia and clergy were in great part removed from the rest of the population and deported for forced labor in Germany.”⁴²⁴ Thus the great library of the Jewish Theological Seminary at Lublin, Poland was burned to destroy Jewish national life, Lemkin wrote. And then a military band was summoned to silence their cries.⁴²⁵

Cultural techniques of genocide, Lemkin’s third category, was also closely intertwined with social techniques. Across the incorporated territories, he observed, “the local population is forbidden to use its own language in schools and printing.”⁴²⁶ There were decrees ordering teachers in grammar school to be replaced with German teachers to “assure the upbringing of youth in the spirit of National Socialism.”⁴²⁷ Laws were passed in Poland banning Polish youth from studying the liberal arts because “the study of liberal arts may develop independent national Polish thinking.” Instead, Polish children were only allowed to complete their schooling in vocational schools, preparing them to labor in German industries.⁴²⁸ It was even illegal to dance in public buildings in Poland, except for dance performances officially approved as sufficiently German.⁴²⁹ In France, Lemkin pointed to the importance the Nazi party placed on Germanizing Alsace-

⁴²³ Lemkin, *Axis Rule*, 83.

⁴²⁴ Lemkin, *Axis Rule*, 83.

⁴²⁵ Lemkin, *Axis Rule*, 84.

⁴²⁶ Lemkin, *Axis Rule*, “Order concerning the Use of the German Language in Luxemburg, August 6, 1940,” p. 440.

⁴²⁷ Lemkin, *Axis Rule*, “Order concerning Compulsory Schooling in Lorraine, February 14, 1941,” 386.

⁴²⁸ Lemkin, *Axis Rule*, 84.

⁴²⁹ Lemkin, *Axis Rule*, “Order concerning Prohibition of Dancing in the Government General, April 9, 1941,” 555.

Lorraine, where private schools were closed in order to promote a unified National Socialist education, and anti-German textbooks were banned.⁴³⁰ In fact, in every occupied territory, people who “engaged in painting, drawing, sculpture, music, literature, and the theater are required to obtain a license” from the local office of the Reich Chamber of Culture “in order to prevent the expression of the national spirit through artistic media.”⁴³¹ In Poland, the authorities in charge of cultural activities organized the destruction of national monuments, destroyed libraries, archives, and museums, carrying away what they desired and burning the rest.⁴³²

Fourthly, the Axis genocide was being committed through the field of economics, from liquefying financial cooperatives, confiscating property, or manipulating financial systems in order to undermine the elemental base of human existence. The social techniques of genocide, Lemkin argued, could include the targeting of any group or institution that was attacked because it was important for maintaining the structure and character of group life, including economic groups, such as the destruction of a “laboring or peasant class” intended to destroy industrial or food production with the intention of destroying a greater group as a sociological entity.

Fifthly, genocide was being committed biologically, he wrote. Since the German ideology thought of nations in idioms of race and biological superiority, there was very clearly a biological element to the Axis genocide, Lemkin believed. The Nazi regime

⁴³⁰ Lemkin, *Axis Rule*, 385-391. See the following order and regulations: regarding Private Schools, December 6, 1940; concerning the Elementary School System in Lorraine, February 14, 1941; Prohibition on the Use of Certain French Textbooks, August 10, 1940

⁴³¹ Lemkin, *Axis Rule*, 84. See *Axis Rule*, “Duty of Registration for All Persons Engaged in Creating or Transmitting Cultural Values in Luxemburg,” 442.

⁴³² Lemkin, *Axis Rule*, “Order concerning the Preservation of Works of Art in the Occupied Territory of France, July 15, 1940,” 390.

sought to lower birthrates of people whose bloodline was undesirable while promoting the reproduction of those who were biologically more favorable. Lemkin's ideas on the matter also covered crimes we would now consider sexual violence or gender crimes, discussed in greater detail below.

It is important to note that Lemkin did not believe that all genocides had to have a biological component. Rather, the biological techniques of the Axis genocide were a function of Nazi racial ideology. The Italian occupation of Albania, for instance, established a national body for Albanian cultural growth that was tasked with the "fascization" of Albanian society and the Italian penal code enacted in Albania criminalized anti-fascist and anti-Italian speech.⁴³³ Similar laws were passed under Italian occupied Yugoslavia, in Ljubljana, Dalmatia, and Montenegro, where fascist and Nazi forces sought to remove ethnic Serbians.⁴³⁴ The Bulgarian occupation in Greece carried out genocide in the Aegean region through a program of "agricultural economic colonization."⁴³⁵ What distinguished the German occupation, Lemkin wrote, was that nations were defined in biological terms and thus the laws revealed a genocide conducted with the goal of destroying national patterns socially, culturally, and biologically.

⁴³³ Lemkin, *Axis Rule*, 275-281. See specifically: "Vicegerent's Decree creating the Albanian Fascist Party, June 2, 1939," 275; "Vicegerent's Decree No. 73 concerning the Institution of the Central Council of Corporative Economy, March 14, 1940," 277; "Vicegerent's Decree No. 101 concerning Attributions and Functioning of the Fascist Upper Corporative Council, April 3, 1940," 277; "Vicegerent's Decree No. 114 concerning the Statute of the 'Skanderbeg Foundation,'" National Body for Cultural Growth in Albania, April 8, 1940," 278; and "Vicegerent's Decree No. 228 concerning Crimes against the Personality of the State, January 6, 1940," 281.

⁴³⁴ Lemkin, *Axis Rule*, 584-590. See all decrees and laws.

⁴³⁵ Lemkin, *Axis Rule*, "Decree concerning Land Grants for Municipal Officials in the Villages of the Aegan Region, Approved by the 34th Decision of the Council of Ministers Taken at the Session of October 9, 1942, Protocol No. 131," 416; and see "Decree regarding the Construction, and Justification of Expenditures for the Construction, of Dwelling-houses for the Colonists in the Aegean Region, Approved by the 36th Decision of the Council of Ministers Taken at the Session of October 14, 1942, Protocol No. 133," 417-418.

The German occupation “has elaborated a system designed to destroy nations according to a previous prepared plan” to commit genocide to “protect the strong against the inferior,” Lemkin wrote.⁴³⁶ In both Germany and Axis occupied territories, Lemkin added, a policy of depopulation was pursued. Laws were enacted with the explicit intent of to decrease the birthrate of national groups of non-German blood, accompanied by steps to increase the birthrate of Germans. Lemkin pointed out that Nazi regime thought of these measures as humane solutions to solving their nationalities question, quoting Hitler as saying “we have developed a technique of depopulation ... to remove millions of an inferior race that breeds like vermin! ... I shall simply take systematic measures to dam their great natural fertility” that are “systematical and comparatively painless, or at any rate bloodless.”⁴³⁷ Lemkin then produced the Nazi decrees that substantiated Hitler’s promise. There were decrees in Poland ordering men to be sent off to forced labor in order to separate males and females so as to prevent them from reproducing, while German families with three or more children were offered government subsidies.⁴³⁸ Since the Dutch and Norwegians were considered German blood, there were laws passed to subsidize the illegitimate children of German soldiers born to Dutch and Norwegian women.⁴³⁹

Furthermore, Lemkin argued, Hitler presented his biological plan in humanitarian

⁴³⁶ Lemkin, *Axis Rule*, 81.

⁴³⁷ Lemkin, *Axis Rule*, 86.

⁴³⁸ Lemkin, *Axis Rule*, 86. See “Order of the Reich Commissioner for the Occupied Netherlands Territories concerning Marriages of the Male Persons of German Nationality in the Occupied Netherlands Territories, and Related Matters, February 28, 1941,” 474. Also see *Axis Rule*, “Order concerning the Granting of a Child Subsidies to Germans in the Government General, March 10, 1942,” 553.

⁴³⁹ Lemkin, *Axis Rule*, 87. See “Order concerning the Subsiding of Children Begotten by Members of the German Armed Forces in Occupied Territories, July 28, 1942,” 504.

terms, proclaiming in 1940 that “in former days it was the victors prerogative to destroy entire tribes, entire peoples. By doing this gradually and without bloodshed, we demonstrate our humanity.”⁴⁴⁰ What was unique with Hitler’s genocide, Lemkin wrote, was that it “is based not upon cultural but upon biological patterns. He believes that ‘*Germanization* can only be carried out with the *soil* and never with *men*’.”⁴⁴¹ Whereas the Soviet occupants of Poland sought to destroy bourgeois forms of Polish national identity to create a new socialist subject, the German “occupant has organized a system of colonization of these areas” to supplant undesired “national patterns” with German national patterns ascribed to blood.⁴⁴² To Germanize a territory, therefore, the regime had to physically remove or kill the non-Germans who lived there.

Citing Alfred Rosenberg, a intellectual architect of Nazi race ideology and *Lebensraum*, Lemkin noted that German authorities openly stated that “history and the mission of the future” were no longer class struggles, or religious struggles, “but the clash between blood and blood, race and race, people and people.”⁴⁴³ “In this German conception the nation provides the biological element for the state. Consequently, in enforcing the New Order, the Germans prepared, waged, and continued a war not merely against states and their armies, but against peoples,” Lemkin wrote.⁴⁴⁴ Politically and legally, he continued, the German occupying authorities viewed war as a means for

⁴⁴⁰ Adolf Hitler, “Statement to Rausching,” in *The Voice of Destruction*, ed. Hermann Rausching (New York: G. P. Putnum’s Sons, 1940), 138. Quoted in Lemkin, *Axis Rule*, 81 n. 7.

⁴⁴¹ Lemkin, *Axis Rule*, 81.

⁴⁴² Lemkin, *Axis Rule*, 83.

⁴⁴³ Lemkin, *Axis Rule*, 81. Lemkin is citing Alfred Rosenberg, *Der Mythos des 20. Jahrhunderts* (München: Hoheneichenverlag, 1935), 1-2. On Rosenberg, see Robert Cecil, *The Myth of the Master Race: Alfred Rosenberg and Nazi Ideology* (New York: Dodd Mead, 1972).

⁴⁴⁴ Lemkin, *Axis Rule*, 80.

carrying out genocide. The reasoning of Nazi Germany “seems to be as follows:” “The enemy nation within the control of Germany must be destroyed, disintegrated, or weakened in different degrees for decades to come. Thus the German people in the post-war period will be in a position to deal with other European peoples from the vantage point of biological superiority.”⁴⁴⁵

This fifth technique was closely related to the sixth technique of “physical debilitation and even annihilation” of national groups. The physical attack on nations was conducted through racial discriminations in feeding, measures intended to endanger the health of groups, and mass killings. This technique of mass killing, Lemkin wrote, “was employed mainly against Poles, Russians, and Jews, as well as against leading personalities” who represented the intelligentsias of enemy nations. The Jews, Lemkin wrote, were liquidated from disease, hunger, and executions inside the ghettos, on transport trains, and in labor and death camps.

The seventh technique was religious, Lemkin wrote, as the German occupation attempted to change the religious patterns of the occupied territories. Curiously enough, Lemkin did not include the destruction of Jewish life to be a religious technique of the Axis genocide. The reason was that Nazi ideology thought of the Jews as a nation, and saw nations as biological entities. Thus, in the Nazi project, the destruction of the Jews was a biological and physical program. The religious techniques of genocide that Lemkin listed had to do with the German persecution of Christian clergy, the pillage and destruction of Christian churches, and the imposition of Nazi youth organizations intended to pressure children into renouncing Christianity, and the specifically brutal

⁴⁴⁵ Lemkin, *Axis Rule*, 81.

repression of Catholicism. To reduce both protestant and Catholic religious affiliations across Europe, he argued, laws were passed making it legal for children to renounce their religious affiliation and prohibiting any publication of the names of people who resigned from congregations.⁴⁴⁶ In certain places, the German occupying forces even transferred protestant churches to local Lutheran administrations to promote Germanism.⁴⁴⁷

The last technique of the Axis genocide, Lemkin wrote, was the closely related category of morality. Moral genocide, he argued, included acts intended to “weaken the spiritual resistance of the national group.” This could include forced drug use, or the practice of inflating food prices to prevent people from affording basic nutrition, while artificially keeping alcohol prices low to encourage people to drink instead of eat. Laborers in Axis occupied Poland were even paid in alcohol, Lemkin noted, a practice common during the famine Stalin orchestrated in Ukraine. In Polish cities, he noted furthermore, curfew laws were enforced strictly unless a person could provide a ticket to a German gambling house, which had been illegal under Polish law before the German occupation.⁴⁴⁸

In and of themselves, these eight techniques did not constitute genocide. Nor were these techniques the only way to destroy nations. Rather, Lemkin’s analysis of the laws of the totalitarian Axis rule revealed that the legal order in the occupied territories was orientated towards destroying enemy nations through these eight techniques. For this reason, Lemkin’s analysis of Axis rule places the political field as the primary technique

⁴⁴⁶ Lemkin, *Axis Rule*, 89.

⁴⁴⁷ Lemkin *Axis Rule*, 89. See *Axis Rule*, “Order concerning Withdrawal from Religious Congregations, December 9, 1940,” 438; And see, “Regulation concerning Provisional Rearrangement of the Evangelical Church Organization in Lorraine, September 28, 1940,” 385.

⁴⁴⁸ Lemkin, *Axis Rule*, 90.

of genocide from which the other seven techniques emanated. While the Nazi regime and Axis occupation might have appeared irrational and arbitrary, there was unifying principle to the entire project: genocide.

3.4 ECONOMICS AND GENOCIDE

Understanding Lemkin's thoughts on economics and genocide requires a brief summary of what Lemkin's contemporaries thought about National Socialism.

Axis Rule was the first legal and political study of the Axis occupation. But it was not the first study of Nazi Germany, National Socialism, or Nazi master-race ideologies. Nor was Lemkin alone in studying and condemning the use of violence and terror to enforce political and social policies. Jacques Barzun wrote an early and influential study on the "modern superstition" of race-doctrines that formed a cornerstone of the Third Reich's legitimacy.⁴⁴⁹ Magnus Hirschfeld was one of many raising alarms in the late 1930s that National Socialism aimed to purify society of Jews, homosexuals, and people considered sub-human, by sterilizing or killing them.⁴⁵⁰ Political scientists such as the Fabian Socialist Herman Finer demonstrated the degree to which fears of interracial cross-breeding and a disdain for regional German particularism shaped Hitler's plan to eliminate local German bureaucracies and security forces, just as much as he feared that

⁴⁴⁹ Jacques Barzun, *Race: A Study in Modern Superstition*, New York: Taylor and Francis, 1937

⁴⁵⁰ Magnus Hirschfeld, *Racism* (London: Kennikat Press, 1938).

they might oppose Nazi directives.⁴⁵¹ And many warned, before 1940, that the vision of *Mein Kampf* was underway.⁴⁵²

Lemkin was not the only one to frame his analysis of Nazi Germany through the theory of totalitarianism. When he wrote *Axis Rule*, the canonical studies of totalitarianism had not yet been published. These included Carl Joachim Friedrich and Zbigniew K. Brzezinski's *Totalitarian Dictatorship and Autocracy* (1956),⁴⁵³ Karl Wittfogel's *Oriental Despotism: A Comparative Study of Total Power* (1957),⁴⁵⁴ and *The Origins of Totalitarianism* by Hannah Arendt (1951).⁴⁵⁵ After this generation of thinkers, totalitarianism became an "essentialist" concept frequently used to justify American democracy over Soviet communism and fascism.⁴⁵⁶ Lemkin, in the spirit of his times in the 1950's, likewise slipped into anti-communist polemics.⁴⁵⁷ However, *Axis Rule* should not be judged as expressing Cold War era understandings of totalitarianism. Instead, it should be interpreted within the context of the debates on totalitarianism in the 1930s and 1940s. Most of these works were shaped by the mass mobilizations of the First World

⁴⁵¹ Herman Finer, *Modern Government, Vol. 2* (New York: Taylor and Francis, 1932), 210-211.

⁴⁵² Frederick Lewis Schuman, *The Nazi Dictatorship: A Study in Social Pathology and the Politics of Fascism* (New York: Knopf, 1936).

⁴⁵³ Joachim Friedrich and Zbigniew K. Brzezinski, *Totalitarian Dictatorship and Autocracy* (Cambridge: Harvard University Press, 1956).

⁴⁵⁴ Karl August Wittfogel, *Oriental Despotism: A Comparative Study of Total Power* (New Haven: Yale University Press, 1957).

⁴⁵⁵ Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace and Company, 1951).

⁴⁵⁶ Herbert Spiro and Benjamin Barber, "Counter-Ideological Uses of 'Totalitarianism'," *Politics and Society* 1 (1970):3-21.

⁴⁵⁷ Anton Weiss-Wendt, "Hostage of Politics: Raphael Lemkin on 'Soviet Genocide'," in *Journal of Genocide Research* 7 (2005): 551-559.

War, National Socialism, and then rise of Nazi Germany.⁴⁵⁸ These texts differ from *Axis Rule* in one important way: while Lemkin's contemporaries were trying to discover how economics led rise of National Socialism and the rise of the Nazi state, Lemkin was more concerned with how Axis occupation used the field of economics in order to commit genocide. Unlike the overwhelming majority of his contemporaries, Lemkin did not see the Nazi regime or National Socialism as an economic program.

While the analysis and thesis of *Axis Rule* is too far away from Sigmund Neumann's *Permanent Revolution*⁴⁵⁹ to suggest this text had any influence on Lemkin, it is almost certain that *Axis Rule* was shaped by Ernst Fraenkel's *Dual State*⁴⁶⁰ and, to a lesser degree, Franz Neumann's *Behemoth*.⁴⁶¹ National Socialism, Fraenkel argued in 1941, divided German law into two competing areas, forming a "prerogative state" governed by the party which ruled through arbitrary violence, and a "normative state" which maintained the legal order and protected the legitimacy of German courts. The regime, Fraenkel continued, embodied Schmitt's principle that "a jurisprudence concerned with ordinary day-to-day questions has practically no interest in the concept of sovereignty."⁴⁶² When the sovereign state declares martial law, in Schmitt's theory, the prevailing legal order of the state is suspended in the name of preserving the state.

⁴⁵⁸ See Alfons Söllner, "Hannah Arendt's The Origins of Totalitarianism in its Original Context," *European Journal of Political Theory* 3 (2004), 219-238.

⁴⁵⁹ Sigmund Neumann, *Permanent Revolution: The Total State in a World at War* (New York: Harper and Brothers, 1942).

⁴⁶⁰ Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (New York: Oxford University Press, 1941).

⁴⁶¹ Franz L. Neumann, *Behemoth: The Structure and Practice of National Socialism, 1933-1944, 2nd edition* (New York: Oxford University Press, 1944).

⁴⁶² Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 2010), 12.

Yet the situation is not anarchy or chaos. The law recedes but the state remains, and “order in the juridical sense still prevails even if it is not the ordinary kind.”⁴⁶³

Sovereignty and the politician are conserved while the constitutional state is dismantled.⁴⁶⁴ The authority of the modern sovereign to establish the legal order, produce laws, and decide the legal norms, was therefore not based on laws, Schmitt argued.⁴⁶⁵ Likewise, the state of exception revealed that the modern state was not defined as a monopoly over coercion, as Weber and Hobbes thought, but as the monopoly to decide what the normal situation is. For Schmitt, the state’s decision to suspend the law of the state demonstrated that the two elements of the concept of legal order—*legal* and *order*—are independent concepts.

Fraenkel quoted from Gestapo legal advisors to argue that the secret police explicitly adopted the distinction Schmitt made between the legal order of the state and the authority of the state, which was not derived from laws. “The task of combating all movements dangerous to the state implies the power of using all necessary means, provided they are not in conflict with the law,” one Nazi legal brief reasoned, only to add in the next sentence: “Such conflicts with the law, however, are no longer possible since all restrictions have been removed following the Decree of February 28, 1933, and the triumph of National-Socialist legal and political theory.”⁴⁶⁶ Fraenkel argued that Schmitt’s state of exception was enacted through the secret police, which preserved the normative state while allowing the capitalist system to continue for the benefit of German

⁴⁶³ Schmitt, *Political Theology*, 12.

⁴⁶⁴ Bloch, *Natural Law and Human Dignity*, 150.

⁴⁶⁵ Schmitt, *Political Theology*, 12-13,

⁴⁶⁶ Quoted in Fraenkel, *The Dual State*, 25.

nationals. This freed the prerogative state from judicial restraint and made the arbitrary rule of law the rule of law.⁴⁶⁷

If there is any theoretical point of confluence between Lemkin and Fraenkel it is in Fraenkel's writings on Schmitt and the program of National Socialism in Germany, and Lemkin's thesis that the German regime ruled occupied Europe through the usurpation of sovereignty. However, Lemkin's theory of the usurpation of sovereignty was different than the theory of the state of exception. In Lemkin's thought, the Axis occupiers did away with the existing normative and legal order in the states they conquered and replaced it with a new normative and legal order established through decrees and laws issued directly from the Nazi party in the name of the German nation.

Strikingly, Lemkin began *Axis Rule* almost exactly the same way Fraenkel began *The Dual State*, with a description of the legal order of Germany and the Axis occupied territories. Like Fraenkel, Lemkin charted the administrative structure of the German Reich and the Axis occupied governments, and then turned his attention to the role of the police in sustaining the legal order of the regime. After detailing the expansion of the Gestapo made by Hermann Göring in Prussia, and the extension of the Gestapo into the German Reich by Nazi SS Polish Force Chief Heinrich Himmler, Lemkin argued that the guiding principle of the National Socialist Regime was "based not so much on the law as on the doctrines of the Nazi party" that gave prominence to "protecting the interests of the nation."⁴⁶⁸ Thus the police were gradually freed from the legal constraints of the state, and placed under the directives of the party until the national police were unified across

⁴⁶⁷ Fraenkel, *The Dual State*, 25.

⁴⁶⁸ Lemkin, *Axis Rule*, 17.

Germany and special courts for the Gestapo were established in 1939, giving the secret police judicial autonomy.⁴⁶⁹ The police were thus granted discretionary power, Lemkin wrote, citing legal provisions from the Netherlands in 1941 giving the Superior SS and Police Chief the right to deviate from existing laws, take over the direct administration of the area, and promulgate regulations on “penal provisions subjecting a defendant to fines of unlimited amount, imprisonment, or jail.”⁴⁷⁰ Citing legal decrees issued in Poland, Luxembourg, and the eastern territories of the Reich between 1939 and 1940, Lemkin went on to show that Nazi party gave the police discretionary power to dictate regulations and impose penalties without juridical procedure, and even to take over courts martial.⁴⁷¹

Lemkin, like Fraenkel, focused on how the police enforced two systems of citizenship law in the Axis occupation: one system was designed to protect German nationals and the other intended to inflict terror upon enemies of the state. But Fraenkel, unlike Lemkin, turned to Schmitt and political heritage of Machiavelli, Hobbes, and Marx to explain why both the prerogative state and the normative state in Germany found their identifying “order” in the person of Adolf Hitler. In Lemkin’s analysis on the , the populations of the occupied territories were forced to obey the police, while the police were freed from the authority of local officials. Thus, the SS and the Gestapo were granted full procedural and judicial discretion, granting them “great striking power.” However, this mean that the legal order was not found in the figure of the dictator, but in the political and social institutions of Nazi Germany.

⁴⁶⁹ Lemkin, *Axis Rule*, 17.

⁴⁷⁰ Lemkin, *Axis Rule*, “Order of the Reich Commissioner for the Occupied Netherlands Territories concerning the Establishment of Administrative Court Martial, March 19, 1941,” 475.

⁴⁷¹ Lemkin, *Axis Rule*, 20.

In modern states, Lemkin wrote, the “law plays a rather considerable rôle in police relations because of the inherent necessity of protecting the rights of individuals.”⁴⁷² But, he argued, the German regime had followed a totalitarian innovation in the techniques of modern statecraft. Quoting the 1939 directives of Gestapo Chief and Deputy Reich Protector of Bohemia Reinhard Heydrich, Lemkin continued: the “German police are trained in the idea embodied in the slogan ‘you are nothing; the nation is everything’. *Du bist nichts; das Volk ist alles.*”⁴⁷³ This was a point that Lemkin carried over from his works on the exaggerated nationalism of the penal codes of fascist Italy and the USSR, which redirected the rule of law and the force of state security forces from protecting the citizen to protecting the nation.

It would be easy to assume at this point that Lemkin and Fraenkel’s theories were in agreement. However, for Lemkin, the usurpation of sovereignty meant that the existing legal order at the local levels throughout Germany and the occupied territories might have been abolished, but it was replaced by a new legal order. The structure of the state, therefore, only appeared to be hollow and ruled by arbitrary power when, in actuality, the Nazi party through Himmler had forged strict institutional constraints upon the police. For this reason, Lemkin believed, the political task of the police was very narrowly defined: “to protect the interests of the nation.”⁴⁷⁴

Lemkin arrived at this conclusion because, in the second and third parts of *Axis Rule*, he embarked on an intellectual project that Fraenkel explicitly avoided: he included

⁴⁷² Lemkin, *Axis Rule*, 17.

⁴⁷³ Lemkin, *Axis Rule*, 17.

⁴⁷⁴ Lemkin, *Axis Rule*, 17.

hundreds of pages of Axis decrees and laws of occupation which he augmented with his own legal analysis. Fraenkel, in contrast, sought “to explain the juridical ‘dualism’ which characterizes the entire system of private and public law in contemporary Germany” and “the necessary consequence of a certain state of crisis for the directing elements of capitalist society.”⁴⁷⁵ Perhaps “they have lost confidence in rationality and have taken refuge in irrationality,” Fraenkel continued: “to demonstrate this it is necessary to do more than compile a list of cases in constitutional law which do not confirm to the Rule of Law.”⁴⁷⁶ Lemkin’s project, at this point, could not have been more different.

One reason Lemkin focused on the actual laws and decrees of Axis occupation is because he was not only a scholar, he was also a prosecutor. Lemkin wrote *Axis Rule* with the full intention that the book would be used to prosecute the architects of the Axis genocide. A second reason is that Lemkin believed genocide and totalitarianism were two separate concepts. Totalitarianism and dictatorships, the subject of Fraenkel’s study, were social and political systems. Genocide, for Lemkin, was an act that involved social processes. Therefore, Fraenkel concerned himself with the transformation of the juridical structure of the German state under National Socialism, not in the actual things the Nazi state was doing or ordering people to do. Lemkin, on the other hand, dismissed the theoretical questions surrounding the laws and politics of the Nazi state and, instead, used the laws of the regime to discover what the Axis occupation was doing, and how. It was Lemkin’s focus on hundreds of actual laws and decrees of the Axis regime that would set his study apart from his peers.

⁴⁷⁵ Fraenkel, *The Dual State*, xiv.

⁴⁷⁶ Fraenkel, *The Dual State*, xiv.

Fraenkel's *The Dual State* and Neumann's *Behemoth* are still considered among the most sophisticated political analyses of the Nazi system, even if their findings have been superseded in the last half a century. Yet neither Fraenkel nor Neumann, Lemkin's colleague at the US Board of Economic Warfare, examined what the Nazi party was actually ordering people to do across the occupied territories. As Fraenkel asserted, this was not an oversight. Fraenkel and Neumann—along with Otto Kirchheimer,⁴⁷⁷ Arkadius Gurland,⁴⁷⁸ Friedrich Pollack,⁴⁷⁹ and Max Horkheimer,⁴⁸⁰—had all focused on the relationship between the rise of the totalitarian Nazi regime and monopoly capitalism. In opposition to Fraenkel's dual state theory, and contrary to Horkheimer's thesis that the political structure of National Socialism gave rise to a state capitalist order, Neumann's *Behemoth* argued that monopoly capitalism fueled the war by attaching economic interests to imperialist conquest of new markets and resources that would be "Germanized" and appropriated for German industry.⁴⁸¹ The Nazi party employed the industrial capabilities of German monopoly industries, Neumann argued, while German

⁴⁷⁷ Otto Kirchheimer, "Changes in the Structure of Political Compromise," *Studies in Philosophy and Social Science* Vol. 9 (1941): 264–289; Otto Kirchheimer, "The Legal Order of National Socialism," *Studies in Philosophy and Social Science*, Vol. 11 (1941).

⁴⁷⁸ Arkadius R. L. Gurland, Otto Kirchheimer, and Franz L. Neumann, *The Fate of Small Business in Nazi Germany: Printed for the United States Congress and Senate Special Committee to Study and Survey Problems of Small Business Enterprise* (Washington, D.C.: US Government Printing Office, 1943).

⁴⁷⁹ Frederick Pollock, "State Capitalism: Its Possibilities and Limitations," in *Critical Theory and Society: A Reader*, eds. S.E. Bronner and D.M. Kellner (New York: Routledge, 1989). Against Neumann, Pollock claimed political motives trumped economic motives in National Socialism as Nazi Germany commanded the economy to overcome the deficiencies in state capitalism and allocate resources for the war effort.

⁴⁸⁰ Max Horkheimer, "The Jews and Europe," in *Critical Theory and Society: A Reader*, eds. S.E. Bronner and D.M. Kellner, trans. Mark Ritter (New York: Routledge, 1989), 87: The stability of fascism and National Socialism rested on an alliance against revolution that was made with economic elites and a promise given to the masses that there will be more jobs.

⁴⁸¹ Jürgen Habermas, "The Task of a Critical Theory of Society," in *Critical Theory and Society: A Reader*, eds. S.E. Bronner and D.M. Kellner, trans. Thomas McCarthy (New York: Routledge, 1989).

industry used the Nazi's violence to smash unions and democratic opposition, and then benefited from Nazi conquests. The "behemoth" National Socialist regime appeared to be a total state but actually lacked the institutions of a modern state, Neumann argued, ruling in the interests of monopoly capitalism through terror, pointing the country towards war.

Just as Fraenkel and Lemkin's description of the Nazi legal order bear a close resemblance but depart theoretically, *Axis Rule* also contains much of the same language that Neumann used regarding the Nazi program of "Germanizing" foreign industry. Where Neumann considered the Nazi war to be a form of imperial expansion into European markets, Lemkin saw the war as a colonial expansion into European territories. It is tempting to assume that Lemkin was borrowing Neumann's thesis, but Lemkin had already worked out his theory on the economics of totalitarian regimes in *The Regulation of International Payments* and in his Stockholm University lectures in 1941—before Neumann's *Behemoth* was published. In these works, Lemkin did not suggest that capitalism or economics played a role in the rise of the totalitarian regime, nor caused the war, except that it offered segments of the German population narrow economic incentives to participate in the genocide. Instead, Lemkin saw economic instruments as tools used to commit genocide.

In arguing that genocide was not an economic program, Lemkin's theory in *Axis Rule* implicitly returns to a point that Bauer made in his critique of imperialism in *The Question of Nationalities and Social Democracy*, where Bauer argued that the economic systems of imperial capitalism generated incentives to destroy and physically annihilate minority nations in Europe and the colonial world. The old system of English free trade had privileged cosmopolitanism, Bauer wrote, in that it thought of the world as a single

economic zone and refused to erect customs and exchange boarders between states. But the liberal nation-state “inscribed the principle of nationality on its banner,” erected customs boarders, and perused universal economic and political interests that were actually national interests in disguise. “Modern imperialism” does not seek a unified world; it “encloses the economic zone of the individual country within a customs border” that opens up the less developed country as a sphere of investment and sales for the capitalists of the developed country.⁴⁸²

Modern imperialism, therefore, “does not dream of freedom, but prepares for war,” Bauer wrote, because the modern nation-state “does not believe in the possibility of uniting the whole of humanity in free and peaceful exchange” but “seeks to help its own land at the cost of the other by arming itself with tariffs, with navies, and with soldiers against other countries.”⁴⁸³ The armies that were raised by nation-states, Bauer continued: must be ready and willing to be used, today in African and tomorrow in India, today to exterminate a Negro tribe root and branch and tomorrow to struggle against the white soldiers of another nation. Today they must protect the owners of large gold mines against the rebellion of their foreign workers and tomorrow dispense bloody punishment to the Egyptian peasants for beating their arrogant conqueror.⁴⁸⁴

Yet, it was not enough that the armies of nation-states had to be willing to inflict such brutality, Bauer contended. The national citizens of nation-states must “desire” to subjugate, enslave, and destroy entire nations of less developed others in the name of their nation. All of the white-skinned Britons in the mother country and the colonies the

⁴⁸² Bauer, *The Question of Nationalities and Social Democracy*, 379.

⁴⁸³ Bauer, *The Question of Nationalities and Social Democracy*, 379.

⁴⁸⁴ Bauer, *The Question of Nationalities and Social Democracy*, 390.

world over, Bauer wrote, had conceived of national British unity as being built on the subjugation, exploitation, and destruction of four hundred million of their subjects.⁴⁸⁵

Where liberal political theory saw ethnic, cultural, and national minorities as a problem in a necessarily homogenous nation-state, Bauer attempted to show that a state did not have to be erected in the name of a particular nation.⁴⁸⁶ This theory of national cultural autonomy is what Renner attempted to give a juridical form in the nation-state.⁴⁸⁷ Just as the state has been secularized to remove religious beliefs as a requirement of citizenship, the nation had to be separated out of the doctrine of territorial state sovereignty.⁴⁸⁸ Yet Bauer and Renner had little to say about how the principle could exist outside of the legal structure of a state, and thus they could offer no concrete solutions towards ending the colonial and imperial horrors of destroying entire nations for economic and political gain. As Lemkin asserted in his letter to Renner, his own work on genocide followed in this tradition to create the legal categories necessary for enshrining the principle of national cultural autonomy into international law.⁴⁸⁹

Socialists on the left tended to view nationalism and nations as threatening universal democratic values. Socialists on the right, such as Edward Bernstein, argued that “socialists should finally accept the higher culture’s ensuing guardianship over the

⁴⁸⁵ Bauer, *The Question of Nationalities and Social Democracy*, 395.

⁴⁸⁶ See the Ephraim J. Nimni, “Introduction for the English-Reading Audience,” in Otto Bauer, *The Question of Nationalities and Social Democracy*, ed. Ephraim J. Nimni, trans. Joseph O’Donnell, (Minneapolis: University of Minnesota Press, 2000), xix.

⁴⁸⁷ Karl Renner, “State and Nation,” in *National Cultural Autonomy and its Contemporary Critics*, ed. Ephraim Nimni, (London: Routledge, 2005).

⁴⁸⁸ Renner, “State and Nation,” 30, 39.

⁴⁸⁹ “Raphael Lemkin to Karl Renner,” Raphael Lemkin Papers, MS-60, American Jewish Archives, Cincinnati, Ohio, United States of America (hereafter AJA), Box 1, Folder 15, March 29, 1950,

vanquished peoples” and promote “a reasonable geographical expansion of the nation” to advance world socialism and bring about a “healthy evolution in the forces of production” in the lands of “indolent savages.” To prevent the formation of nation-states and nationalism was a “romantic fight against windmills,” Bernstein wrote.⁴⁹⁰ However, both left and right socialists argued that colonial horrors were inherent in the capitalist mode of production and could only be abolished through a revolutionary transformation of the economy. Bauer set himself apart, arguing that colonial destruction was not a necessary consequence of capitalism, but a consequence of imperialism. Imperialism was a policy choice arrived at politically, put forth by the state for the unity of the nation and benefit of the national economy and a few monopoly capitalists. Therefore, imperial horrors and the destruction of entire nations was a choice, too, a tool used by imperial nation-states to advance their interests. This meant the destruction of nations and national minorities could be stopped without changing the economic basis of these conflicts.

For Lemkin, the principle was the same but the causal relationship was reversed: economics was a tool for destroying nations. But Lemkin’s point shared Bauer’s insight, that genocidal horrors and the wholesale destruction of entire nations was not an inevitable consequence of modernity, but were actions that people chose to undertake or to follow for specific reasons.

⁴⁹⁰ Quoted in Manfred B. Steger, *The Quest for Evolutionary Socialism: Eduard Bernstein and Social Democracy* (Cambridge: Cambridge University Press, 2006), 207-208. Like theorists such as Kant, Locke, Tocqueville, or Marx, Bernstein’s position on colonialism expressed a racism endemic to much of the tradition of liberal and socialist theory. While the racism of all these theorists should be condemned by all scientific and ethical accounts, it should not be allowed to overshadow the greater body of their work. Steger’s definitive biography demonstrates that Bernstein’s political thought was built on an ethnically motivated attempt to promote liberty, solidarity, and distributive justice.

Besides this reversal in the relationship between modern economics and colonial destruction, Lemkin followed Bauer's thesis on how modern economics could be used to destroy nations. Both held that the ideology of national unity allowed the imperial nation-states or genocidists to see the exploitation and destruction of less-developed nations as a moral good while extracting capital out of the exploited nation, which helped to pay for the military power needed to maintain exploitation and killing. Bauer had even looked at the way foreign exchanges and customs borders to exploit and destroy nations. Lemkin likewise focused on the clearinghouses the German Reich established to manipulate foreign trade and currency exchanges across the occupied territories, to exploit and undermine the vitality of subjected nations.

Before the First World War, Lemkin wrote, Germany established a clearing system to coordinate international trade with Latin American and southeastern Europe.⁴⁹¹ Initially, the clearing system was designed to allow German interests to penetrate Latin American economies by granting the countries favorable exchange rates so that foreign banks and merchants would pay and receive payment in their local currencies while German businesses would pay and receive payments in German currency, while the discrepancy in prices that favored Latin American interests would be covered by the German central bank, going unnoticed by German merchants.⁴⁹² As Germany began seeking imperial expansion, the clearing system was transformed into a tool for

⁴⁹¹ Lemkin, *La Règlementation des Paiements Internationaux* (Paris: A. Pedone, 1939). Clearing is an instrument of financial trade, usually a third party or intermediary, that coordinates transactions between banks and transactions between the sellers and purchasers of goods. In normal bilateral clearing exchanges, the clearinghouse would pay the exporter in Country A for the goods and then balance its accounts with the payment from the importer in Country B. The process speeds the exchange process necessary for capitalism to function across long distances.

⁴⁹² Lemkin, *Axis Rule*, 59.

controlling foreign economies, freezing the assets in the clearing system to extort future trade privileges.⁴⁹³ Finally, as German imperialism came into direct control of foreign governments, Berlin forced the countries into the clearing system, and manipulated the payments and credits so that foreign trade cost the German state and German businesses virtually nothing.⁴⁹⁴

The National Socialist government made totalitarian innovations to this imperial German system of finance, Lemkin wrote. From the first outbreak of war, the Central Office of the Reich Credit Institutes erected customs borders throughout the conquered territories, which they used to manipulate the currency exchange rates between 1939 and 1942 so that “the local central banking institutions were compelled by the occupant ... to finance the invasion.”⁴⁹⁵ Lemkin produced decrees and laws to demonstrate that the German occupiers were instructed to use a special legal tender issued by the Central Office of Reich Credit Institutes, but were prohibited from importing the tender into Germany. The local offices of the institute established in the occupied countries acted as agencies to the central office, and were authorized to regulate all money and credit transactions in the occupied territories. This included the buying and selling of promissory notes, the making of loans, the transaction of all bank business, and the trade in securities. Once the special currency had established itself, the institute would withdraw its currency and force the local central banking institutions to exchange them into local currency, injecting capital into the German Reich, paying for the occupation.

⁴⁹³ Lemkin, *Valutareglering och Clearing* (Stockholm: P. A. Norstedt and Söner, 1941).

⁴⁹⁴ Lemkin, *Axis Rule*, 59.

⁴⁹⁵ Lemkin, *Axis Rule*, 52.

The exchange laws introduced throughout occupied Europe gave Berlin the ability to leverage shortages in almost any economic field, wherever and whenever it wished.⁴⁹⁶ In 1939, Lemkin wrote, totalitarian regimes in Germany, the USSR, and Italy erected finance laws that allowed them to import raw materials or hire manual labor without paying for it, or even orchestrate the collapse of grain prices to create scarcities in bread in regions where they wished to annihilate the local population or punish the inhabitants for their political stances.⁴⁹⁷ In his lectures at Stockholm University, he identified two key provisions in the German Exchange Control Law. First, the exportation of foreign currency, securities, and precious metals was prohibited. Secondly, the population, businesses, and financial institutions of the occupied territories were forced to surrender of foreign currency and gold to the state, as well as their financial assets in foreign countries. The confiscated assets oftentimes consisted of the entire gold reserves held by central banks. The German state was granted a monopoly over all foreign exchange in the occupied territory, while gaining extraordinary amounts of foreign assets that could be frozen or unfrozen to pressure to foreign governments.⁴⁹⁸

By 1941, Germany was importing heavily from Axis occupied territories without exporting anything at all. This trade deficit meant that the bilateral clearinghouses between Berlin and the occupied countries were moving large amount of capital into the occupied countries without returning foreign capital to Berlin. Instead of the clearinghouse in Berlin transferring the money it received from Germans consumers and

⁴⁹⁶ Lemkin, *Axis Rule*, 56.

⁴⁹⁷ Lemkin, *La Règlementation des Paiements Internationaux*.

⁴⁹⁸ Lemkin, *Valutareglering och Clearing*.

companies paying for the imports from the occupied countries, Berlin kept the payments and ordered the central banks of the occupied territories to issue more local currency to their clearinghouse so their clearinghouse could pay their exporters.⁴⁹⁹ In the occupied countries “where the atmosphere of false peace is being fostered” the technique prevented exporters from feeling immediate harm, not realizing that they were being paid by credits issued by their own national bank, not the Germans buying their goods. This expanded the currency in circulation in the occupied territories and caused unchecked inflation, undermining the economy of the occupied territories to the gain of the Reich.⁵⁰⁰

Clearing and exchange laws were essential tools in the German genocide, Lemkin argued. The capital the German clearinghouse accumulated stayed in state coffers, helping to finance the war effort. When foreign labor done for the German state was paid for through the clearing system, the labor was free. Across the entire span of occupied Europe, the German regime forced trade between occupied territories to go through the German clearinghouse. As credits entered the German clearinghouse, the assets could also be frozen, leaving the burden of adjustments to be made by the occupied countries. Germany was also able to stop the trade of the most vital resources and goods across Axis occupied Europe and keep them at the disposal of the German state.⁵⁰¹ The economic arrangement leveraged political power by rewarding or punishing the occupied states

⁴⁹⁹ The German manipulation of clearing and exchange controls was one of the major economic and political concerns in international affairs between 1939 and 1940. *The Quarterly Journal of Economics* dedicated an entire special issue to the subject, which greatly influenced Lemkin’s work. See Howard S. Elis, “Chapter I: German Exchange Control, 1931–1939: From an Emergency Measure to a Totalitarian Institution,” *The Quarterly Journal of Economics* 54 (1940).

⁵⁰⁰ Lemkin, *Axis Rule*, 61.

⁵⁰¹ Lemkin, *Axis Rule*, 62.

accordingly. The clearinghouses could also “cripple” a national group and transform life into “a daily fight literally for bread and for physical survival.”⁵⁰²

3.5 CONSENT, INTERESTS, AND GENOCIDE

Bauer, like Lemkin, understood that modern nation-states were using finance laws and their armies to destroy entire nations. In reversing Bauer’s causal mechanism, Lemkin maintained that the destruction of nations was not an economic program, although he recognized that the large-scale manipulation of international finance and capitalism offered incentives to commit genocide. This reversal also allowed Lemkin to reveal the way small-scale incentives were often enough to secure the participation and consent of ordinary Germans in whose name the genocide was being conducted, even if the people did not believe the victims were “enemy nations.”

One small-scale financial incentive that Lemkin went to great lengths to document was the plunder of property across occupied Europe. From the first days of the invasion of Poland, “the Jews were immediately deprived of the elemental means of existence” while the financial resources and properties of the Poles “are taken from them and given to others who are eager to promote Germanism.”⁵⁰³ While it is now taken as commonplace historical knowledge, for decades historians overlooked the way the buying of stolen goods and the transfer of Jewish property “revealed the extent of complicity of ordinary citizens.”⁵⁰⁴

⁵⁰² Lemkin, *Axis Rule*, 85.

⁵⁰³ Lemkin, *Axis Rule*, 86.

⁵⁰⁴ Dan Stone, “Raphael Lemkin on the Holocaust,” *Journal of Genocide Research*, 7 (2005), 543.

Lemkin's insight sheds light on two of the largest debates that have taken place in Holocaust historiography. The first debate took place in the 1940s and 1950s over the causal role of capitalism, discussed above. The second debate, in the 1980s and 1990s, concerned how much the populations in Germany and elsewhere knew about the Holocaust. Against the argument that people were unaware of the scope of the genocide in occupied Germany, a number of scholars have contended that people were fully aware of the genocide but did nothing to stop it. Ian Kershaw asserted that the populations of Germany knew what was happening but were indifferent to the fate of the Jews.⁵⁰⁵ Dov Kulka and Michael Kater augmented the thesis by arguing that average Germans bore responsibility because their antisemitic tendencies made them "passively complicit."⁵⁰⁶ In a similar vein, Hans Mommsen added that the German people—especially functionaries—were antisemitic and apathetic, and held an authoritarian mentality that demanded obedience to the state and moral indifference to the victims.⁵⁰⁷

Against these later positions, Lemkin suggested that complicity in the genocide was constructed either because average people across occupied Europe were given incentives to support the genocide or because they believed the genocide was being conducted for their benefit. While political elites directed the genocide towards the goal of destroying national diversity, "all groups of the German nation had their share in the

⁵⁰⁵ Ian Kershaw, *Popular Opinion and Political Dissent in the Third Reich: Bavaria, 1933-1945* (Oxford: Clarion Press, 1983).

⁵⁰⁶ Otto Dov Kulka, "Public Opinion in Nazi Germany: The Final Solution," *The Jerusalem Quarterly* 26 (1983); Michael H. Kater, *The Nazi Party: A Social Profile of Members and Leaders, 1919-1945* (Cambridge, MA: Harvard University Press, 1983).

⁵⁰⁷ Hans Mommsen, "The Reaction of the German Population to the Anti-Jewish Persecution of the Holocaust," in *Lessons and Legacies: The Meaning of the Holocaust in a Changing World*, ed. Peter Hayes (Evanston, Illinois: Northwestern University Press, 1991).

spoils of occupied Europe.”⁵⁰⁸ An individual bureaucrat or German citizen might not have known the ultimate goal of the genocide was to destroy an entire nation of people, but they willingly facilitated the genocide nevertheless. For some, antisemitism and ideology surely played a role, as they interpreted and acted upon Nazi directives with enthusiasm. For others, it was a matter of following orders. And yet, for others still, it was not about antisemitism or following orders at all.

So, who was guilty of genocide? “Facit cui prodest,” Lemkin wrote: he who benefited did it. “The German techniques of exploitations of the subjugated nations are so numerous, so thoughtful, and elaborate, and are so greatly dependent upon personal skill and responsibility, that this complex machinery could not have been successful without devotion to the cause of the persons in control,” Lemkin wrote. But he also argued that the genocidal program constructed a whole array of incentives, which brought people across society into the genocidal process. As the Axis occupation extended throughout Europe, Lemkin wrote, Polish geese, Yugoslav pigs, French wine, Danish butter, Greek olives, and Norwegian fish were suddenly newly affordable luxuries to average Germans. Industrialists found new opportunities to invest in French and Polish coal and Russian lumber. German factories and agriculture profited from forced labor, businessmen exploited the debased economies and bought up foreign interests, and merchants benefitted from the clearing system.⁵⁰⁹

What is more, Lemkin argued, the actions of the private citizens, undertaken in their own narrow self-interest, were sanctioned by a regime that established these

⁵⁰⁸ Lemkin, *Axis Rule*, xiv.

⁵⁰⁹ Lemkin, *Axis Rule*, xiv.

incentives through policy directives and the fiat of law. These individuals would not have considered themselves to be participating in the destruction of entire nations, yet their actions taken together gave legitimacy and form to the genocide. What Lemkin was trying to show in *Axis Rule* was that within a few short years, non-violent Axis policies of genocide—such as banning interracial marriages, outlawing wedding ceremonies that were from non-German traditions, or manipulating finance law—gave way to rational policies of forced starvation and mass murder that carried the support of millions of people.⁵¹⁰ The argument might read like a prosecutor's brief, but *Axis Rule* managed to trace Axis policies to their antisemitic, xenophobic, and totalitarian core without reducing the genocide to antisemitism, xenophobia, or totalitarianism.

By documenting the Axis laws and decrees, Lemkin was able to show something that his contemporaries such as Fraenkel and Neumann had trouble showing in their studies of National Socialism: the purpose of the war was to destroy national cultural diversity within Europe by eliminating those nations deemed inferior, such as the Jews, in order to protect and promote the German nation. Taken together, Lemkin believed the laws of occupation and legal decrees revealed that the political elites of the totalitarian Nazi regime had chosen to colonize Europe, transforming the conquered territory for the German nation. Even the clearing and exchange laws were designed to destroy the vitality of enemy nations so that these nations could be replaced by the German nation, in terms of national consciousness, social and economic patterns, and biology.

Genocide was colonial crime, Lemkin wrote in *Axis Rule*. While Mark Mazower has used Lemkin's work to call for studying the Holocaust in the context of European

⁵¹⁰ Lemkin, *Axis Rule*, xiv-wv.

colonialism, the perspective has been largely avoided until recently.⁵¹¹ Scholars have begun to argue that colonial thinking shaped Nazi concepts of exterminating “indigenous Poles and Ukrainians” and “native Jews,” who were presented as impediments to economic stabilization and the public health of German settlers.⁵¹² Some have also argued that colonial powers such as Great Britain presented a model to German imperialists in the late nineteenth and early twentieth centuries, while the German experience of colonialism proved to be an incubator for the race theories, legal categories, and techniques of mass extermination that were put to use in by the Nazis.⁵¹³

Lemkin’s writing can contribute to these debates. “In line with this policy of imposing the German national pattern, particularly in the incorporated territories, the occupant has organized a system of colonization of these areas,” Lemkin wrote.⁵¹⁴ As a consequence of this colonization, Lemkin concluded: “participation in economic life is thus dependent upon one’s being German or being devoted to the cause of Germanism. Consequently, promoting a national ideology other than German is made difficult and

⁵¹¹ Mark Mazower, “After Lemkin: Genocide, the Holocaust and History,” *The Jewish Quarterly* 41 (1994). On the genocide and settler colonialism, see A. Dirk Moses, ed., *Genocide and Settler Society: Frontier Violence and Stolen Indigenous Children and Australian History* (London: Berghahn Books, 2004); and A. Dirk Moses and Dan Stone, eds., *Colonialism and Genocide* (London: Routledge, 2007).

⁵¹² David Furber and Wendy Lower, “Colonialism and Genocide in Nazi-occupied Poland and Ukraine,” in ed. A. Dirk Moses, *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, pp. 372-400 (London: Berghahn Books, 2008)

⁵¹³ Jürgen Zimmerer, “The Birth of the Ostland Out of the Sprit of Colonialism: A Postcolonial Perspective on the Nazi Policy of Conquest and Extermination,” *Patterns of Prejudice* 39 (2005); Benjamin Madley, “From Africa to Auschwitz: How German Southwest Africa Incubated Ideas and Methods Adopted and Developed by the Nazis in Eastern Europe,” *European History Quarterly* 35 (2005); and Elisa von Joeden-Forgy, “Hidden in Plain Sight: Atrocity Concealment in German Political Culture Before the First World War,” in eds. Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson, *Hidden Genocides: Power, Knowledge, Memory* (New Brunswick: Rutgers University Press, 2013).

⁵¹⁴ Lemkin, *Axis Rule*, 83.

dangerous.”⁵¹⁵ By citing the Axis decrees that explicitly referred to the occupation as the colonization of Europe, Lemkin asserted that committing genocide to make room for German blood was a choice made by the elites who formulated the policies in line with a particular vision of the good. Territorial aggrandizement and power were incentives, too. On a smaller scale, the functionaries who carried out the genocide, and the ordinary people in whose name the genocide was being committed, also chose, for a wide variety of reasons, to grant the genocide their tacit approval.⁵¹⁶

⁵¹⁵ Lemkin, *Axis Rule*, 86.

⁵¹⁶ See Lemkin, *Axis Rule*, p. 21, 38, 45, 63, 64, 79, 83, 187-189, 222, 224-225, 238, 244, 416-417, 417-418, and 565.

CHAPTER 4: *AXIS RULE IN OCCUPIED EUROPE* IN HOLOCAUST AND GENOCIDE STUDIES

*Make the male lines like trees that have had their roots cut;
Make the female lines like brooks that have dried up in winter;
Make the children and grandchildren like eggs smashed against rocks;
Make the servants and followers like heaps of grass consumed by fire; ...
In short, annihilate any traces of them, even their name.*

—Fifth Dali Lama ordering the repression on Tibetan rebels, 1660⁵¹⁷

4.1 THE DESTRUCTION OF THE JEWS

During the war years and immediately after, there was an abundance scholarship on the Nazi attempt to destroy the Jews of Europe. The Polish historian Philip Friedman wrote *This was Oświęcim* in 1945, as well as accounts of the destruction of the Jews of Bialystok and Chelmno.⁵¹⁸ In the 1950s, Gerald Reitlinger published some of the first attempts to document the extermination of the Jews in Europe, and Léon Poliakov offered what was perhaps the first full study to chart Nazi antisemitism through Nazi propaganda and personal accounts.⁵¹⁹ But Lemkin's study remained unique because he interpreted the mass killing of Jews as only one part of a wider Nazi attempt to reshape the fabric of European society.⁵²⁰ "Where Lemkin challenges contemporary orthodoxy is in his implication that the notion of a 'Holocaust' as a specifically Jewish tragedy makes no

⁵¹⁷ Quoted in Ben Kiernan, *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur* (New Haven: Yale University Press, 2007), 6.

⁵¹⁸ Philip Friedman, *This was Oswiecim: The Story of a Murder Camp* (London: United Jewish Relief Appeal, 1946).

⁵¹⁹ Gerald Reitlinger, *The Final Solution: The Attempt to Exterminate the Jews of Europe, 1939-1945* (New York: Beechurst Press, 1953); and Léon Poliakov, *Harvest of Hate: The Nazi Program of the Destruction of Jews in Europe* (London: Elek Books, 1956). Also see Philip Friedman, "Review of *The Final Solution: The Attempt to Exterminate the Jews of Europe, 1939-1945* by Gerald Reitlinger," *Jewish Social Studies* 16 (1954), 186-189. And see David Luck, "Use and Abuse of Holocaust Documents: Reitlinger and 'How Many?'," *Jewish Social Studies* 41 (1979), 95-122.

⁵²⁰ Feierstein, *El Genocidio Como Práctica Social*.

sense,” Dan Stone has written: “the genocide of the Jews was just one aspect of a broad Nazi demographic plan based on extreme racial fantasies.”⁵²¹

Historians and genocide scholars, according to Stone, have yet to address Lemkin’s challenge “to view the genocide of the Jews not as *sui generis* but as one, if unusually significant, part of Nazi genocide, and as one albeit extreme variant of genocide.”⁵²² On the whole, Lemkin “understood what we know of the Holocaust only in the broader context of Nazi demographic plans.”⁵²³ For Lemkin, the Nazis sought to eliminate not only the Jews, but all groups of non-German peoples, along with their cultural manifestations, in order to create living space for their own nationals. Nevertheless, Lemkin is unequivocal about the fact that the Jews, as a group, occupied a unique position under Nazi law, which gave shape to distinct policies and actions taken against the Jews across Axis occupied Europe.

Hilberg’s *The Destruction of the European Jews* is widely recognized as the seminal historical study advancing the thesis that the destruction of European Jews developed in stages, growing more extreme and more dehumanizing until the final solution to physically destroy the Jews.⁵²⁴ Hilberg’s study affirms one of Lemkin’s central theses in *Axis Rule*—that the genocide began before the outbreak of violence and war. While this historical interpretation is now commonly held, for decades most scholars

⁵²¹ Stone, “Raphael Lemkin on the Holocaust,” 548.

⁵²² Stone, “Raphael Lemkin on the Holocaust,” 548.

⁵²³ Stone, “Raphael Lemkin on the Holocaust,” 544

⁵²⁴ Raul Hilberg, *The Destruction of European Jews* 3rd edition (New Haven: Yale University Press, 2003), 49.

assumed the Holocaust was an indivisible event that defied historical interpretation.⁵²⁵

Against this view, Hilberg argued that the destruction of the Jews was a “destruction process” that began with defining the Jews as victims, which then led to the expropriation of Jewish positions of administrative authority, employment, property, wealth, and eventually even food. The expropriation operations in turn gave way to the concentration of Jews in ghettos and forced labor camps and, finally, to physical annihilation. What distinguished this destruction process from antisemitic pogroms and bloody massacres, Hilberg wrote, was that the pogroms and massacres did not achieve an administrative goal. A pogrom results in the destruction of life and property, but it does not call for further actions, Hilberg argued. A step in the destruction process, however, even one as seemingly benign as legally defining a Jew, carries consequences and can be considered the “seed of the next steps.”⁵²⁶

If there was a revelation in Lemkin’s thought between the 1930s and 1940s, it was along these axioms. Lemkin’s conception of barbarism and vandalism did not present the destruction of nations as a social, political, and historical process. These earlier crimes Lemkin proposed were orientated towards outlawing a singular act, not the dynamic act of a genocidal processes. Lemkin’s work on the Axis genocide acknowledged that the genocide was rooted in a wide range of social and political practices and employed a diverse set of instruments. Genocide was not the attempt to destroy a nation, where attempt is defined as a singular intentional act that either succeeds or fails. Genocide was

⁵²⁵ Yehuda Bauer, “The Significance of the Final Solution,” in *The Final Solution: Origins and Implementation*, edited by David Cesarani pp. 300-309 (London: Routledge, 1996), 309.

⁵²⁶ Hilberg, *The Destruction of European Jews* 3rd edition, 50.

the attempt to destroy a nation, where attempt is defined as an active social, political, or historical process set in motion intentionally.

Hilberg credited Lemkin's legal and intellectual achievement in demonstrating that the Nazi instruments of genocide manifest through the structure of Axis governments and the law, in both non-violent and violent forms, from the physical to the "spiritual."⁵²⁷ Where Lemkin's study focused on the various instruments through which the Axis genocide developed into a plot of mass death, Hilberg likewise saw the genocide as growing increasingly brutal, moving through the legal and institutional processes of the German regime. For both Hilberg and Lemkin, the legal definition of the Jews under the Nuremberg Laws did not predetermine the final solution, but proved to be the first step in a series of events that progressively led to the German policy of total biological annihilation.⁵²⁸ In his *Sources of Holocaust Research: An Analysis*, Hilberg lists Lemkin along with Ernest Frankel and Franz Neumann as establishing "the basis for later research" on the Holocaust that was written during the Holocaust. Specifically, Hilberg noted, Lemkin's contribution was that he saw that the Nazi genocide began in Germany through discriminatory non-violent public laws, and that he also discovered that the Nazi hegemony extended the genocidal program throughout the Axis allied countries by gradually bringing the legal codes of these countries into line with the discriminatory, genocidal laws of Germany.⁵²⁹

⁵²⁷ Jean-Louise Panné, "Raphael Lemkin and Raul Hilberg: About a Concept," in *Rafal Lemkin: A Hero of Humankind* edited by Agnieszka Bienczyk-Missala and Slawomir Debski, (Warsaw: The Polish Institute of International Affairs, 2010), 101-116.

⁵²⁸ Hilberg, *The Destruction of European Jews* 3rd ed., 51. For an analysis of the conceptual unity between Hilberg and Lemkin, see Panné, "Raphael Lemkin and Raul Hilberg: About a Concept."

⁵²⁹ Raul Hilberg, *Sources of Holocaust Research: An Analysis* (Chicago: Ivan R. Dee, 2001), 202.

Analyzing the regime through the lens of the law allowed Lemkin to understand that the laws against the Jews were not uniform across occupied territories, however. Therefore, the genocide could not be explained in terms of a blanket antisemitism. In general, Lemkin noted, the laws in the western territories of Denmark and France were not as severe as the laws in the east, an observation that has since been born out across the scholarship on the Holocaust. Part of the reason for this, Lemkin noted, was because “in Denmark the Danish authorities successfully resisted German demands as to the introduction of anti-Jewish legislation” until the Germans took over complete control of Denmark in August 1943 and sent the Jews into Poland.⁵³⁰ The Danish King Christian X had flaunted his refusal to adopt anti-Jewish laws, Lemkin wrote, explaining “to German officials that there was no Jewish question in Denmark because Danes ‘never had any minority feelings toward the Jews’.”⁵³¹

In 1941, a Swedish diplomat in Copenhagen reported that the Danish King rebuked Nazi laws against the Jews on the grounds that the Danes did not harbor anti-Jewish feelings.⁵³² Historians have since demonstrated that Danish leaders and a majority of Danish citizens resisted German anti-Jewish policies, as Lemkin suggested, and that the German authorities were convinced that attacks upon the country’s Jews would jeopardize Danish collaboration.⁵³³ Even after Germany took complete control over Denmark, popular resistance to the Nazi genocide against Jews continued, Lemkin wrote.

⁵³⁰ Lemkin, *Axis Rule*, 75, n. 3.

⁵³¹ Lemkin, *Axis Rule*, 160, n. 12.

⁵³² Paul Levine, “Sweden’s Complicated Neutrality and the Rescue of the Danish Jews,” *The Routledge History of the Holocaust*, ed. Jonathan C. Friedman (London: Routledge, 2011), 308.

⁵³³ Paul Levine, 308

Solidarity with the Jews peaked with a country-wide movement to help nearly a thousand people escape to Sweden.⁵³⁴ The event Lemkin referred to is a now held up as an iconic example of how civil resistance sometimes succeeded in thwarting Nazi policies, with some historians crediting Danish fishermen with ferrying nearly eight thousand people into neutral Sweden at great personal risk.⁵³⁵

The first historical account of the escape, published by Leni Yahil in 1969, proposed that the national characteristic and moral standards of the Danes predisposed them to love democracy and freedom. While the thesis on the Danish national spirit is clearly suspect, Yahil cites *Axis Rule* to define the legal relationship between Germany and Denmark and explain the lack of anti-Jewish laws in Denmark until 1943.⁵³⁶ Lemkin, however, did not paint Denmark in such hopeful colors. Interpreting the Axis genocide more broadly than only the destruction of European Jewry, Lemkin documented the active cooperation between Germany and the Danish military and financial sectors. While they may have resisted the German demands to destroy the Jews, the Danish government and society accepted the Nazi-imposed financial, legal, and institutional policies of genocide.⁵³⁷ Lemkin even included two 1941 laws proving Danish participation in the

⁵³⁴ Lemkin, *Axis Rule*, 75, n. 3. Lemkin cites an account published in *Foreign Affairs*.

⁵³⁵ See Leo Goldberger, ed., *The Rescue of the Danish Jews: Moral Courage Under Stress* (New York: New York University Press, 1987).

⁵³⁶ Leni Yahil, *The Rescue of Danish Jewry: Test of Democracy* (Newish Publication Society of America, 1969), 436, n. 3.

⁵³⁷ Lemkin, *Axis Rule*, 377-383

genocide, one outlawing subversive “demonstrations, by word or act” and the other prohibiting all communistic activities.⁵³⁸

In understanding the development of the genocide, regional differences mattered, Lemkin observed. Jews were treated differently in the east and the west. But, the Jews who were deported into Poland from the western territories of France, Norway, Belgium, and the Netherlands were treated in law and in practice as Polish Jews, subjected to the same forced labor, malnourishment, and death. Time mattered, too. What few regions of occupied Europe managed to resist German anti-Jewish laws were slowly succumbing to the increasing Nazi pressure to remove the Jews and prepare the occupied territories to be incorporated into the new European order. By 1939, the condition of Jews in most Axis occupied Europe had already grown precarious, Lemkin wrote.

The first regulations against Jews issued across Europe were restrictions to their freedom of movement, their property, and their employment while imposing rationing based on racial criteria, Lemkin wrote. In Poland, Jews over the age of ten were required to wear a yellow Star of David on an armband, and laws were passed requiring all Jewish enterprises and stores to have special signs visible to the public. Lemkin cited decrees such as a statewide ban on Jews using the Polish railroad, which accompanied new laws in Poland that physically removed Jews from public life and moved them into ghettos.⁵³⁹ In May 1941, a decree of the Führer implementing the 1935 Reich Nationality Code and the 1935 Act for the Protection of German Blood and German Honor in Poland

⁵³⁸ Lemkin, *Axis Rule*, “Law No. 254 concerning the Prohibition of Certain Demonstrations, June 9, 1941,” 381. And, “Law No. 349 concerning the Prohibition of Communistic Associations and Communistic Activities, August 22, 1941,” 381-382.

⁵³⁹ Lemkin, *Axis Rule*, 75.

concretized who would live and who would be left to die.⁵⁴⁰ These laws structured a set of interrelated developments, which included racially motivated preferences in distributing food, the establishment of Jewish ghettos, the implementation of forced labor, and the development of concentration camps and extermination camps.

Lemkin argued in *Axis Rule* that Hitler and the Nazi party had set out to commit genocide beginning in the 1930s, but the decision to kill *en mass* developed contingently as successive layers of laws and decrees and overlapping administrative structures shaped the political and social development of the genocide. He cited, for instance, Hermann Göring's order that people of German blood be given preference in feeding.⁵⁴¹ Yet, the decree did not instruct the authorities on how to ration the food, besides privileging Germans. Instead, food resources corresponded to preexisting administrative regulations that created legal and social stratification. The dynamic consequence was that German nationals had retained one hundred percent of their dietary requirement of carbohydrates, and ninety-seven of their protein needs, across the occupied territories Lemkin wrote. Ethnic Czechs were fed with ninety percent of their nutrition needs, followed in diminishing order by Dutch, Belgians, Poles in the incorporated territory, and then Poles in the non-incorporated territories, who all were receiving around seventy percent of their nutrition needs. At the bottom of the list were ethnic Greeks with thirty percent of their daily nutrition needs and Jews who were subsisting on only twenty percent of their daily food requirements.⁵⁴²

⁵⁴⁰ Lemkin, *Axis Rule*, "Order concerning the Organization and Administration of the Eastern Territories, May 31, 1941," 509.

⁵⁴¹ Lemkin, *Axis Rule*, 87.

⁵⁴² Lemkin, *Axis Rule*, 88.

The laws Lemkin produces and the analysis he draws make it clear that the Jews received the least food not because of the initial law mandating discrimination in allocating food, but because of the institutional conditions perpetrated by the special legal status of Jews and the development of Jewish ghettos. In Warsaw—where the Nazis enforced strict control on the distribution of food and artificially inflated the price of grains—German nationals remained well fed but anemia rose one hundred and thirteen percent amongst ethnic Poles, and four hundred and thirty-five percent among Jews, Lemkin noted in *Axis Rule*.

Lemkin saw the discrimination in feeding as corresponding to a larger pattern of endangering the health of “undesired national groups.” The occupying administrations throughout Europe withheld firewood and medicine from non-Germans in winter. In Poland during the fall of 1940, Göring decreed that all citizens of the former Polish state who did not have German blood had to turn over their property to the German occupying authorities.⁵⁴³ During the winter of 1940-1941, low-level officials requisitioned warm clothing, blankets and heating fuel from Jews.⁵⁴⁴ The attempt to physically endanger the health of the Jews was aided by the conditions in the ghettos where they had been forced to live, crowded together in inadequate housing. There were laws mandating that Jews who left the ghetto looking for food or shelter could be executed.⁵⁴⁵ Prohibited from leaving the ghetto, Jews were thereby “denied the use of public parks” and, thereby,

⁵⁴³ Lemkin, *Axis Rule*, “Decree concerning the Treatment of the Property of Citizens of the Former Polish State, September 17, 1940,” 511-516.

⁵⁴⁴ Lemkin, *Axis Rule*, 88.

⁵⁴⁵ Lemkin, *Axis Rule*, 75.

“denied the right of fresh air,” which was “especially pernicious to the health of children,” Lemkin wrote.⁵⁴⁶

In Lemkin’s analysis, the various techniques of genocide were always intertwined. But he was not alone in believing that ghettos were a physical, social, cultural and economic attack upon the Jewish nation. Samuel Gringauz, for instance, argued in 1949 that ghetto life should be seen as an experiment of Jewish community making under abnormal living conditions, as new social institutions emerged in ghettos to meet the new conditions of life.⁵⁴⁷ And the observations of the diarist Yosef Zelkowicz, who was murdered in the Lodz ghetto, closely resemble Lemkin’s own analysis. As Zelkowicz observed, “it is not only the external form of life that has changed in the ghetto” but “the entire Jewish trend of thought has been totally transformed under the pressure of the ghetto” which “has swiftly obliterated the boundaries between sanctity and indignity, just as it obliterated the boundaries between mind and yours, permitted and forbidden, fair and unfair.”⁵⁴⁸ Lemkin differed from his contemporaries, however, in that he was concerned with the destruction of Jewish social institutions and the effect of this destruction on social cohesion and physical well-being.

4.2 THE GHETTO, FORCED LABOR, AND THE CAMPS

⁵⁴⁶ Lemkin, *Axis Rule*, 88.

⁵⁴⁷ Samuel Gringauz, “The Ghetto as an Experiment of Jewish Social Organization,” *Jewish Social Studies* 11 (1949), 9-20.

⁵⁴⁸ Yosef Zelkowicz, *In Those Terrible Days: Notes from the Lodz Ghetto*, ed. Michal Unger (Jerusalem, 2002), 139-141. Quoted in Amos Goldberg, “The History of Jews in the Ghettos: A Cultural Perspective,” in *The Holocaust and Historical Methodology*, ed. Dan Stone (London: Berghahn Books, 2012), 91.

Lemkin's knowledge of the Jewish ghettos was based two primary sources. The first source was rumors passed through Jewish networks. The second was official Nazi decrees. The ghetto, in Lemkin's analysis, had brought about a total annihilation of Jewish social life. As evidence, he cited the waves of refugees from across Europe that poured into the Warsaw ghetto in the spring of 1941. Crowding, hunger, poor sanitation, and a violent typhus epidemic lead to a twenty percent death rate, the disintegration of social solidarity, and the end of customs, traditions, and rites. The Jewish Council, or Judenrat, he argued, played a crucial role in the Nazi effort to shatter the bonds of the Jewish nation, as council members carried out Nazi directives and were instructed to pick which neighbors were sent to death camps, lest they themselves be killed.

With the enrichment of Holocaust historiography, it is now clear that Jewish social life or culture did not disintegrate in the ghettos. Many council members willingly accompanied their family members to the death camps, chose suicide over collaboration, or sabotaged Nazi plans.⁵⁴⁹ Lemkin also did not know that underground support networks were set up to hide those most vulnerable to Nazi purges and to distributed contraband: food, fuel, and weapons.⁵⁵⁰ There were resistance movements and armed uprisings.⁵⁵¹ Indeed, it is simply not true that the Nazis succeeded in reducing the Jews in ghettos to social-less beings.⁵⁵² Nevertheless, many scholars have since substantiated what Lemkin

⁵⁴⁹ Isaiah Trunk, *Judenrat: The Jewish Councils in Eastern Europe under Nazi Occupation* (New York: Stein and Day, 1977).

⁵⁵⁰ Israel Gutman, *The Jews of Warsaw, 1939-1943: Ghetto, Underground, Revolt* (Bloomington: Indiana University Press, 1982).

⁵⁵¹ Norman Davies, *Rising '44: The Battle for Warsaw* (New York: Viking, 2004).

⁵⁵² Gustavo Corni, *Hitler's Ghettos: Voices from a Beleaguered Society 1939-1944* (London: Arnold, 2002).

gleaned from rumors and Nazi decrees, that waves of refugees, starvation, and disease did unravel social customs and cultural rituals, causing social cohesion and solidarity to break down in the Jewish ghettos across Europe.⁵⁵³

Ghetto life, for Lemkin, had proven the social, cultural, moral and, ultimately, the physical and biological techniques of genocide could be orchestrated through very simple political and economic levers. For this reason, Lemkin gave special attention to the laws governing economic life, for they demonstrated that the seemingly disparate laws and decrees of the Axis regime actually formed an overlapping network orientated towards the physical destruction of national diversity. In this sense, the social and political aspect of ghetto life was not unique to the ghetto, but a central facet of the genocide that permeated beyond the ghetto, throughout the Axis occupation. In the Netherlands, for instance, Jews were prohibited from opening bank accounts in order to exclude them from the economy and undermine their social basis.⁵⁵⁴ Across Europe, Lemkin demonstrated that Axis occupiers forbade Jews from being employed, prevented Jews from receiving state unemployment benefits, and made it illegal for Jews to receive money, food, and shelter from non-Jews. In the Russian occupied territories, taxes were put in place that essentially mandated that the salary paid to Jews would be entirely redirected to the state.⁵⁵⁵ Even through these examples did not involve physically putting people in actual ghettos, the genocidal principle was the same, according . Jews were materially marginalized while the bonds of social solidarity were strained, with the goal

⁵⁵³ Amos Goldberg, "The History of Jews in the Ghettos: A Cultural Perspective," in Dan Stone, ed., *The Holocaust and Historical Methodology* (London: Berghahn Books, 2012), 91-92.

⁵⁵⁴ Lemkin, *Axis Rule*, 76.

⁵⁵⁵ Lemkin, *Axis Rule*, 76; "Regulation concerning Remuneration to Jewish Labor in the General District of Latvia, March 19, 1942," 311.

of undermining the social basis of group life. The physical ghetto and economic “ghetto” in Lemkin’s analysis were both designed to advance the Nazi regime’s racial and demographic objectives.

What is more, Lemkin noticed that the physical ghettos were intended to reify the social belief that the Jewish family of mind had no place in the social fabric of Poland, Europe, and the world. Lemkin documented conscription decrees from the Warsaw ghetto explicitly prohibiting members of the Jewish council “to help a Jew to escape service,” or to buy or accept the property of the Jews who were sentenced to hard labor.⁵⁵⁶ In such conditions, nations as families of mind, could barely exist, he believed. But these decrees criminalizing solidarity amongst Jews were not limited to Poland, nor were they intended to only shatter Jewish solidarity. They were also intended to shatter any conscious sense of a mutually shared identity between Jews and non-Jews. To prove his point, Lemkin produced decrees from Serbia in December 1941 where the death penalty was instituted for anyone who sheltered, hid, or assisted Jews, or accepted their valuables, property, and wealth for safekeeping when they were sentenced to forced labor.⁵⁵⁷ The sequestered Jewish property was given or sold to non-Jewish citizens, who were thereby given a material incentive to support the genocide, all while knowing that showing solidarity and compassion towards Jews would bring about their own death.⁵⁵⁸ When one considered that these laws contained provisions that made compassion and

⁵⁵⁶ Lemkin, *Axis Rule*, “Second Order Implementing the Order of October 16, 1939: concerning the Introduction of Forced Labor for the Jewish Population of the Government General, December 12, 1939,” 544.

⁵⁵⁷ Lemkin, *Axis Rule*, “Order concerning the Sheltering of Jews, December 22, 1941,” 601.

⁵⁵⁸ Lemkin, *Axis Rule*, 76.

solidarity illegal, Lemkin believed, the moral techniques of genocide intersected with the social, physical and economic.⁵⁵⁹

A number of scholars have pointed out that Nazi Germany's racial objectives were an irrational waste of resources that actually conflicted with their economic projects and the economic realities of the occupied territories.⁵⁶⁰ Lemkin, in contrast, believed that the Nazi party had brought its economic plan into line with its plan to destroy the national-patterns of the occupied territories, which included removing the indigenous economic patterns as well as the actual people who lived there. The work of other scholars lends credibility to other aspects of Lemkin's position. It is now clear that conscripted laborers from Eastern Europe were used to maintain the wartime economy, but the individuals who were conscripted were usually selected according to racial criteria in order to remove them from the occupied territories.⁵⁶¹ What is more, it is now standard knowledge that the Jewish forced labor in Poland was an explicit facet of the Nazi plan to physically exterminate Jews.⁵⁶²

Lemkin felt that labor camps and death camps were the most devastating technique of the Axis genocide because they brought together the social, cultural, economic, and physical techniques of genocide. The labor camps established in the 1930s, such as Sachsenhausen, Mauthausen, and Gross-Rosen, were located next to

⁵⁵⁹ Lemkin, *Axis Rule*, 77, 90.

⁵⁶⁰ Donald Bloxham, "Jewish Slave Labour and its Relationship to the 'Final Solution'," in *Remembering for the Future: The Holocaust in an Age of Genocide*, eds. John K. Roth and Elisabeth Maxwell (New York: Palgrave, 2001).

⁵⁶¹ Czeslaw Luczak and Zbigniew Landau, "Forced Labor," in *Encyclopedia of the Holocaust*, ed. Israel Gutman (New York: Macmillan, 1990).

⁵⁶² Wolf Gruner, *Jewish Forced Labor Under the Nazis: Economic Needs and Racial Aims, 1938-1944* (New York: Cambridge University Press, 2006).

factories and quarries, and were filled mainly with accused criminals of the nation, a-socials, homosexuals, and communists. By the end of 1938, German and Austrian Jews, deprived of their right to work for wages, were forced into labor on state infrastructure projects. When Germany conquered Poland in 1939, millions of Polish men and women were conscripted for labor, as were all Jewish males.

In his later works, Lemkin thought of the Nazi labor laws as a type of slavery. He conceptualized slavery in its various forms—from the labor camps of the Axis genocide to the North Atlantic slave trade—as “effective techniques of genocide because they attacked multiple aspects of life simultaneously.”⁵⁶³ In the context of the English and French genocides against Native Americans, for example, Lemkin described slavery as a form of both physical and cultural genocide. It was physical genocide because:

The slave is often separated from his family and unable to perpetuate his group (his offspring is the property of his master, and not rarely fathered by him). The slave is physically so abused as to render him at best a poor parent (Indian mothers could not nurse their babies, etc.) and at worst a victim of physical genocide by death.

Culturally, “the frequent separation of families in slavery means the break-up of a culture,” Lemkin continued: “The slave is not only the physical property of his master but his spiritual property also.”⁵⁶⁴

In *Axis Rule*, Lemkin does not write that the concentration camps were a type of slavery, but he nevertheless focuses on the way in which labor laws and forced labor were the formed the beginning of the camp system. In fact, Lemkin considered forced labor to be the most devastating of the Axis techniques of genocide—both as a part of the

⁵⁶³ Butcher, “A ‘synchronized attack’: On Raphael Lemkin’s Holistic Conception of Genocide,” 263.

⁵⁶⁴ Lemkin, “Slavery as Cult. and Phys. Genocide,” AJHS, Box 9, Folder 11.

concentration camp system and as a larger part of the Nazi attempt to destroy nations. One of the first steps taken by the German occupation, he wrote, was to abolish “institutions of progressive social legislation” and “progressive labor legislation” and impose a labor system that replaced legal rights with “the grace of the occupant.”⁵⁶⁵ Pay across Eastern Europe were set by fiat to “starvation wages” for all non-Germans, with a special Eastern Worker’s Tax levied against laborers from the Ukraine and the Baltic States that amounted to almost half of their wages, which were already too low to afford basic nutrition.⁵⁶⁶ The goal of the labor legislation, he noted, was to drive non-Germans towards starvation, hunger, and social collapse.

Lemkin was clear that there was a stark difference between the labor laws for Jews and the labor laws for other non-Germans. This difference originated not in anti-Jewish ideology, but from the legal institutions already in place that dictated how each group was defined and how they should be treated. For non-Germans who were not Jewish, forced labor meant being shipped to Germany to replace German laborers sent to the front. This often meant death—sometimes death in a concentration camp. But, Lemkin believed, the German state was not looking at forced labor from the perspective of economic exploitation—that was only a tangential benefit. “A policy of depopulation is being pursued,” Lemkin wrote, by sending two million men and women to German factories and farms from the occupied territories by 1941, “separating families and

⁵⁶⁵ Lemkin, *Axis Rule*, 71.

⁵⁶⁶ Lemkin, *Axis Rule*, 71.

keeping the men far away from their homes,” in order to “disrupt centers of political resistance.”⁵⁶⁷

For the Jewish population, forced labor meant certain death, Lemkin wrote, usually in a concentration camp. Initially, since Jews had already been segregated into ghettos and prohibited from working, factories were established in some of the ghettos. The ghetto at Lodz alone had nearly one hundred such factories supporting the German war effort, where the system of forced labor developed incrementally with the aim of exploiting Jewish labor without ever losing sight of the ideological goal of destroying the Jews.⁵⁶⁸ The deplorable conditions led to higher death rates. But the wording of the actual laws, Lemkin observed, also contributed to the production of death. The laws in Poland that applied to the recruitment of Jews in ghettos stated that the labor was for the purpose of “education.” However, just how one was to be “educated” through forced labor was left to the arbitrary discretion of local officials, meaning that the term of service would necessarily be indefinite, guaranteeing death since Jewishness was not something that could be educated away.⁵⁶⁹ These labor laws laid the groundwork necessary for decrees in 1939 that began to define the reasons for confinement more broadly, ordering the deportations for the purpose of filling the camps, Lemkin observed. In Slovakia, for example, Lemkin showed that the local authorities had the freedom to use the camps not

⁵⁶⁷ Lemkin, *Axis Rule*, 67.

⁵⁶⁸ Christopher R. Browning, *Nazi Policy, Jewish Workers, German Killers* (New York: Cambridge University Press, 2000).

⁵⁶⁹ Lemkin, *Axis Rule*, “Second Order Implementing the Order of October 16, 1939: concerning the Introduction of Forced Labor for the Jewish Population of the Government General, December 12, 1939,” 544.

only for deporting Jews, but for anyone who warranted “reasonable fear that they will be an obstacle to the upbuilding of the State of Slovakia.”⁵⁷⁰

These regulations covering forced labor grew more and more specific in regard to the treatment of enemy races and nations, but less and less specific in defining what constituted an enemy, Lemkin wrote. When these laws overlapped with the functions of the S.S., which was already freed from formal judicial restraint, the S.S. became invested with the full authority “to liquidate politically undesirable persons and the Jews” under its own discretion so long as the program fit into the implicit ideological boundaries of the Nazi regime. Thus the Chief of the Gestapo in Poland Wilhelm Krüger “built up the technical apparatus of mass-murder on three main lines: death by gas in special chambers, electrocution, and death in the so-called death trains by the action of quicklime” and killed “half a million inhabitants of the Warsaw ghetto” until he was finally assassinated “by Polish patriots.”⁵⁷¹ By 1943, Lemkin estimated, 1,702,500 Jews had been “liquidated within the ghettos” by “debilitation and starvation,” “by massacres,” “or in special trains in which they are transported to a so-called ‘unknown’ destination.”⁵⁷²

Despite his emphasis on documenting the physical destruction of the Jews, Lemkin considered the Jews to be one of many victims of genocide. The perspective stands in sharp contrast to the positions of leading scholars in later years who have rejected the thesis that other groups could be considered victims of genocide along with

⁵⁷⁰ Lemkin, *Axis Rule*, 143.

⁵⁷¹ Lemkin, *Axis Rule*, 22.

⁵⁷² Lemkin, *Axis Rule*, 77, 89.

Jews.⁵⁷³ Yehuda Bauer, for instance, did not dispel Lemkin, but he nevertheless drew a distinction between genocide as a form of murderous denationalization and the uniqueness of the Jewish Holocaust. The term genocide, Bauer suggested, should be saved for describing “the intent to destroy a group through selective mass murder” while the term holocaust should be used to describe a “radicalization of genocide: a planned attempt to physically annihilate every single member of a targeted ethnic, national, or racial group.”⁵⁷⁴ Like Bauer, Steven Katz insisted that the “final solution” was a unique response to the Jews that could not be reduced to historical, social, and political contexts.⁵⁷⁵ Katz argued that the Holocaust was the only true genocide in history, with its uniqueness generating its own phenomenological category of genocide.⁵⁷⁶

Lemkin, in contrast to these later scholars, believed that across Europe “the technique of mass killing” was directed towards the people whom Nazi ideology and laws defined as the least likely to be Germanized. The Jews were one of many such groups. In Poland, Bohemia-Moravia, and Slovenia, “the intellectuals are being ‘liquidated’ because they have always been considered as the main bearers of national ideals,” Lemkin wrote.⁵⁷⁷ In the case of the Poles, Russians, and Jews, the German occupation came to see mass killing as the easiest way of removing their national patterns

⁵⁷³ This debate has been covered by Helen Fein, “Definition and Discontent: Labeling, Detection, and Explaining Genocide in the Twentieth Century,” in *Genozid in der Modernen Geschichte*, ed. Stig Förster and Gerhard Hirschfeld (Münster: Lit, 1999). Also see Mazower, “After Lemkin: Genocide, the Holocaust and History.”

⁵⁷⁴ Yehuda Bauer, *Rethinking the Holocaust* (New Haven: Yale University Press, 2001), 10-12.

⁵⁷⁵ Mazower, “After Lemkin: Genocide, the Holocaust and History,” 5-8.

⁵⁷⁶ Steven T. Katz, *The Holocaust in Historical Context, Vol. 1* (Oxford: Oxford University Press, 1994). On Katz’s phenomenological approach, see Yehuda Bauer’s review essay, “Review of The Holocaust in Historical Context, Vol.1,” *Journal of the American Academy of Religion* 65 (1997), 678-681.

⁵⁷⁷ Lemkin, *Axis Rule*, 88.

of the territory so that German cultural, economic, and administrative national patterns could be put into place and the regions incorporated socially and politically into the Reich and the German nation.⁵⁷⁸ Nevertheless, he acknowledged that the mass-killing of the Jews was different because the Jewish national and racial group had been defined by the Nuremberg Laws as any person who had more than two grandparents belonging to the Jewish faith.⁵⁷⁹ This made it easy to identify, arbitrarily, who was Jewish and who was not across the entire territory of occupied Europe, while German citizenship laws stripped Jews of citizenship rights.⁵⁸⁰ The laws had simultaneously compelled the social isolation of Jews while creating the conditions necessary for their social isolation. Thus the physical techniques of genocide were bound up within the non-physical techniques of genocide, as part of one holistic system.⁵⁸¹

4.3 THE INTENT TO COMMIT GENOCIDE: LEMKIN IN HISTORICAL DEBATES

For Katz, genocide as a philosophical concept, could only be applied when the perpetrators acted with the prior intention to destroy the victim group in its entirety.⁵⁸² In *Axis Rule*, Lemkin placed very little emphasis on intent. What mattered was that groups

⁵⁷⁸ Lemkin, *Axis Rule*, 88.

⁵⁷⁹ Lemkin, *Axis Rule*, 75.

⁵⁸⁰ Lemkin, *Axis Rule*, 75-77.

⁵⁸¹ Also see Butcher, "A 'synchronized attack': On Raphael Lemkin's Holistic Conception of Genocide."

⁵⁸² Steven T. Katz, *The Holocaust in Historical Context, Vol. 1*, 131.

were being destroyed, not the level of intention behind the act.⁵⁸³ Yet, for Katz it was intent that distinguished genocide phenomenologically from other mass killings of entire groups. Genocide was genocide, not mass slaughter, because the perpetrators carried in their minds the idea of destroying the group as a group, then acted according to the structures of their consciousness.

Whether Lemkin meant intent as *dolus specialis* (or, special intent, where intent is constituted legally by showing prior intent in the psychological state of the perpetrator) or *dolus eventualis* (where intent is constituted by the act) has been a matter of contentious legal debate.⁵⁸⁴ The most persuasive arguments show that Lemkin implied the latter, *dolus eventualis*.⁵⁸⁵ In any case, intent for Lemkin was not philosophical, but juridical.

Reading Lemkin demands that the fate of the Jews be considered within the larger context of the Nazi genocide. Reading Lemkin also demands that the Nazi genocide be considered as one of many cases of genocide in history that, in the modern state, became intertwined with European colonialism and the question of how the nation-state handled minority nations.⁵⁸⁶ Scholars such as Katz see Lemkin as being correct to derive the

⁵⁸³ Katherine Goldsmith, "The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach," *Genocide Studies and Prevention*, 5 (2010), 247.

⁵⁸⁴ See Goldsmith, "The Issue of Intent in the Genocide." On the debate over the interpretation of intent to commit genocide in international law, see William A. Schabas, *Introduction to the International Criminal Court*, 2nd ed. (New York: Cambridge University Press, 2004), 38. And see Lawrence. J. LeBlanc, *The United States and the Genocide Convention* (Durham, NC: Duke University Press, 1991), 51.

⁵⁸⁵ Goldsmith, "The Issue of Intent in the Genocide." By analogy, think of a homicide case where a perpetrator points a loaded gun at a victim and pulls the trigger. To show special intent, *dolus specialis*, requires that the prosecution demonstrate what the perpetrator was thinking that led him or her to pull the trigger. To show *dolus eventualis*, the intent to commit murder is demonstrated by the fact that the perpetrator knew what would happen when he or she pulled the trigger on a loaded gun, and then pulled the trigger. That the perpetrator had in his or her mind the intention to murder matters not. Intent is constituted by the act.

⁵⁸⁶ Mazower, "After Lemkin: Genocide, the Holocaust and History," 5.

concept of genocide from the experience of the Jewish Holocaust, but erring in applying the concept to the experience of other victims of Nazi violence.⁵⁸⁷ For Katz, the Sinti and Roma cannot be considered victims of the Nazi genocide, even though they too were sent to death camps, because the perpetrators had not destroyed them as a group while acting upon the prior idea that they should be destroyed as a group. For Lemkin, these groups were intended to be victims of genocide because they suffered genocide: intent was constituted by the act. Thus Lemkin proceeds to detail the special legal status of the Jews in chapter eight, only to draw no distinction between the experience of the Jews and other minority groups targeted for destruction in the ninth chapter, titled “Genocide.”

The question of intent raises the question of the role of ideology in structuring intent, and facilitating genocide. Since Lemkin saw intent as constituted by the act, it follows that he would diminish the causal role of ideology. He believed the political regimes led by Hitler and Stalin both committed genocide, but he never indicated that he believed these genocides resulted from their far right and far left ideologies. In fact, throughout all of his writings, Lemkin believed that genocide was not restricted to only some kinds of societies, cultures, or governments—a point illustrated by his intention to write a history book about genocides in antiquity through modern times that considered genocides committed by Rome, Egypt, the Vikings, Mongolia, Japan, Korea, Belgium, the US, and many others.⁵⁸⁸ Lemkin saw the Nazi genocide as unique because it was conducted largely through official policy directives mediated through the modern state, and because it presented the victim nations in biological terms. But genocide, as a social

⁵⁸⁷ Katz, *The Holocaust in Historical Context, Vol. 1*, 125-130.

⁵⁸⁸ Raphael Lemkin, “Description of the Project,” NYPL, Reel 3, Box 2, Folder 1. See sections titled “Part I Antiquity” through “Part III Modern Times.”

practice, transcended the ideologies that rise and fall through the scope history.

To further illustrate the point, Lemkin believed that Stalin's genocide was different in form and means than Hitler's genocide. However, these two regimes shared the defining characteristic of attempting to destroy the national patterns of the oppressed groups and replace them with a "Sovietness" or "Germanness." Lemkin argued that the Russian and Soviet attack on the Ukrainians, Poles, Hungarians, Romanians, Jews, the Crimean and Tatar Republics, the Baltic Nations of Lithuania, Estonia and Latvia, and the total annihilation of the Ingerian nation, were all genocides, before and during Stalin's reign. Each of these attacks aimed to erase cultural diversity within the Soviet empire. These genocides might not have been as rapid as the Nazi genocide within Axis occupied Europe, but the attempt to destroy cultural and national diversity was identical: "Hitler murdered millions of people outright," Lemkin wrote. But "Stalin is a great master of slow death procedures, in slave labor and concentration camps" and through policies aimed at the great destruction of the targeted nations through the destruction of intellectuals, clergy, and slow famines: "We call it genocide."⁵⁸⁹

It was not just ideology that Lemkin sought to bracket from his analysis of genocide. The breadth of political realities in which genocide occurs led Lemkin to argue "the motivations on the side of the offenders are of no importance. To destroy the [victim] groups for political, economic, or strategic reasons, is genocide." Throughout his archival writings, he signaled that "the intent to destroy the group is basic to the concept of genocide."⁵⁹⁰ When confronted with an array of possible motives for a genocide, he

⁵⁸⁹ Raphael Lemkin, "The Truth About The Genocide Convention," NYPL, Reel 4, Box 3, Folder 3-4, 4.

⁵⁹⁰ Lemkin, "The Truth About The Genocide Convention," 2.

tended to ignore the motives and focused his analysis back onto the perpetrators' intention to commit genocide. Ever the jurist, Lemkin's focus on intent rather than motives allowed genocide to fall under the purview of international law.⁵⁹¹ After all, the motives and ideologies behind genocide would be difficult to prove through history but one could easily demonstrate the interests in committing genocide and intent to commit genocide. There was also a conceptual advantage. By bracketing motivations and focusing on intent as constituted by the act, Lemkin strengthened his ability to isolate genocide as a social process, without sacrificing an ability to talk about the interests at stake in genocide. Later in life, he used this to claim that it was always possible to end genocide through political solutions negotiated around these interests.

4.4 LEGITIMACY, LAW, AND LEMKIN'S PROPOSALS FOR REDRESS

When Lemkin was writing *Axis Rule*, Japanese troops had not yet been halted on their way towards Australia, and Hitler's armies appeared to be making steady gains in the USSR. When the book was published, allied forces had not yet invaded occupied France, and German troops had recaptured Rome, freed Mussolini, and re-established a fascist regime. Yet Lemkin still believed that the genocide could be halted if only the other countries cared enough to do so. For almost two decades during the interwar years, he believed, the world had chosen to offer no legal or political responses to the rise of German and Japanese militarism. This refusal to check the military expansion of these states was met with a refusal to uphold the protection of minorities both in Europe and in

⁵⁹¹ Regarding intent, see Schabas, "The Law and Genocide," in *Oxford Handbook of Genocide Studies*, eds. Donald Bloxham and A. Dirk Moses (Oxford: Oxford University Press, 2010).

the colonies, all because of an international political system that privileged the interests of sovereign states over the maintenance of world peace and international liberal law.

Lemkin felt the “national and racial emotionalism” of the German regime, combined with its “efficient industrial output” and “modern technologies of destruction,” was making the previous world war seem “pedestrian.”⁵⁹² A significant part of the reason why the genocide was occurring was because the international humanitarian and legal machinery in place at the time was unable to compel states around the world towards intervening early in the genocide. International law, as it existed, Lemkin wrote, “offers no means of providing of the alleviation of the treatment of populations under occupation until the actual moment of liberation.”⁵⁹³ By then “it is too late for remedies” for the victims are offered reparations for damages while the “human lives, treasures of art, and historical archives” can never be restored.⁵⁹⁴

Lemkin hoped his book would spur world powers, mainly the US, towards two interrelated directions. Most immediately, “to destroy this amalgamation of master-race mythology and aggressive technology which makes of the German people a kind of technified myth that stupefies the world;” and secondly, towards establishing transnational institutions that would create the “political and spiritual conditions” necessary for forcing Germany “to replace their theory of master race by a theory of a master morality, international law, and true peace.”⁵⁹⁵ These two goals could be achieved if countries around the world outlawed the crime of genocide through special treaties,

⁵⁹² Lemkin, *Axis Rule*, xiv.

⁵⁹³ Lemkin, *Axis Rule*, 94.

⁵⁹⁴ Lemkin, *Axis Rule*, 95.

⁵⁹⁵ Lemkin, *Axis Rule*, xiv

which could help orientate the allied war effort and direct the local institutions and administrations in occupied territories towards preventing “the practice of extermination of nations and ethnic groups as carried out by the [German] invaders.”⁵⁹⁶

Legal redress of genocide could only begin by connecting the institutions of the law to the social conditions through which the genocide was being conducted, rationalized, and legitimized, Lemkin argued in *Axis Rule*. Ending the genocide therefore demanded an explanation of the genocide that accounted for the political, social, cultural, economic, religious, moral, physical, and biological aspects of the program. Lemkin announced the project in the subtitle of the book, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*.

The problem of redress, Lemkin believed, had to take into account the fact that the Nazi party did not rise to power through terror or an accident or fate. *Mein Kampf* “has essentially formulated the prolegomenon of destruction and subjugation of other nations,” Lemkin wrote. However, the “present destruction of Europe would not be as complete and thorough had the German people not accepted freely its plan, participated voluntarily in its execution, and up to this point profited greatly therefrom.”⁵⁹⁷

For Lemkin, the Axis genocide served the material and economic interests for the German elites who organized and executed the genocide. But what motivated the followers of the genocidal program was a combination of a “sacred purpose for the German people” as well as the small incentives used to entice people into supporting the

⁵⁹⁶ Lemkin, *Axis Rule*, xi

⁵⁹⁷ Lemkin, *Axis Rule*, xiii.

genocide.⁵⁹⁸ Yet Lemkin did not believe that the genocide was committed out of an ideologically driven fury. His principle of the usurpation of sovereignty, and the great detail he provided to demonstrate that the genocide generated its own support and popular consent, raised the specter that the German regime and the genocide were self-legitimizing. “All important classes and groups of the population have voluntarily assisted Hitler in the scheme of world domination,” Lemkin wrote, including the military, the intelligentsia, propagandists, and Germans abroad, as well as the scientists “by elaborating doctrines for German hegemony,” the educators “by arming spiritually the German youth,” and the business men “by penetrating and disrupting foreign economies through cartels, patent devices, and clearing agreements.”⁵⁹⁹ The genocide, Lemkin believed, generated its own rationale and was committed by men that “did not look like fiends” and “used the words ‘good’ and ‘bad’ as if they had the same meanings for them as for their listeners.”⁶⁰⁰

If the genocide manufactured its own consent, then it was a dynamic process that unfolded contingently. But it was also a process where people always had a choice to perpetuate the genocide. As a prosecutor, Lemkin was led to think in such terms because, legally, establishing legal guilt presupposes the guilty made a choice. In such a way, Stone writes, Lemkin falls into line with historians such as Raul Hilberg, Martin Broszat, and Christopher Browning, who all questioned the assumption that the Nazi genocide

⁵⁹⁸ Stone, “Raphael Lemkin on the Holocaust,” 542. Stone provides the quote, taken from Raphael Lemkin, *Thoughts on the Nazi Genocide*, ed. Steven L. Jacobs (Lewiston: Edwin Mellen Press, 1992), 189-190.

⁵⁹⁹ Lemkin, *Axis Rule*, xiii.

⁶⁰⁰ Raphael Lemkin, *Raphael Lemkin's Thoughts on the Nazi Genocide*, ed. Steven L. Jacobs (Lewiston: Edwin Mellen Press, 1992), 229. See Stone, “Raphael Lemkin on the Holocaust,” 543.

emerged from the direct orders from Hitler, and instead pointed to the role of bureaucracies, an industry of death, low-level bureaucrats, or “ordinary men.”⁶⁰¹

Lemkin coined and defined the concept of genocide in *Axis Rule* in order to explain the principle atrocity being committed by a regime that was “totalitarian in its method and spirit.”⁶⁰² In order to bring about an end to the genocide, he wrote, it was necessary to untangle the web of overlapping laws, administrations, interests, and ideologies that gave shape to a genocide that was dynamically producing its own rationale, generating popular consent for its own program, and manufacturing its own political and legal legitimacy. Decades after Lemkin coined the word genocide, sociologists studying genocide such as Zygmunt Bauman followed Max Weber and argued that modern bureaucracy provided the logistical machinery and moral apparatus necessary for undertaking the genocidal program of mass killing, rationalizing the violence demanded by state leaders and impelling bureaucrats to efficiently carrying out orders. The authority and routinization inherent in bureaucratic systems authorize genocide and make genocide seem routine, Bauman argued. In Bauman’s thought, the bureaucracy then provides the moral context through which the genocidal orders are interpreted. The dehumanization of bureaucratic objects only makes it easier for orders to be followed, since the victims appear less than human to the bureaucrats carrying out the orders.⁶⁰³

⁶⁰¹ The point is made by Stone, “Raphael Lemkin on the Holocaust,” 543. See Hilberg, *Destruction of the European Jews*; Martin Broszat, *The Hitler State: The Foundation and Development of the Internal Structure of the Third Reich* (New York: Longman Group, 1981); Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: Harper Collins, 1992).

⁶⁰² Lemkin, *Axis Rule*, ix.

⁶⁰³ See Bauman, *Modernity and the Holocaust*, chapter 4.

Bauman was not the only one to connect the Holocaust to the organization of German society, nor genocide to modernity. Hilberg and many others had already noticed that “the machinery of destruction *was* the organized community in one of its special roles.”⁶⁰⁴ Lemkin, too, had discovered something quite similar. However, Renner and Bauer’s theory of national cultural autonomy, which Lemkin relied on to formulate his vision of national-cultural life, was little use to his problem of identifying how the legitimacy of the Axis regime could be combated through international law. For this aspect of his theory, Lemkin drew upon his contemporary sociologists.

As Marxists Renner, Bauer, and Neumann considered legal legitimacy to be of little concern since the problem of legitimacy would be solved when the working class established the good legal order.⁶⁰⁵ Lemkin, drawn to Renner’s vision of national cultural autonomy, never abandoned what Moses called “his liberal faith” in universal, international law.⁶⁰⁶ With Lemkin’s liberalism came the liberal preoccupation with legitimacy, where modern law to be legitimate must be seen as guaranteeing the definitions, basic rights, and protections of citizens who understand themselves as constituent parts of the society that established the law.⁶⁰⁷ If genocide generated its own legitimacy in the modern state through the law, then the law was a vehicle through which genocide would be delegitimized, and therefore prevented.

⁶⁰⁴ Raul Hilberg, *Destruction of the European Jews*, 3rd ed. ([1961] New Haven, CT: Yale University Press, 2003), 1061.

⁶⁰⁵ William E. Scheuerman, *Between the Norm and Expectation: The Frankfurt School and the Rule of Law* (Cambridge, Massachusetts: Massachusetts Institute of Technology Press, 1997), 258, n 15.

⁶⁰⁶ Moses, “Empire, Colony, Genocide: Keywords And The Philosophy Of History,” 11.

⁶⁰⁷ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: Massachusetts Institute of Technology Press, 1996).

In his later writings after the passage of the UN Genocide Convention, Lemkin turned to the work of the psychologist Erich Fromm to study the social psychological basis of the genocidist's political legitimacy.⁶⁰⁸ As Fromm wrote in his famous 1941 book *The Fear of Freedom*, the First World War was supposed to have marked the ultimate victory of freedom, strengthening existing democracies and creating new ones out of old monarchies. But within a few short years, political systems emerged "that took command of man's entire social and personal life." These totalitarian regimes, however, did not rise across Europe because "men like Hitler had gained power over the vast apparatus of the state through cunning or trickery." Nor did "they or their satellites [rule] merely through sheer force" over whole populations that were "will-less object of betrayal and terror." Instead, the "crisis of democracy" was not "a peculiarly Italian or German problem, but one confronting every modern state." The "lust for power" of a small elite was met with indifference by millions of people who seemed to be "yearning for submission" and "conformity" while exhibiting a complete "disregard for the rights of the weak."⁶⁰⁹ While we know Lemkin read Fromm in the 1950s, it is impossible to prove he read Fromm while writing *Axis Rule in Occupied Europe*. However, Lemkin seems to follow Fromm closely in *Axis Rule*, identifying four inter-related ways in which the Axis laws and decrees were legitimized, over and above the institutions and democratic traditions of Axis occupied Europe: first, by a "racial emotionalism" orchestrated by the Nazi master-race ideology; a "national emotionalism" of a unified Germany; the promise of material or emotional gains for those whom the regime ideologically and politically

⁶⁰⁸ Raphael Lemkin, "The Concept of Genocide in Social and Individual Psychology," NYPL, Reel 3, Box 2, Folder 3.

⁶⁰⁹ Erich Fromm, *The Fear of Freedom* (London: Routledge, 1942), 2-6.

avored; and, finally, through state terror and violence.⁶¹⁰

It is also possible that Lemkin drew upon a study led by Theodor Adorno, which built on Fromm's work and argued that the authoritarian personality projects personal and social insecurities onto "inferior" minority groups, which allows the authoritarian individual to act violently towards the other.⁶¹¹ Drawing on Adorno, Frenkel-Brunswick, Levinson, and Sanford's *The Authoritarian Personality*, Lemkin wrote in *Introduction to the Study of Genocide* that "genocide does not originate with the riot mob," but in "certain myths and superstitions regarding the victimized group" that allows genocide to be "properly rationalized." Such myths are built up by "nonscientific scholars" to make it seem "that there exists certain inferior races and religious, or that certain nations have particular destinies," Lemkin wrote: "Some of these individuals may be psychotic but ...[the soldiers] regard their odious task as they would fighting a plague ... [and] may even consider themselves humane."⁶¹²

Another theorist Lemkin drew upon to help him out of his problem of legitimacy was Max Weber, whose name Lemkin wrote into an outline for a chapter on ethics and psychology for his unfinished *Introduction to the Study of Genocide*.⁶¹³ Weber defined the legal order as a system of rules that were obeyed as legitimate because they followed a consistent logic with other rules that should also be obeyed. The system was enforced

⁶¹⁰ Lemkin, *Axis Rule*, xiv.

⁶¹¹ Theodor Adorno, Else Frenkel-Brunswick, Daniel Levinson, and Nevitt Sanford, *The Authoritarian Personality* (New York: Harper & Row, 1950). Steven L. Jacobs believes that Adorno was Lemkin's source: Jacobs, ed., *Lemkin on Genocide* (Lanham: Lexington Books, 2012), 30, n. 23.

⁶¹² Lemkin, "The Concept of Genocide in Social and Individual Psychology," See section called "Propaganda, Premeditation, and Professional Genocidists."

⁶¹³ Raphael Lemkin, "Introduction to the Study of Genocide, Outline," NYPL, Reel 3, Box 2, Folder 1, 7.

by a government that claimed the right to use legitimate physical force against its citizens, and established a binding authority over citizens. But rational-legal authority was based on an administration and legal order that had been created with specific references to the condition of the state in which it was enacted, and could be changed by legal-rational legislation.⁶¹⁴ With the “disenchantment of modernity,” legal-rational authority dispensed of natural law in favor of positive law, while precluding universal morals and duties from its own structure.⁶¹⁵ In liberal theories of positive law, therefore, legitimacy presupposes that the law is not a superstructure, but actively capable of restraining the political order to protect people’s rights and autonomy. For Lemkin, the law was more than a passive script that justified the political and economic order of society. The legal order could strive towards being autonomous from the political order, while constraining the political order to prevent genocide.

4.5 PEACE THROUGH LAW

Lemkin believed that international law was much more than a tool for securing peace by balancing power in international relations and providing collective security among states. Instead, he argued, domestic laws of states could be organized through international law in order to prevent states from mobilizing their domestic societies towards genocide. “International peace is not only the task of international law which acts in relations between governments,” Lemkin wrote in his archival papers, “but is also the

⁶¹⁴ Max Weber, *Economy and Society*, Guenther Roth and Claus Wittich, eds. (Berkeley: University of California Press, 1978).

⁶¹⁵ Habermas, *Between Facts and Norms*.

task of individual societies which must be educated for peace.”⁶¹⁶ In *Axis Rule*, he proposed a multilateral treaty requiring states to enshrine laws against genocide into their constitutions and domestic legal codes and under international law (*delicta juris gentium*) with universal jurisdiction, alongside crimes such as piracy and slavery.⁶¹⁷ Lemkin believed that enshrining genocide as an international crime in domestic criminal codes would correct the problem that doomed the minority protection treaties, which failed primarily “because not every European country had a sufficient judicial machinery for the enforcement of its constitution.”⁶¹⁸ But Lemkin also believed that using international law to shape domestic laws would introduce new norms protecting national, religious, and racial minority groups from oppression and genocide.⁶¹⁹

The recommendation was a direct reflection of Lemkin’s work on barbarism and vandalism during the interwar years, in particular his Kelsen-inspired monistic and positive law approach. However, Lemkin knew that one could not simply introduce such norms into law and expect it to affect social change. The law, and the institutions it bequeathed, had to speak to the conditions of the society. Lemkin’s early work on the Polish, Soviet, and fascist Italian criminal codes had orientated him towards this positive law approach, teaching him just how adept Lenin and Mussolini’s regimes were at crafting legal codes that resonated within their societies, directing their societies towards their political and social goals of destroying enemy forms of national consciousness.

Lemkin’s thought, here, marks a final break with the work of Renner and Bauer,

⁶¹⁶ Lemkin, "Summary of Activities of Raphael Lemkin," NYPL Reel 2, Box 1, Folder, 33/34, 4.

⁶¹⁷ Lemkin, *Axis Rule*, 93.

⁶¹⁸ Lemkin, *Axis Rule*, 93.

⁶¹⁹ Schabas, *Genocide in International Law*, 34.

whose ideas had been so influential in shaping his desire to enshrine the universal protection of national groups into international law and overturn the nation-state's system of defining national belonging in monocultural terms and destroying minorities. As a Marxist legal theorist, Renner not only avoided the problem of legitimacy but he also believed that the legal order could not drive economic, political, and social change.⁶²⁰ The position led Renner to argue that the actual laws and decrees enshrined into the legal order mattered very little. The proof Renner provided was European property laws, which were written hundreds of years in the past in reference to archaic notions property, but were constantly reinterpreted so that the meaning of the law constantly changed even though the letter of the law stayed the same, keeping the law relevant across changing historical conditions.⁶²¹

In contrast, Lemkin's believed that the relationship between the law and society was dynamic, where political and social context shaped legal codes while legal codes in turn shaped politics and society. "The author is aware of the fact that redress should be full and embrace not only additional aspects, both economic and legal, but it should also involve important political and moral considerations," he wrote.⁶²² If international legal norms were going to be introduced into national legal codes across the world and oblige people to act against genocide, then they had to be introduced in a way that addressed the

⁶²⁰ See Scheuerman, *Between the Norm and Expectation*, 258, n. 15. Renner had little choice but to avoid the question, lest he engage a central teaching of Marxism that the law is a superstructure that arises out an economic basis. Bauer, for his part, saw a way out of the problem through Marx's writings on Bonapartism, maintaining that the law could exist on its own terms and rein in political actors and states in Europe after the First World War because of a balance in class interests allowed for it.

⁶²¹ Karl Renner, *The Institutions of Private Law and Their Social Functions*, trans. Agnes Schwarzschild (London: Routledge, 1949).

⁶²² Lemkin, *Axis Rule*, xiii.

political and social conditions that were engendering genocide. But the dynamism also meant that it was possible that simply introducing the norm would be enough for it to take hold and compel human action. As genocide legitimized itself, so too could the moral cause against genocide.

For Lemkin, genocide was not rooted in the ontological grounding of the nation-state, nor was it inherent in particular social, political, or economic constellations, such as monopoly capitalism or totalitarianism. Nor was genocide a form of Enlightenment thought that was reformed as a myth of progress and a in scientific rationality, enchanting a world that was supposed to be disenchanted.⁶²³ Genocide also did not occur because Nazi orders were greeted with a mass of “willing executioners.”⁶²⁴ Rather, genocide was a social process, contingent upon a constellation of social and political factors, that people chose to commit. Practically speaking, this meant that genocide could be abolished because it was not inherent in the human condition or in historical conditions—one did not have to wait for a revolution in the economic basis of human life or a dramatic shift in the social consciousness of humanity. The people and societies committing genocide today could easily live in peace tomorrow. The law could be a conduit for this peace, only if the problems in existing humanitarian law were addressed.

In *Axis Rule*, Lemkin diagnosed a disjuncture between the institutions of existing humanitarian law, which promised to protect people from states, and the actual practice of humanitarian law, which had been transformed into an instrument of protecting states from people during the interwar years under the minority rights regime. The treaties

⁶²³ Max Horkheimer and Theodor Adorno, *Dialectic of Enlightenment: Philosophical Fragments*, Gunzelin Schmid Noerr, ed., Edmund Jephcott trans. (Stanford: Stanford University Press, 2002).

⁶²⁴ Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust*.

against genocide that Lemkin called for in *Axis Rule* would not only alleviate the suffering of the victims of genocide during the war, he argued. They would bring the institution of international liberal law into line with the social and economic conditions of the world, which had outpaced the evolution of humanitarian law. For Lemkin, there was a new need to espouse a cosmopolitan vision of humanitarian law that would subordinate the nation-state to a system of sovereignty that did not see national and cultural difference as a fundamental threat to the political and legal structure of states.

On one level, Lemkin argued, the treaties would create the national-level and international judicial machinery necessary for extraditing and punishing Axis war criminals after the war. But they would also establish, for the first time, a legitimate system of “international protection of national and ethnic groups against extermination attempts and oppression in times of peace.”⁶²⁵ The genocide committed in Axis occupied Europe in the 1940s had begun non-violently in the 1930s before the outbreak of “total war.” Outlawing the Axis genocide in the midst of the war in 1944 would thus give direction to the political, social, and military resistance against the Axis powers, Lemkin wrote in the introduction to *Axis Rule*. But, more importantly, it would establish the legal framework necessary for future generations to extend the humanitarian project into their world. This was a crucial point for Lemkin, for he felt the German war effort used genocide as “a new technique of occupation aimed at winning the peace even though the war itself is lost.”⁶²⁶ Through genocide, the Axis powers could succeed in shaping the future according to their own designs, altering the social fabric of the continent in their

⁶²⁵ Lemkin, *Axis Rule*, xiii.

⁶²⁶ Lemkin, *Axis Rule*, 81.

perceived favor, even if their armies were defeated.

International human rights law in its current form took shape with the laws of armed conflict codified in the nineteenth century to prohibit certain types of weaponry and protect medical personnel.⁶²⁷ The Hague Regulations of 1907 expanded the scope of humanitarian law and the laws of war to cover the treatment of enemy combatants, and contained provisions requiring occupying armies to respect certain rights of civilian populations while guaranteeing inhabitants protection under law of nations.⁶²⁸ Lemkin's argument in *Axis Rule* was that the Hague Regulations only extended protections to civilians residing in the territory occupied by belligerents, which meant that the institution of humanitarian in the 1940s law was no longer connected to the political and social reality of a totalitarian, industrial state, nor to the reality of colonial rule. Reshaping the existing political and legal order was an absolute necessity, Lemkin felt. Humanitarian law both domestically and internationally had lost touch with the humanitarian crimes being committed. The attempt to destroy entire nations had been a hallmark of nineteenth and twentieth century politics, and extraordinary violence against national minorities had been committed during times of formal peace. It was clear to Lemkin that the domestic legal codes could not protect human beings, while international humanitarian law simply did not apply.

Lemkin defined genocide specifically to address this deficiency. Genocide, defined as the destruction of national patterns committed in times of peace or war, was different than existing war crimes under humanitarian law. Lemkin's crime was written

⁶²⁷ Schabas, *Genocide in International Law*, 18

⁶²⁸ Schabas, *Genocide in International Law*, 18.

purposefully to mark the antithesis of the Rousseau-Portalis Doctrine, a theory codified in the Hague Regulations of 1899 and 1907. First articulated by a French jurist Jean-Étienne-Marie Portalis in 1801 at the opening of the French Prize Court, the doctrine was based on Portalis's reading of Jean-Jacques Rousseau's *The Social Contract*, where Rousseau wrote that war is a relation between states, not people, and therefore the private subjects who were the belligerents would not hold hostilities towards each other as individuals.⁶²⁹ The doctrine allowed the laws of war to prohibit the military from targeting non-combatants who, as private citizens, did not partake in the belligerence of states.⁶³⁰ But it also established a belief that war was not directed against populations, which limited humanitarian laws to conflicts between two sovereign states, Lemkin wrote.⁶³¹ The Hague regulations were thus incapable of protecting minorities from the police and armies of their own states because the laws only protected people during warfare and, by definition, a war could not be waged between a state and a populace.

In *Axis Rule* Lemkin wrote that the Rousseau-Portalis Doctrine was now irrelevant to international affairs because Germany was waging a “total war” that claimed the enemy was “the nation, not the state.” Yet institutional, social, and moral constraints against genocide were impossible because the world's legal, social, and moral prisms were oriented towards viewing genocide as not a form of war, but a sovereign right. Since the 1930s, Lemkin wrote, the victims of the German regime had been left to suffer their fate. Accordingly, Lemkin positioned his recommendations squarely within the

⁶²⁹ Lassa Oppenheim, *International Law Volume II: War and Neutrality* (Bombay: Longmans, Green, and Company, 1906), 60. See Jean-Jacques Rousseau, *The Social Contract*, Book 1.4.

⁶³⁰ Eyal Benvenisti, *The International Law of Occupation* (Oxford: Oxford University Press, 2012), 24.

⁶³¹ Lemkin, *Axis Rule*, 80

developments in international law, to expand humanitarian protections to peoples and minorities, a project he began after the First World War as a response to Soviet atrocities and colonial violence.⁶³² Because the Hague Regulations only applied to times of military occupation and “were silent regarding the preservation and integrity of a people,” Lemkin wrote that the regulations should be amended to include genocide, which should consist of two parts: “in the first should be included every action infringing upon the life, liberty, health, corporal integrity, economic existence, and the honour 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 of such groups to the prejudice or detriment of another.”⁶³³ The regulations had to be further amended, he continued, to “include an international controlling agency vested with specific powers, such as visiting the occupied countries and making inquiries as to the manner in which the occupant treats natives in prison.”⁶³⁴ With this last recommendation, Schabas notes, Lemkin essentially conceived of the fact-finding commission included in Article 90 of the Protocol Additional I to the 1949 Geneva Conventions.⁶³⁵

Lemkin’s hope that his book would help stop the genocide in progress was fantastic. But his belief that the book might reshape the structure of international law in the future proved pragmatic. After the way, *Axis Rule* was put to use by the Nuremberg courts and the crime of genocide was included in the indictment of Nazi war criminals, even though Lemkin himself played a very peripheral role in the court and the crime of

⁶³² Schabas, *Genocide in International Law*, 34.

⁶³³ Lemkin, *Axis Rule*, 90-93.

⁶³⁴ Lemkin, *Axis Rule*, 94.

⁶³⁵ Schabas, *Genocide in International Law*, 34 n. 96.

genocide was never considered in the proceedings. By 1948 Lemkin's work formed the legal and theoretical foundation of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, while *Axis Rule* is now considered a founding text of twentieth century humanitarian law.

CHAPTER 5: NUREMBERG, 1944-1946

וְאָרֹר הָאֹמֶר: נָקָם
 נִקְמָה כְּזֹאת, נִקְמָת דָּם יֶלֶד קָטָן
 – בְּרָא הַשָּׁטָן-עוֹד לֹא
 הִתְהַוֶּה-וְיִקָּב הַדָּם אֶת
 יִקָּב הַדָּם עַד תִּהְיוּ מִחֲשָׁכִים
 שֶׁדִּי וְחֹתֵר שְׂמֹנְאֵכֶל בָּהּ
 מוֹסְדוֹת הָאָרֶץ הַנִּמְקִים-כָּל

*And cursed be he who cries: vengeance!
 Such a vengeance, the vengeance for a small child's blood
 —Satan himself never dreamed—
 and blood would fill all space!*

— Hayim Nahman Bialik, from “On the Slaughter” [1903]⁶³⁶

5.1 NUREMBERG, GENOCIDE, AND THE DESTRUCTION OF THE JEWS

In 1942, before the US opened major military operations in Europe, Lemkin had dedicated himself to the impossible task of convincing the US to intervene politically, diplomatically, and legally on behalf of the victims of Nazi genocide. Over and again, he was met by the apathy of statesmen. Washington’s policy makers at the highest levels knew of the Nazi camps and attempts to exterminate enemy nations, but the official reports were being suppressed, Lemkin wrote. The “conspiracy of silence” that “poisoned the air” was a “double murder ... It was the murder of the truth ... in a way it was disrespect of death.”⁶³⁷ After the war, Lemkin dedicated himself to another nearly impossible task. Plying the halls and offices of the Nazi war crimes tribunal in Nuremberg, Lemkin lobbied the Nuremberg jurists to hold Germans guilty of genocide before the outbreak of war. Lemkin knew that such a charge would subvert the doctrine

⁶³⁶ Hayim Nahman Bialik, “On the Slaughter,” in *Bialik: Selected Poems of Hayim Nahman Bialik*, translated and edited by Atar Hadari (Syracuse: Syracuse University Press, 2000), 11.

⁶³⁷ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 117.

of national sovereignty by extending the laws of war to protect people from state violence in times of peace.⁶³⁸

Initially, there was support within the Allied governments for trying the German leaders for humanitarian crimes against populations. The British Foreign Secretary Anthony Eden declared in December 1942 that England would ensure retribution for Jews being subjected to “barbarous and inhuman treatment” that was “now carrying into effect Hitler’s oft repeated intention to exterminate the Jewish people of Europe.”⁶³⁹ In the Roosevelt administration, two years later, Henry Morgenthau Jr. urged the president to ensure that post-war justice avenge Nazi crimes against the Jews. However, as Philip Spencer notes, it eventually became obvious that trying Nazi leaders for humanitarian crimes would cause political problems for the Allies.⁶⁴⁰

Popular memory often holds that the Nuremberg tribunal was intended to bring legal justice for the horrors of the Jewish Holocaust, even though the tribunal eventually rejected the principle of trying Nazi leaders for their crimes against the Jews.⁶⁴¹ For many scholars and activists, the Nuremberg trials are often considered legalism’s greatest victory in securing human rights. Yet, here again, in the words of Gary Bass, “it is only in retrospect that Nuremberg has become unimpeachable.”⁶⁴² While it is tempting to see the trials as predetermined, at the time it was not obvious to the Allies that they should not

⁶³⁸ Donald Bloxham, *Genocide on Trial: The War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford: Oxford University Press, 2001).

⁶³⁹ Quoted in Schabas, *Genocide in International Law*, p. 35.

⁶⁴⁰ Philip Spencer, *Genocide Since 1945* (London: Routledge, 2012), 4.

⁶⁴¹ Bloxham, *Genocide on Trial*. Also see Arendt, *Eichmann in Jerusalem*.

⁶⁴² Bass, *Stay the Hand of Vengeance*, 203.

simply execute the defeated and move on with rebuilding.⁶⁴³ Stalin proposed dealing with the matter of justice by shooting 100,000 Germans. Churchill proposed that the leaders of the Nazi regime be executed without trial. As the support for trials began to take shape, Stalin eventually shifted positions and pressured the allies to turn the tribunal into a show trial so there would be no possibility of embarrassing acquittals.⁶⁴⁴ And Morgenthau Jr. convinced Roosevelt to “pastoralize” Germany—by de-industrializing the economy, executing German officers, and banishing all SS officers to far off places of the world. Morgenthau Jr. cited the Ottoman deportation of Greeks that his father had witnessed as ambassador to the Ottoman Empire as legal precedent.⁶⁴⁵ It was a strange precedent, given that Morgenthau Sr. described the Greeks as “the first victims of this nationalizing idea” to make “Turkey exclusively the country of the Turks,” and lobbied his own government to interfere in “these outrages [which] aroused little interest in Europe of the United States.”⁶⁴⁶ It was not until Morgenthau Jr.’s proposal was leaked to the public that Roosevelt began to support a tribunal.⁶⁴⁷ That trials took place at all was remarkable.

The first Allied mention of trials is widely cited as the Moscow Declaration of November 1, 1943. But the call for these trials, Schabas has found, made no direct mention of the racist aspects of Nazi war crimes directed against national, ethnic, or religious groups. The UN Commission for the Investigation of War Crimes, established days before the Moscow Declaration, based its recommendations for criminal prosecution

⁶⁴³ Bass, *Stay the Hand of Vengeance*, 147.

⁶⁴⁴ Bass, *Stay the Hand of Vengeance*, 147.

⁶⁴⁵ Bass, *Stay the Hand of Vengeance*, 153.

⁶⁴⁶ Henry Morgenthau, *Ambassador Morgenthau’s Story* (Detroit: Wayne State University Press, 2003), 222.

⁶⁴⁷ Bass, *Stay the Hand of Vengeance*, 157.

on provisions established under the Responsibilities Commission of the 1919 Paris Peace Conference, which Italy and Japan had signed and Germany never rejected.⁶⁴⁸ Even though these provisions listed “denationalization” and the mass-murder of civilians as crimes, Schabas writes, the commission never applied these crimes to the Nazi exterminations, nor Nazi treatment of the Jews.⁶⁴⁹

By 1944, the US State Department was urging the US not to prosecute Germans for crimes committed against minority groups within German borders.⁶⁵⁰ Plans for trials had coalesced around a proposal by Murray Bernays with the support of Henry Stimson, who argued that the crimes against the Jews had no place in the tribunal. Current scholarship suggests that Stimson played a leading role in pushing the US away from punishing humanitarian crimes, and instead focusing on war crimes. For Stimson, Morgenthau had made two errors. First, Stimson criticized the treasury secretary for not calling for criminal trials and, secondly, for allowing his Jewish “race” to shade his call for vengeance. Both errors, Stimson argued, would threaten the credibility of the US-led postwar reconstruction.⁶⁵¹

In May 1945, President Truman appointed Supreme Court Justice Robert Jackson as the chief US prosecutor in the International Military Tribunal (IMT). Two days later, Lemkin wrote a letter to Jackson explaining the crime of genocide. Lemkin included in the letter his article on genocide as a modern crime published in *Free World* magazine. The magazine survives in Jackson’s archives, complete with his annotations of Lemkin’s

⁶⁴⁸ Schabas, *Genocide in International Law*, 36.

⁶⁴⁹ Schabas, *Genocide in International Law*, 37.

⁶⁵⁰ Schabas, *Genocide in International Law*, 37.

⁶⁵¹ Bass, *Stay the Hand of Vengeance*, 175.

claims.⁶⁵² John Barrett, investigating books on loan from the library of congress, found that Jackson borrowed *Axis Rule* from the court's library, took it to London and to Nuremberg, and returned it after he completed his duties as chief of counsel.⁶⁵³ Impressed, Jackson hired Lemkin as a personal consultant.

At the London Conference of June 1945, the US submitted a proposal to prosecute Nazi leaders that was based on the Martens clause of the Hague Conventions, but considered the prosecution of humanitarian crimes only when they were linked to the crime of aggression against other populations.⁶⁵⁴ In Jackson's words, "the way Germany treats its inhabitants, or any other country treats its inhabitants is not our affair any more than it is the affair of some other government to interpose itself into our problems."⁶⁵⁵ Jackson went on to make clear that the "program of extermination of Jews and destruction of the rights of minorities" falls under the preview of international law only when it is "part of a plan for making an illegal war."⁶⁵⁶

The London conference marked the time the exact term "crimes against humanity" was used in international law. Hersch Lauterpacht developed the concept, which was defined as "namely, murder, extermination, enslavement, deportation, and

⁶⁵² John Q. Barrett, "Raphael Lemkin and 'Genocide' at Nuremberg, 1945-1946," in *The Genocide Convention Sixty Years After Its Adoption*, eds. Christoph Safferling & Eckart Conze (The Hague: T.M.C. Asser Press, 2010), 36. See Raphael Lemkin, "Dr. Raphael Lemkin letter to Honorable Robert Jackson, 4 May 1945," in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington DC, Box 98, Folder 9.

⁶⁵³ Barrett, "Raphael Lemkin and 'Genocide' at Nuremberg, 1945-1946," 38.

⁶⁵⁴ Schabas, *Genocide in International Law*, 40.

⁶⁵⁵ Spencer, *Genocide Since 1945*, 4. The quote from Jackson is taken from Spencer.

⁶⁵⁶ Robert H. Jackson, "Minutes of Conference Session 23 July 1945," in *Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials* (Washington D.C.: US Government Printing Office, 1949) 331.

other inhumane acts committed against any civilian populations,” or “persecutions on political, racial or religious grounds” during and after the war.⁶⁵⁷ By August, the US, Britain, France, and Russia signed the Agreement for the Prosecution and Punishment of Major War Crimes of the European Axis and established the charter of the International Military Tribunal (IMT). Although Lemkin did not attend the conference, the jurists used his concept of genocide. Jackson even penciled the word in the margins of draft proposals that described the destruction of nations and minorities as possible crimes.⁶⁵⁸ Jackson made sure to include genocide in Count Three of the IMT indictment of War Crimes, marking the first time genocide appeared in international law.⁶⁵⁹

Lauterpacht and Lemkin were two of the most important historical figures in a larger circle of jurists who were attempting to redefine state sovereignty after the Second World War. It is quite remarkable, Phillippe Sands writes, that the two jurists who established the most significant concepts in twentieth century humanitarian law were both born to Polish and Jewish parents in the borderlands of crumbling European empires and graduated from the prestigious Jan Kazimierz University faculty of law in Lwów,⁶⁶⁰ Yet, Lauterpacht and Lemkin’s concepts are often presented as competing ideas, with crimes against humanity taken as protecting individuals and genocide as protecting groups. While Lemkin was appreciative of Lauterpacht, Lauterpacht considered Lemkin’s idea of genocide to be useless and morally fraught, reifying the concept of

⁶⁵⁷ Schabas, *Genocide in International Law*, 42.

⁶⁵⁸ Barrett, “Raphael Lemkin and ‘Genocide’ at Nuremberg,” 41.

⁶⁵⁹ Hilary Earl, “Prosecuting Genocide Before the Genocide Convention: Raphael Lemkin and the Nuremberg Trials, 1945-1949,” *Journal of Genocide Research* 15 (2013), 323.

⁶⁶⁰ Philippe Sands, “The Memory of Justice: The Unexpected Place of Lwów in International Law—A Personal History,” *Case Western Journal of International Law* 43 (2011).

group belonging and threatening to perpetuate the kinds of thinking that led to genocide in the first place.⁶⁶¹

From Lemkin's perspective, social scientists might understand that the boundaries of identity are imagined and plastic, but that did not stop the perpetrators of genocide from believing that groups were immutable and acting accordingly, with a violent resolve to eliminate the group as a concrete object. Lemkin did not see himself as enshrining a form of groups' rights, but rather outlawing the attempt to destroy an imagined group. Lauterpacht felt that there was no difference between criminalizing the attempt to destroy a group and enshrining groups rights into law. In either formation, he argued against Lemkin, genocide amounted to a form of groups rights that was made redundant by crimes against humanity, which implicitly protected groups by outlawing the attempt to physically kill or persecute individuals because of their group belonging.⁶⁶² The debates between the merits of the two concepts are likely to be endless.⁶⁶³ What is significant is that both jurists expressed a deep sensitivity to the anxieties and bloodshed of vulnerable people and minorities living on the peripheries of crumbling empires,⁶⁶⁴ both believed that international law could be used to overturn the "theology of the state" or the "deification" of the state that protected the state and leaders of the state from the rule of

⁶⁶¹ Hersch Lauterpacht, "Review of Raphael Lemkin: Axis Rule in Occupied Europe," *Cambridge Law Journal* 9 (1945), 140; Hersch Lauterpacht, *International Law. A Treatise by Lassa Oppenheim*. Vol. 1: *Peace* (London: D. McKay, 1955), 744.

⁶⁶² Lauterpacht, *International Law. A Treatise by Lassa Oppenheim*. Vol. 1: *Peace*.

⁶⁶³ For a discussion, see William A. Schabas, "Raphael Lemkin, Genocide and Crimes against Humanity," in *Rafal Lemkin: A Hero of Humankind*, eds. Agnieszka Bienczyk-Missala and Slawomir Debski, (Warsaw: The Polish Institute of International Affairs, 2010).

⁶⁶⁴ Ana Filipa Vrdoljak, "Human Rights and Genocide: The Work of Lauterpacht and Lemkin in Modern International Law," *The European Journal of International Law* 20 (2010).

law;⁶⁶⁵ both dedicated their legal careers to the possibility of using international law as a means of securing peace and overcoming the violent tendencies of xenophobic nation-states; and both considered their work to be within the tradition of human rights.

While Lauterpacht benefitted from his official position in the courts, Lemkin was hindered by his unofficial and tangential status. Henry King, a Nuremberg prosecutor, recalled meeting Lemkin at the Grand Hotel in Nuremberg in 1946, and described him as an “unshaven” and disheveled “crank.”⁶⁶⁶ As Hilary Earl remarks, this was because Lemkin had just learned of his family’s death in the genocide.⁶⁶⁷ But King also recalled Lemkin was upset that the IMT limited its judgments to crimes committed during wartime and dropped the charges of genocide during the proceedings.⁶⁶⁸ Yet, King writes, it took years for him to appreciate Lemkin. “He was disheveled and rough-cut as he appeared to me,” and he “was very focused on pushing his points” and “buttonholed me several times.”⁶⁶⁹ But “he possessed a soul that had steely determination to correct a national and international wrong.”⁶⁷⁰

In a line of reasoning often overlooked by scholars, King asserted that Lemkin’s influence on Jackson was subtle, yet significant.⁶⁷¹ “It was one of the great coincidences

⁶⁶⁵ Hersch Lauterpacht, “Westlake and Present Day International Law,” *Economica* 15 (1925).

⁶⁶⁶ Henry T. King, Jr., Benjamin B. Ferencz, and Whitney R. Harris, “Origins of the Genocide Convention,” *Case Western Reserve Journal of International Law* 40 (2007).

⁶⁶⁷ Earl, “Prosecuting Genocide Before the Genocide Convention,” 323.

⁶⁶⁸ King, Ferencz, and Harris, “The Origins of the Genocide Convention,” 14.

⁶⁶⁹ King, Ferencz, and Harris, “The Origins of the Genocide Convention,” 14 and 20.

⁶⁷⁰ King, Ferencz, and Harris, “The Origins of the Genocide Convention,” 20.

⁶⁷¹ For one exception in the scholarly literature, see Barrett, “Raphael Lemkin and ‘Genocide’ at Nuremberg, 1945-1946.” Barrett does first work to demonstrate the affinity between Lemkin and Jackson. It is my hope that this account can substantiate much of Barrett’s claims.

of history that Robert Jackson's emergence as a leader in the international legal community at Nuremberg almost coincided with Lemkin's definition of genocide and the publication of his critical book," King wrote.⁶⁷² Like Lemkin, Jackson argued that the principle of universal jurisdiction should be applied "in holding those who carried out genocidal acts accountable" and proposed "the elimination of the defenses of sovereign immunity (acts of state) and superior orders."⁶⁷³ This was a major innovation, King argues, that was eventually put to use in Slobodan Milosevic's trial at The Hague.

In recent years, scholars have begun to document the extend of Lemkin's influence at Nuremberg, even if the charges of genocide were dropped and he was eventually sidelined. Besides Jackson's use of the word, the British deputy prosecutor, Sir David Maxwell-Fyfe, treated Lemkin's ideas seriously, Hilary Earl argues, using the word genocide during the cross examination of Konstantin von Neurath on June 25, 1946 in regards to the German treatment of Czechs.⁶⁷⁴ In one of the clearest testaments to Lemkin's lobbying abilities and influence, he managed to convince the British Chief Prosecutor Sir Hartley Shawcross to repeatedly use the word "genocide" in his remakes even though Lauterpacht refused to include the word "genocide" in the drafts of the speeches he wrote for Shawcross.⁶⁷⁵ Shawcross, in his closing statement of the British prosecution on July 27, 1946, explained the Nazi motivations according to Lemkin's belief that the Nazi policy and the war effort were orientated towards a strategy that went

⁶⁷² King, Ferencz, and Harris, "The Origins of the Genocide Convention," 21.

⁶⁷³ King, Ferencz, and Harris, "The Origins of the Genocide Convention," 18-19.

⁶⁷⁴ Earl, "Prosecuting Genocide Before the Genocide Convention," 324.

⁶⁷⁵ Philippe Sands, "Twin Peaks: The Hersch Lauterpacht Draft Nuremburg Speeches," *Cambridge Journal of Comparative and International Law* 1 (2012), 37-44.

“beyond mere Germanization” to include “the imposition of the German cultural pattern upon other peoples. Hitler was resolved to expel non-Germans from the soil he required by that they owned, and colonize it by Germans” by exterminating the Jews, gypsies, Yugoslavs, and the non-German inhabitants of Alsace-Lorraine.⁶⁷⁶ Shawcross even repeated Lemkin’s analysis that the technique of national destruction “varied from nation to nation, from people to people,” but nevertheless “the long-term aim was the same in all cases.”⁶⁷⁷ Clearly, as Stiller has shown, many of the definitions of genocide employed by the jurists at Nuremberg shared Lemkin’s understanding of the concept, and that the term genocide was not applied exclusively to the Nazi crimes against the Jews.⁶⁷⁸

The concept of genocide was developed most fully during the Subsequent Nuremberg Trials, known as the NMT. The word received special attention from prosecutors during the SS-Einsatzgruppen trials—the only trials to almost exclusively deal with war criminals whose only function was to commit the genocidal murder of Jews.⁶⁷⁹ And, the defendants Ernst Lautz and Oswald Rothaug were convicted of genocide even though genocide was not included in the indictment.⁶⁸⁰ However, as Stiller argues, the only case that could be considered a “genocide trial” was the trial of fourteen defendants who were officials from the Race and Settlement Office and the Office for the Strengthening of Germandom. It was these subsequent trials that dealt with

⁶⁷⁶ Quoted in Alexa Stiller, “Semantics of Extermination: The Use of the New Term of Genocide in the Nuremberg Trials and the Genesis of a Master Narrative,” in *Reassessing the Nuremberg Military Tribunals: Transitional Justice, Trial Narratives, and Historiography* eds., Kim C. Priemel and Alexa Stiller 104-133 (New York and Oxford: Berghahn Books, 2012), 108.

⁶⁷⁷ See Stiller, “Semantics of Extermination,” 108.

⁶⁷⁸ See Stiller, “Semantics of Extermination,” 106.

⁶⁷⁹ Earl, “Prosecuting Genocide Before the Genocide Convention,” 318.

⁶⁸⁰ Earl, “Prosecuting Genocide Before the Genocide Convention,” 327.

the explicit killing of Jews and the Wannsee Conference that helped transform genocide from Lemkin's broad conception into a concept that was understood as a specific crime against a group of people, helping to establish a narrative where the extermination of the Jews was seen as the proto-type for the crime of genocide.⁶⁸¹

5.2 CHARGING CRIMINAL CONSPIRACY

One of Lemkin's more peculiar influences rested in a legal mechanism of Anglo-Saxon law which, Lemkin had argued in *Axis Rule*, could circumvent the principle of command responsibility that Nazi defendants would surely invoke. This mechanism was criminal conspiracy laws, which had been used in the US to prosecute corporations and organized crime. The Nuremberg tribunal is now famous for exporting this aspect of US domestic law to prosecute the Nazis as a criminal association. Throughout the scholarly literature, the idea of charging the Nazis with criminal conspiracy is attributed to Bernays and Stimson, who had successfully prosecuted the American Sugar Refining Company under these laws.⁶⁸² However, this was an innovation Lemkin helped formulate to some degree, given that the principle was outlined explicitly in *Axis Rule*. "The police and the S.S. are interwoven with the administration of the occupied countries," Lemkin wrote:

The special functions of the S.S. and the police have given them the opportunity to perpetrate the greater part of the war crimes which have occurred during this war. As the United Nations have committed themselves to the prosecution of such crimes, the special structure of the S.S. and police should be an important factor in determining the basis for a new treatment of these crimes.

⁶⁸¹ Earl, "Prosecuting Genocide Before the Genocide Convention," 333; Stiller, "Semantics of Extermination," 106.

⁶⁸² Bradley F. Smith, *The American Road to Nuremberg* (Stanford: Hoover Institution Press, 1981).

An analysis of the specific functions of the Gestapo and S.S. and of their program and world outlook leads to the conclusion that in the light of their close connection and combined activities they constitute an association having as its purpose the commission of crimes *in genere*. Such crimes are directed not only against municipal law of the occupied countries, but also against international law and the laws of humanity. Such an association amounts to what is called in Anglo-Saxon law as conspiracy, or in continental European law unlawful association.⁶⁸³

Could *Axis Rule* have influenced Bernays and Stimson? Stimson and Bernays' first written exchange on charging the Nazis as a criminal organization is a memorandum dated to September 1944.⁶⁸⁴ Lemkin's *Axis Rule* was published in November. Strictly speaking, Bernays and Stimson's first known conversations predate Lemkin's publication of these ideas by two months.

Robert Conot substantiates the conjecture that Lemkin influenced Bernays. According to Conot, Colonel Mickey Marcus of the Army Civil Affairs Division was disturbed by Morgenthau's emotional display of revenge and, upon hearing that Bernays wanted to push for a criminal trial, handed him an early copy of *Axis Rule*.⁶⁸⁵ However, the records at the Carnegie Endowment for International Peace indicate that an advanced copy of Lemkin's book was sent out to the director of the Army Civil Affairs Division in October a month after the memorandum between Bernays and Stimson's first known

⁶⁸³ Lemkin, *Axis Rule*, p. 23.

⁶⁸⁴ Bass, *Stay the Hand of Vengeance*, 384, n. 102. See "Bernays Memorandum, 15 September 1944," in Smith, *American Road to Nuremberg*, 36.

⁶⁸⁵ Robert E. Conot, *Justice at Nuremberg* (New York: Basic Books, 1984), 11-12.

communication on the matter.⁶⁸⁶ Still, the publisher had already been sending out advanced copies of the text to offices throughout Washington, and Lemkin had been advertising his work relentlessly. And it is clear that Bernays and Lemkin shared a juridical horizon, with Bernays echoing Lemkin's words on genocide as a holistic social and political phenomenon, writing in a letter to his wife that "the crimes and atrocities were not single or unconnected, but were the inevitable outcome of the basic criminal conspiracy of the Nazi party ... based on the Nazi doctrine of racism and totalitarianism [that] involved murder, terrorism, and the destruction of peaceful populations in violation of the laws of war."⁶⁸⁷

Even if Bernays had arrived at the idea of prosecuting Nazi war criminals under criminal conspiracy laws without influence from Lemkin—and it is possible that Lemkin picked up on rumors of the prosecution strategy and included them in his book—Lemkin's *Axis Rule* shaped Bernays' and Jackson's legal approach. A central question in prosecuting genocide, Lemkin argued, was connecting the actions of individuals to the larger project of genocide, when individual perpetrators were motivated by any number of factors and were often not even aware that their actions contributed to a larger program of destruction. In *Axis Rule*, Lemkin wrote that there were two aspects of the US criminal conspiracy laws that were directly relevant to this problem. Firstly, the conspiracy laws had been developed to prosecute criminal corporate behavior, where low ranking defendants claimed they were following orders without understanding the larger criminal

⁶⁸⁶ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 62. Cooper believes it is wrong to attribute the criminal conspiracy prosecution to Lemkin because the Army Civil Affairs Division did not have a copy of *Axis Rule*.

⁶⁸⁷ Murray C. Bernays, Letter from Bernays to his Wife, June 10, 1945, *The Bernays Papers*, Box 1, University of Wyoming American Heritage Center, Laramie, WY.

purpose of their actions while those high in the hierarchy claimed they did not have control over the actions of their subordinates.

Citing Lauterpacht and George Finch, Lemkin argued that the plea of following superior orders was now largely inadmissible for excusing war crimes.⁶⁸⁸ Should a court allow a defendant to claim they were following superior orders, charging them with criminal conspiracy would mitigate the basis on which the plea of following superior orders rests. Essentially, to claim one was following orders “presupposes integrity of character and a respect for the law and morality on the side of the offender, who suffers a conflict between his own conscience and the compulsion of service ... [and assumes] he would never have committed it had he not been ordered to do so in the particular case.”⁶⁸⁹ To prevent criminal responsibility from evaporating as such, criminal conspiracy laws made “mere membership in such groups treated as an offence” because it is assumed that the defendant does not carry the presupposed integrity of character, since he or she “voluntarily joined an organization which approves and glorifies such crimes.”⁶⁹⁰ Therefore, Lemkin concluded, criminal conspiracy laws would recognize the Nazi police as a voluntary criminal organization and allow “all the members of the Gestapo and the SS [to] be punished [for genocide] for the sole reason that they are carrying out such functions in the occupied countries.”⁶⁹¹

⁶⁸⁸ Lemkin, *Axis Rule*, 24. Lemkin cites George A. Finch, “Superior Orders and War Crimes,” *American Journal of International Law*, Vol. 15 (1921), 440, 444; and Hersch Lauterpacht, *International Law: A Treatise Vol. 2* (London: Longmans, Green and Company, 1940), 454.

⁶⁸⁹ Lemkin, *Axis Rule*, 23.

⁶⁹⁰ Lemkin, *Axis Rule*, 24.

⁶⁹¹ Lemkin, *Axis Rule*, 23.

5.3 THE “TIMIDITY” OF THE IMT: PROSECUTING A PAST HITLER

Jackson followed Lemkin’s lead and argued in the prosecution that the SS and the Gestapo were a criminal organization party to the Nazi criminal program.⁶⁹² In a June 1945 memorandum to President Truman, Jackson repeated Lemkin’s legal reasoning, point by point, to make the case for using criminal conspiracy laws to prevent the defendants from using the plea of following superior orders:

With the doctrine of immunity of a head of state usually is coupled another, that orders from an official superior protect one who obeys them. It will be noticed that the combination of these two doctrines means that nobody is responsible. Society as modernly organized cannot tolerate so broad an area of official irresponsibility. There is doubtless a sphere in which the defense of obedience to superior orders should prevail. ... And of course, the defense of superior orders cannot apply in the case of voluntary participation in a criminal or conspiratorial organization, such as the Gestapo or the S.S.

...

Whom will we accuse and put to their defense? We will accuse a large number of individuals and officials who were in authority in the government, in the military establishment, including the General Staff, and in the financial, industrial, and economic life of Germany who by all civilized standards are provable to be common criminals. We also propose to establish the criminal character of several voluntary organizations which have played a cruel and controlling part in subjugating first the German people and then their neighbors. ... Organizations such as the Gestapo and the S.S. were direct action units, and were recruited from volunteers accepted only because of aptitude for, and fanatical devotion to, their violent purposes.⁶⁹³

Then, in another line taken from *Axis Rule*, Jackson recommended the President approve the prosecution of Nazi “atrocities and offenses, including atrocities and persecutions on racial or religious grounds, committed since 1933” by applying to “the principles of

⁶⁹² Barrett, “Raphael Lemkin and 'Genocide' at Nuremberg, 1945-1946,” 38.

⁶⁹³ Robert H. Jackson, “Atrocities and War Crimes: Report from Justice Robert H. Jackson to the President,” *United States Department of State Bulletin* 12 (1945): 1073-1074.

criminal law as they are generally observed in civilized states” and “assimilated as a part of International Law at least since [the Hague regulations of] 1907.”⁶⁹⁴

In his autobiography, however, Lemkin mentions none of this, dedicating only three pages to Nuremberg. The reason was simple. Nuremberg represented a failure for Lemkin. The tribunals dispensed retributive justice and “created a feeling that ... crime should not be allowed to pay.” But, the judgment “only partly relieved the world’s moral tensions,” Lemkin wrote, while “the purely juridical consequences of the trials were wholly insufficient.”⁶⁹⁵ In August 26, 1946 as the IMF judges were considering their verdict, Lemkin wrote a letter to the prosecutor Sir. David Maxwell Fyfe requesting help in pressuring the judges to include genocide in their Judgment:

I think that the inclusion of Genocide in the judgment would contribute to the creation of a preventative atmosphere against repetition of similar acts of barbarity. Indeed, we cannot keep telling the world in endless sentences: Don’t murder members of national, racial and religious groups; don’t sterilize them; don’t impose abortions on them; don’t steal children from them; don’t compel their women to bear children for your country; and so on. But we must tell the world now, at this unique occasions, don’t practice Genocide.⁶⁹⁶

Lemkin’s letter is a clear indication that, behind the scenes, he was not only pressuring for genocide to be included in charges, he was also advocating for crimes of sexual violence and rape to be considered acts of genocide. The tribunal eventually threw out the charges of genocide and refused to prosecute the defendants for humanitarian crimes committed during times of peace.

⁶⁹⁴ Jackson, “Atrocities and War Crimes,” 1076.

⁶⁹⁵ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 118.

⁶⁹⁶ Lemkin, “Raphael Lemkin to the Right Honorable David Maxwell Fyfe,” AJHS, Box 1, Folder 18, August 26, 1946, 1-2.

Lemkin's critique was more substantial than simply grumbling about his concept being left out of the law. As Lemkin noticed in his work on the Soviet and Italian legal codes, the law of totalitarian political regimes was used to transform society. The Axis genocide found its inception when Nazi master-race ideologies were enshrined into laws that, after the usurpation of sovereignty, compelled the genocide in almost every sphere of social life. Lemkin's approach to the law was a Kantian and Kelsen-inspired approach that upheld a tensional relationship between legal monism and legal positivism, where universal maxims existed but one could not naively expect to change human behaviors by enshrining these maxims into law. The law had to take into account the social and historical conditions in which the law was being interpreted and followed, if the law was to compel action and change the world. "One should not overlook the importance of appropriate terminology in times, when international law and in particular international criminal law is being reshaped by the present war crimes trials," Lemkin wrote about the Nuremberg tribunal.⁶⁹⁷ The form and content of the law—and even the actual words themselves—had to match historical conditions. Instead, the tribunal reproduce existing legal norms when legal innovations were demanded in order to prosecute an ancient crime in its modern form.⁶⁹⁸

The existing Hague Regulations lacked any means for enforcement and were "silent regarding the preservation of the integrity of a people."⁶⁹⁹ In Lemkin's mind, these

⁶⁹⁷ Raphael Lemkin, "The Significance of the Concept of Genocide in the Trial of War Criminals," undated, Southern Historical Collection, John Johnston Parker Papers, Records of the Nuremberg Trial of Major German War Criminals, Manuscripts Department, Wilson Library, The University of North Carolina at Chapel Hill, reference number 3566. Quoted in Earl, "Prosecuting Genocide Before the Genocide Convention," 333.

⁶⁹⁸ See Hilary Earl, "Prosecuting Genocide Before the Genocide Convention," 320.

⁶⁹⁹ Lemkin, *Axis Rule*, 90.

deficiencies in the law could be amended by criminalizing genocide to prohibit “every action infringing upon the life, liberty, health, corporal integrity, economic existence, and the honour of the inhabitants when committed because they belong to a national, religious, or racial group ... [as well as] every policy aiming at the destruction or the aggrandizement of one of such groups to the prejudice or detriment of another.”⁷⁰⁰ In the postwar world, international law could have been reborn if the jurists of the Nuremberg tribunals could escape their own “timidity,” Lemkin wrote. Humanitarian law could be extended to protect people from state violence during times of peace, and the doctrine of national sovereignty could be redefined according to the principle of national cultural autonomy to remove nationality as a condition for belonging in states, and in the world. But the Allies had not gone to war to save the victims of genocide, and certainly not to save the Jews.⁷⁰¹ So it followed that the Nuremberg tribunal in 1946 would not prosecute Nazi leaders for humanitarian crimes against minority nations and the Jews, but for war crimes and crimes of aggression.⁷⁰²

Railing against the “timidity” of the IMT, Lemkin accused the jurists of blindly prosecuting “a past Hitler” while refusing “to envisage future Hitlers.” They could not escape their “military origins” and accept “principles for the behavior of the civilian world in times of peace” as legally valid and historically expedient. Therefore, “they did not want to, or could not, establish a rule of international law that would prevent and

⁷⁰⁰ Lemkin, *Axis Rule*, 90-93.

⁷⁰¹ Spencer, *Genocide Since 1945*, 4. Also see Richard Breitman, *What the Nazis Planned, What the British and Americans Knew* (New York: Hill and Yang, 1998).

⁷⁰² Spencer, *Genocide Since 1945*, 4.

punish future crimes of the same type.”⁷⁰³ Not only had the Nuremberg courts rejected the principle that humanitarian laws and crimes against humanity could be applied to peacetime, they also had established conditions where states that are attacked (and thus not guilty of crimes against peace or aggressive war) could not be charged with humanitarian crimes. The proposition was preposterous, Lemkin believed, arguing that the IMT had proven that the world’s states cared only to protect against aggression by other states, and had no interest in humanitarian law that could protect populations.⁷⁰⁴

Professor Barrett observes that there is a “disjunction between the general greatness and historical significance of Raphael Lemkin and what his role [at Nuremberg] really was.”⁷⁰⁵ Lemkin was barely involved in the legal process, and did not even have his own office or telephone. But he had conceptualized the crime of genocide and succeeded in having the crime recognized, briefly. Assistant US prosecutor Sidney Alderman considered *Axis Rule* and Neumann’s *Behemoth* as the two basic sources used by the jurists of the tribunal for understanding Axis war crimes.⁷⁰⁶ Yet Alderman remembers Lemkin as nearly impossible to work with, insisting at all times and in all meetings that the other jurists use his concept of genocide, until they had no choice but to give him a “water-haul out” and remove his name from committee rosters, keeping him in the office “for encyclopedic purposes” only.⁷⁰⁷

⁷⁰³ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 118-119.

⁷⁰⁴ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 120.

⁷⁰⁵ Barrett, “Raphael Lemkin and ‘Genocide’ at Nuremberg,” 53.

⁷⁰⁶ Barrett, “Raphael Lemkin and ‘Genocide’ at Nuremberg.”

⁷⁰⁷ Quoted in Barrett, “Raphael Lemkin and ‘Genocide’ at Nuremberg,” 41.

Despondent, Lemkin left Nuremberg before the tribunal reached its verdict. His limited success at Nuremberg—however much he denied this success—legitimized the crime of genocide in international law, preparing the way for his work at the UN. But the concept of genocide no longer belonged to Lemkin. Through Nuremberg, the word genocide was shaped by, and given meaning by, an entire cohort of jurists, from Murray Bernays and Sidney Alderman, to Robert Jackson, all of whom “contributed much to an essential part of what history properly recalls as Lemkin’s achievement.”⁷⁰⁸

⁷⁰⁸ Barrett, “Raphael Lemkin and ‘Genocide’ at Nuremberg,” 54.

CHAPTER 6: THE UNITED NATIONS AND THE GENOCIDE CONVENTION, 1946-1948

*Tengo ha veinte años en la carne hundido
—y es caliente el puñal—
un verso enorme, un verso con cimeras
de pleamar.*

—Gabriela Mistral, from “El Suplicio”⁷⁰⁹

6.1 SELLING THE CONVENTION: PROGRESSIVISM, ANTI-COLONIALISM, ISLAMIC THEOLOGY, AND GENDER CRIMES

In the autumn of 1946, Lemkin attended the first regular session of the United Nations General Assembly in Lake Success, New York. Sitting down on the sofa in the delegates lounge, he drafted a resolution asking the UN to consider genocide an international crime along with piracy, slavery, and the trafficking of children. Outside, the sky was drizzling and the “Long Island landscape was undressing itself of its colors and leaves for the bleaching totality of November.” Inside the delegates were excited and cheerful, with “a latent open-mindedness” about humanitarian laws “as if they owed an apology to the world ... for the follies and frustrations, and the many crimes committed.”⁷¹⁰ His spirits were buoyed by a recent success in August 1946 when the prosecutor at the Supreme National Tribunal of Poland charged Nazi defendants with genocide in the “biological” and “cultural senses.”⁷¹¹ Editorials on genocide had also begun appearing, and Lemkin convinced *The New York Times* columnist Otto Tolischus to editorialize on the

⁷⁰⁹ Gabriela Mistral, “El Suplicio [Torture],” *Selected Poems of Gabriela Mistral*, trans. Ursula K. Le Guin (Albuquerque: University of New Mexico Press, 2003), 10.

⁷¹⁰ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 122.

⁷¹¹ United Nations, *Study of the Question of the Prevention and Punishment of the Crime of Genocide*, E/CN. 4/Sub 2/416, dated 4 July 1978, p. 6-7. Also see Kuper, *Genocide*, 22.

importance of a genocide convention just a few weeks before the opening of the General Assembly.⁷¹²

From his casual conversations with the delegates, Lemkin observed that the nations of Africa “on whom genocide was practiced” during the period of European colonization were the most receptive to a proposal to outlaw genocide. His task, as he described it, would be to assemble the African nations together with a number of Latin American and Asian states to form a coalition that “the European delegations could not refuse to follow, especially after the recent holocaust.” If smaller states could to bring a law against genocide to the agenda, then “the Allies of the recent war would have to say yes, because they could not afford to be led but must themselves lead.”⁷¹³

After mimeographing a draft convention, Lemkin approached Ricardo Alfaro of Panama, a delegate with “a great name among international lawyers [who] liked a good fight for an idea.” Alfaro signed, as did the Cuban ambassador Guillermo Belt. Lemkin then sought out an acquaintance from London, the former president of the World Alliance of Women, Margery Corbett Ashby, who introduced him to the chair of the Indian delegation, Vijaya Lakshmi Pandit. “I briefly explained my formula for the unity of mankind in diversity and the rule of law for the protection of national, racial, and religious groups against destruction,” Lemkin recalled, telling her: “Through this protection, groups are permitted to exist and mankind is enriched—like a universal concert in which every nation plays its part.” Like many from former colonies, Pandit was enthusiastic about protecting national cultural diversity. Believing a genocide

⁷¹² Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 124; Lemkin, “Genocide,” *New York Times*, August 26, 1946, 17.

⁷¹³ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 121-122.

convention would uphold what “Gandhi worked for,” she claimed that Lemkin’s “concept of oneness” out of “many races and creeds” was a principle “we in India live by” and “our philosophers preached.”⁷¹⁴ With the necessary three signatures, Lemkin rushed into the Secretary General’s office “like an intoxicated man” to file his resolution.

Lemkin’s next task was to convince individual delegates to support the resolution from within their delegations. The US congresswoman Helen Gahagan Douglass, whom Lemkin met in 1945, introduced him to Adlai Stevenson. After convincing Stevenson of the merits of a law against genocide, Lemkin sent a telegram to the US Ambassador to the UN, Warren Austin, urging him to support the convention so the US could present itself as taking the lead in humanitarian affairs. Knowing that Austin was a “deeply religious” Congregationalist Christian—a denomination with ties to the temperance, abolitionist, and women’s suffrage reform movements in the US—Lemkin emphasized the progressive aspects of a genocide convention.⁷¹⁵ Lemkin’s persuasion worked, and his ability to frame the convention within the tradition of progressivism won the further support of Corbett Ashby, who organized a private gathering of women from around the world to discuss genocide.

In his autobiography, Lemkin made clear that the UN Genocide Convention could never have succeeded if it were not for the support of the UN women’s organizations. “In all objectivity,” he wrote, “in 1945 and in subsequent years the contribution of individual women and of women’s organization to the issue was considerable.”⁷¹⁶ Two prominent

⁷¹⁴ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 123.

⁷¹⁵ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 124.

⁷¹⁶ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 125.

figures at the gathering organized by Corbett Ashby emerged as champions of the convention, Frances Perkins, the former head of the Civil Service Commission under the Roosevelt Administration, and the Swedish archeologist Dr. Hanna Rydh, president of the World Women's Alliance.⁷¹⁷ Equally important were the testimonies given by two Czechoslovakian women at the women's meeting. After Lemkin explained the concept of genocide, they described their experience of being tortured at the hands of Axis soldiers. In the following days, Lemkin "noticed growing interest among the delegates" as members of the women's groups began persuading their delegations of the merits of a convention against genocide.⁷¹⁸

Lemkin was certainly not above framing the genocide convention in terms that his audience would like to hear. However, Lemkin's appeal for the support of women's groups was not capricious, invented to sell his ideas to another interest group. Remember that Lemkin had been demanding, behind the scenes, that the Nuremberg judges include under the category of acts of genocide "forced sterilizations," "forced abortions," "the abduction of children," and the use of rape "to compel ... women to bear children for your country."⁷¹⁹ Lemkin's ideas followed from his analysis of the Nazi genocide in *Axis Rule*, where he wrote that some of the most effective techniques of genocide were a patchwork of Axis laws that legalized and encouraged the forced impregnation of women by German soldiers in occupied countries. In the Axis genocide, Lemkin identified decrees and regulations separating men and women, making it illegal for women of

⁷¹⁷ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 124.

⁷¹⁸ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 126.

⁷¹⁹ Lemkin, "Raphael Lemkin to the Right Honorable David Maxwell Fyfe," AJHS, Box 1, Folder 18, August 26, 1946, 1-2.

approved racial groups in Northern Europe to resist the sexual demands of German soldiers, rewarding German soldiers for having illegitimate children, and laws to subsidize women in occupied countries who were forcibly impregnated.⁷²⁰

Although the 1899 and 1907 Hague Conventions did not explicitly state that rape and sexual assault were war crimes, scholars have asserted that these crimes were considered crimes under customary international law and referred to under euphemisms of protecting “family honor and rights.”⁷²¹ The euphemistic language was the beginning of long tradition in international law that essentialized gender roles and conceptualized prohibitions on sexual violence as protections of a women’s dignity, not individual rights.⁷²² The charters of the Nuremberg and Tokyo tribunals made no reference to sexual violence, even though a great deal of evidence of sexual violence was brought to both tribunals.⁷²³ In the Tokyo trials rape was mentioned in the charges, but only indirectly as Japanese commanders were found guilty of allowing soldiers under their command to commit rape.⁷²⁴

To be clear, Lemkin did not frame sexual assault in terms of violating a woman’s “honor,” but rather as a violation of the woman as a means of committing genocide. In *Axis Rule*, he was concerned with “forced impregnation” more from the perspective of

⁷²⁰ Lemkin, *Axis Rule in Occupied Europe*, pp., ix, xiv, 87, 213, 504.

⁷²¹ Cherif Bassiouni, *Crimes Against Humanity in International Law* (Leiden: Martin Nijhoff, 1999), 348. See Article 46 of the 1907 Hague Convention.

⁷²² Judith Gardam, “Women and the Law of Armed Conflict: Why the Silence?” *International and Comparative Law Quarterly*, 46 (1997).

⁷²³ Kelly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Leiden: Martin Nijhoff, 1997), 186-196. On Japanese war crimes and violence against women, see United Nations, Preliminary Report Submitted by the Special Rapporteur on Violence Against Women, its Causes and Consequences, (UN Doc. E/CN.4/1995/42), 1994, at paragraphs 288-290.

⁷²⁴ Cherif Bassiouni, *Crimes Against Humanity in International Law*, 80, 125, 186.

the perpetrator's intention to destroy a social group, and not necessarily from the perspective of the individual victim whose rights and dignity were violated. In the case of the Nazi genocide, the claim was somewhat tenuous since Nazi ideology would not have allowed German soldiers being sexually engaged with non-Germans, even if the sexual relation was forcible and violent—and, indeed, Lemkin's analysis of "forced impregnations" focuses mainly on the cases in northern Europe, where the Nazi party tended to view the people as being biologically close to their master race.

Nevertheless, Lemkin's proposals to the Nuremberg tribunal to outlaw forced abortions, rape, and forced marriage would have placed him at the vanguard in international law.⁷²⁵

It would not be until the 1990s that these crimes—which are now recognized as tactics employed by genocidal regimes against individuals to traumatize and shatter the bonds of social solidarity—were systematically discussed by scholars as a feature of the Nazi genocide, or any other genocide.⁷²⁶

With momentum building in favor of outlawing genocide, the president of the legal committee assured Lemkin that there were enough votes on the steering committee to approve putting a genocide convention onto the agenda of the General Assembly.

⁷²⁵ Rape was explicitly listed under the Control Council Law No. 10, signed by the Allies in 1945 to try Nazi war criminals who were not brought up on charges at the Nuremberg Tribunal. See Control Council Law No. 10, Article II(1)(c). The 1949 Geneva Conventions outlawed rape, but it wasn't until 1969 that international law dealt with sexual violence in any meaningful way, when the UN established the Commission on the Status of Women. Even then, UN declarations, treaties, and Geneva Convention Additional Protocols of 1977 were primarily focused on protecting women according to women's traditional gender roles as expectant and nursing mothers during times of armed conflict. For a critical assessment, see Judith Gardam, "Women and the Law of Armed Conflict: Why the Silence?"

⁷²⁶ Helen Fein, "Genocide and Gender: The Uses of Women and Group Destiny," *Journal of Genocide Research* 1 (1999). Also see Lenore J. Weitzman, "Women," *The Oxford Handbook of Holocaust Studies*, eds. Peter Hayes and John K. Roth (Oxford: Oxford University Press, 2010). For a recent study of gender and the Holocaust, see Sonja Maria Hedgepeth and Rochelle G. Saidel, eds., *Sexual Violence Against Jewish Women During the Holocaust* (Lebanon, NH: Brandeis University Press and the University Press of New England, 2010).

When the item was reached, Adlai Stevenson took the floor and asked that the convention be included in the agenda in the name of the US. Lemkin's had succeeded in convincing the US to take the lead on humanitarian law. But, in echoes of Cold War politics to come, the Russian delegate objected several times to Lemkin's surprise, saying simply "it is not necessary." At Nuremberg, Lemkin wrote, he had heard rumors that the Soviets were executing German collaborators and continuing to send political prisoners to labor camps in Siberia. "Was this the reason for the Russian delegation's opposition," Lemkin surmised, or was it simply their desire to oppose the interests of the US?⁷²⁷

Later that night, Lemkin called on the Czech minister of foreign affairs, Jan Masaryk, to discuss the Russian opposition. Lemkin pleaded with Masaryk for help in lobbying the Russian delegation: "I have studied the writings of your father, Professor Tomáš Garrigue Masaryk, who devoted his life to explaining the cultural personality of nations ... If your father were alive, he would be fighting for the Genocide Convention. I appeal now to his son." Accusing Lemkin of "making a sermon," Masaryk interrupted and asked Lemkin to simply tell him what he should tell the Russian delegation. "I am making a sermon to Vishinsky through you," Lemkin responded, instructing Masaryk to remind the Soviet minister of foreign affairs Andrei Vyshinsky that Communists and Soviet prisoners of war died with Jews in the Nazi massacre of 100,000 people at Babi Yar in Kiev.⁷²⁸ Vyshinsky had denounced Lemkin's ideas of barbarism and vandalism in a 1935 Russian pamphlet titled *Counterrevolutionary*

⁷²⁷ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 126.

⁷²⁸ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 127. Frieze notes that Lemkin would have known that Vyshinski, one of Stalin's most trusted officials, orchestrated the Moscow show trials of 1936-1938, which Lemkin later considered a facet of Stalin's genocides (p. 250 n. 20).

Intervention Through Criminal Law as “capitalist intrigue” by European states to intervene in the domestic affairs of the USSR.⁷²⁹ So, Lemkin told Masaryk, “why not tell him that penicillin is not an intrigue against the Soviet Union.” Taking out his schedule for the next day, Masaryk sarcastically wrote “Vishinsky. Genocide. Penicillin.” without fully knowing why he was supposed to mention penicillin as an intrigue. The next day the Czech foreign minister called to tell Lemkin that Vyshinsky promised the full cooperation of the USSR.

Before the UN Genocide Convention was brought to the General Assembly, Lemkin made the acquaintance of another important ally, Riad Bey, an Egyptian jurist representing Saudi Arabia. The Arab delegates at the convention, Lemkin wrote, spent hours “devouring books and transforming each of them into a firmament of stars” until they “excelled over the intellectuals of Europe.” Judge Riad, himself, was “a treasure of knowledge, imagination, feelings, and wisdom.”⁷³⁰ In November 1946, the two were quickly becoming friends, discussing the Persian philosopher Abu Ali Sina, the Spanish Islamic theologian Ibn Rushd, and the “golden period of cultural and religious tolerance that adorned the tenth through the thirteenth centuries of the rule of the caliphs in Spain, and which has no equal in history.” In modern times, Lemkin wrote in his autobiography describing his conversation with the Egyptian judge, tolerance is “based on religious and cultural indifference and weakening of beliefs.” What modern humanitarian law needed was an infusion of the philosophy of the Arab caliphs who “permitted themselves at that period a leap into the loving human conscience, which created a spiritual federation of

⁷²⁹ Weiss-Wendt, “Hostage of Politics: Raphael Lemkin on ‘Soviet Genocide’,” 558, n. 4.

⁷³⁰ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 130.

minds and souls.” Lemkin recalled that Riad believed “the real spiritual values of any period are never lost.” The judge then concluded their conversation without sentimentality: “to a certain extent, if we work for it, we can only make this period live again through the Genocide Convention.”⁷³¹

By framing the law against genocide within the context of classic Islamic values of cultural and religious tolerance, Lemkin ensured that Riad “became the spokesman for the Genocide Convention in the Arab world.” Long in to the next decade, the two worked together, drafting an Egyptian law against genocide and advocating for similar domestic laws against genocide throughout the Middle East to protect national cultural diversity and outlaw colonial destruction.

Riad was more than a cultural ambassador. Because Lemkin was not a part of an official delegation, he could not play a procedural role in the committee proceedings, which he could only attend if he were invited. Instead, Lemkin relied on delegates like Riad to defend his interests behind closed doors. In his autobiography, Lemkin wrote that Riad single-handedly saved the convention one Saturday morning, on November 30, 1946. The official UN document of the meeting notes that the Colombian delegate recalled, for the record, that the Nuremberg Tribunals defined genocide as “systematic extermination of a group of persons,” and urged that the word extermination, not genocide, should be used to define the crime under international law in addition to “resolutions expressly condemning persecutions for reasons of language, race, or religion.”⁷³² The meeting minutes do not mention that the word “genocide” had actually

⁷³¹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 130.

⁷³² UN Doc. A/C.6/91.

been removed from the text of the draft resolution for the day's meetings and replaced with "extermination," as Lemkin wrote in his autobiography.⁷³³ However, it is clear from the record that there was a proposal to remove the word genocide and replace it with "extermination," and then only "denounce" the destruction of languages, beliefs, religion, and cultures. Such changes would have removed the protection of cultural diversity from the purview of international law, Riad insisted, defending Lemkin's formulation. Later, Lemkin heard from others that "Riad pleaded beautifully and eventually won." Only then did Lemkin realized "how close I came to losing this fight."⁷³⁴ During the meeting, Riad argued that genocide "had existed since the beginning of the human race" and clearly "violat[ed] the principles of the rights of man," but was not yet recognized as such under existing laws.⁷³⁵

The subcommittee was now ready to prepare a final draft convention on the prevention and punishment of the crime of genocide committed against "religious, racial, political [groups] or any other grounds." While Lemkin had won his struggle to include the word genocide into the UN proceedings, he would have to make concessions. The first began with subtle British attack, insisting that the categories of "national and ethnical groups" be removed as groups protected by the convention.⁷³⁶ This took Lemkin by great surprise given that Sir Harley Shawcross was leading the opposition to genocide

⁷³³ Existing scholarship has interpreted Lemkin as inflating the role of Riad in securing support for the genocide convention, citing the reports of the sub-committee on the Legal Committee meetings in December 1946 that contain no evidence of the debate (see UN Doc. A/c.6/120; UN Doc. A/C.6.127; UN Doc. A/231). See Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*. However, Riad's defense of using the word genocide, which Lemkin described in his autobiography, took place on November 30, 1946.

⁷³⁴ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 131.

⁷³⁵ UN Doc. A/C.6/91.

⁷³⁶ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 86.

in the UN, when he had insisted on using the word at Nuremberg even though his speech writer Lauterpacht refused to include the word in his speeches.

In December 1946, the General Assembly passed Resolution 96-I, calling for genocide to be enacted as a crime with universal jurisdiction under the domestic legal codes of all member states, independent of war crimes. The resolution, approved unanimously, called for domestic cooperation of all states to coordinate the international prosecution of genocide.⁷³⁷ “The first stage of the birth pangs of the Genocide Convention was over,” Lemkin recalled. He could not have known that the US and UK governments had issued private orders to their delegates to either bury the convention in subcommittees or confirm genocide in a vaguely-worded resolution that could satisfy the humanitarian activists until the issue faded.⁷³⁸ But Lemkin was wise enough to realize that, by the end of 1946, Shawcross was publically presenting himself as a champion of the concept of genocide while maneuvering to kill the convention procedurally. Supportive on the record, all the way up until 1948, Shawcross was privately hostile towards Lemkin and the idea of a genocide convention. In a letter to the British legal advisor Eric Beckett, Shawcross called Lemkin a “bore” with “a bee in his bonnet about genocide.” “My own feeling is that they [the supporters of a genocide convention] must be dealt with in a hurry by adopting merely declaratory resolutions,” Shawcross

⁷³⁷ Kuper, *Genocide*, 23. Also see Pieter Nicolaas Drost, *Genocide, United Nations Legislation on International Criminal Law* (Leyden: A. W. Sythoff, 1959); Nehemiah Robinson, *The Genocide Convention: A Commentary* (New York: Institute of Jewish Affairs, 1960); Matthew Lippman, “The Drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide,” *Boston University International Law Journal*, Vol. 3 (1984), 1-65. The standard account of the UN drafting process is Schabas, *Genocide in International Law*, which supersedes previous scholarship.

⁷³⁸ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 86-87.

continued, suggesting the UK seek symbolic humanitarian provisions that were legally and politically ineffectual.⁷³⁹

6.2 THE SECRETARIAT DRAFT

Early in 1947, the Secretary General instructed the Economic and Social Council (ECOSOC) to draft a convention on the crime of genocide. The delegates in line with the US and Britain were stalling. Cuba suggested the convention be referred to an ad hoc committee, while the US proposed that the Commission on Human Rights draft the convention. Lemkin interpreted the US proposal as an attempt to sideline the genocide convention by burying it in an overburdened Human Rights Commission which, even if they found time to visit the concept of genocide, would have subsumed Lemkin's ideas as a facet of human rights, not international humanitarian law. In March the ECOSOC returned the convention to the Secretary General, who brought in three experts to draft the convention: Lemkin, his longtime friend and colleague Vespasian V. Pella, and Henri Donnedieu de Vabres, a former Nuremberg judge and professor of law at the University of Paris.⁷⁴⁰ The committee was instructed to define genocide in a way that did not overlap with the existing crimes against humanity that Lauterpacht framed at Nuremberg.⁷⁴¹ But, as Schabas smartly observes, they were under implicit instructions from the Secretary General to make sure the crime of genocide avoided the question of minority rights,

⁷³⁹ Quoted in Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 95.

⁷⁴⁰ See UN Doc. E/330; UN Doc. E/AC.7/15; UN Doc. E/AC.7/15/Add. 2. See Drost, *Genocide, United Nations Legislation on International Criminal Law*. And Schabas, *Genocide in International Law*, 59-60.

⁷⁴¹ UN Doc. E/447, 15.

which was being considered by the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities and the Commission on Human Rights.⁷⁴²

Lemkin was pleased with these developments initially. The Secretary General had distanced the crime of genocide from the troubled minority rights treaties of the League of Nations and the Nuremberg judgment which, Lemkin felt, had failed to address the inadequacies of existing international humanitarian law. However, Lemkin's relationship with de Vabres began to deteriorate. The two feuded publically over Vabres' belief that allowing for national and cultural destruction in the definition of genocide was tantamount to reconstituting the minority protection treaties of the league.⁷⁴³ For Lemkin, to remove the protection of nations from the definition of genocide would destroy the convention's ability to protect nations as families of mind.

While Lemkin's working relationship with the committee began to crumble, political opposition to the convention solidified inside the British Foreign Office. Beckett advised that the resolution on genocide was "useless" and the delegation "should not mind if it got lost somewhere and died a natural death."⁷⁴⁴ The US opposed provisions of Lemkin's draft that outlawed hate speech and wished to delete provisions outlawing other "preparatory acts" that could lead up to genocide. The plan to establish a criminal court to prosecute crimes of genocide provoked wide controversy, as well.⁷⁴⁵ Delegates from around the world argued that prosecuting genocide would violate the principle of national

⁷⁴² Schabas, *Genocide in International Law*, 60.

⁷⁴³ Both Pella and de Vabres argued against the inclusion of cultural genocide. But it seems Pella's longstanding friendship with Lemkin preserved their working relationship. See Schabas, *Genocide in International Law*, 61.

⁷⁴⁴ Quoted in Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 94.

⁷⁴⁵ Schabas, *Genocide in International Law*, 65. See UN Doc. A/401.

sovereignty upheld in the UN Charter.⁷⁴⁶ The French comments on the draft took a reverse approach, supporting international tribunals but rejecting provisions to enshrine genocide into domestic law. The French position demanded that genocide be made a purely international crime, subsumed under crimes against humanity as affirmed by the Nuremberg judgment.⁷⁴⁷ The formulation, Schabas notes, would have excluded the aspects of cultural destruction from punishable acts while making genocide an explicitly state-directed action that could be prosecuted only in international courts.⁷⁴⁸ As Lemkin observed, the French demand to keep genocide strictly an international crime would have prevented France from being accused of committing genocide in French colonies, which the government in Paris claimed were part of the French republic and therefore the treatment of their colonies was not under the jurisdiction of international law.

The largest objections to the convention, however, were not over the issue of international or domestic tribunals, or the prohibition of hate speech. Rather, the delegates were reticent about outlawing cultural destruction and including political groups as legally recognized potential victims of genocide. While opposition to the inclusion of political groups in the convention was led by the Soviet bloc, the US also fretted about the issue.

However, for the US, the cultural acts of genocide were much more troublesome. In a memorandum to Robert Lovett, the Under Secretary of State, US delegates Ernest Gross and Dean Rusk wrote that the US would support the inclusion of political groups in

⁷⁴⁶ UN Doc. A/401/Add.1.

⁷⁴⁷ UN Doc. A/AC.20/29. And see UN Doc. A/401/Add 3.

⁷⁴⁸ Schabas, *Genocide in International Law*, 65.

the convention so long as it was understood that the offense was restricted to their physical annihilation. But a more troubling proposition, Gross and Rusk cautioned, was that the “sporadic outbreaks against the Negro population of the United States” could constitute physical and cultural genocide. So long as the offense of genocide “will not exist unless part of an overall plan to destroy a human group,” the US was in little danger of being held accountable for genocide. Should charges nevertheless “be brought to the attention of the United Nations,” they added, “no possibly can be foreseen of the United States being in violation of the treaty” because “the Federal Government would under the treaty acquire jurisdiction over such offenses.”⁷⁴⁹ The memo between the three statesmen who would rise to prominence in the 1950s and 1960s foreshadowed the US government’s later refusal to ratify the UN Genocide Convention on the grounds that the convention gave international courts jurisdiction over the domestic US affairs, potentially allowing the US and US citizens to be charged with genocide against African-Americans and Native Americans.

Pella and de Vabres argued that the acts of genocide referred to as cultural genocide “represented an undo extension of the notion of genocide and amounted to reconstituting the former protection of minorities under the cover of the term genocide.”⁷⁵⁰ Lemkin argued, on the contrary, that so-called cultural genocide was different than policies of forced assimilation and violations of the rights of minorities. The so-called cultural genocide, Lemkin wrote, was “a policy of drastic methods, aimed at the rapid and complete disappearance of the cultural, moral and religious life of a

⁷⁴⁹ Quoted in Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 99.

⁷⁵⁰ UN Doc. E/447, 27.

group of human beings.” The inclusion of this aspect of the act of genocide in international law was justified, he argued, “not only from the moral point of view, but also from the point of view of the value of the contribution made by such groups to civilization generally. If the diversity of cultures were destroyed, it would be as disastrous for civilization as the physical destruction of nations.” Moreover, he contended, if these acts were outlawed “by municipal law” around the world, “there was no reason why they should not be included in the international crime of genocide.”⁷⁵¹ Lemkin’s reasoning was sound enough to convince all except the US, France, and the Netherlands. For the Netherlands, the provisions listed under the third category of acts of genocide were a matter of human rights.⁷⁵² The US, in agreement with de Vabres and Pella, contended that cultural genocide was nevertheless tantamount to minority rights which, as the French representatives argued, “invites the risk of political interference in the domestic affairs of States ... connected with the protection of minorities” and was therefore beyond the purview of a genocide convention.⁷⁵³

Despite the disputes, Lemkin, Pella, and de Vabres, managed to produce a twenty-four-article draft convention in June 1947 that proclaimed in language taken straight from *Axis Rule in Occupied Europe* that genocide was “the intentional destruction of a group of human beings” that “inflicts irreparable loss on humanity by depriving it of the cultural and other contributions of the group so destroyed.”⁷⁵⁴ Somehow, the drafting committee

⁷⁵¹ UN Doc. E/477, 27-28.

⁷⁵² UN Doc. E/623.

⁷⁵³ UN Doc. A.401/Add.3. Also see UN Doc. E/623.

⁷⁵⁴ See the preamble to the Secretariat Draft Genocide Convention, UN Doc. A/AC.10/41. The draft convention was originally published in French. For an English translation, see Schabas, *Genocide in International Law*, 655.

managed to slip references to political groups as potential victims of genocide back into late working drafts, even though they had been excluded in drafts submitted to the General Assembly. As Schabas observes, there is nothing reported in the official records and debates to explain why and how political groups came to be included in the draft.⁷⁵⁵ The secretariat draft thus sought to prevent and punish “the destruction of racial, national, linguistic, religious, or political groups of human beings,” to outlaw hate speech and propaganda that could incite populations towards genocide and “make [genocide] appear as a necessary, legitimate, or excusable act” and, lastly, to establish an international criminal court to enforce the law.⁷⁵⁶

With the draft complete, the convention still had to be brought before the General Assembly. Stymied by British, Russia, and US obstructions, Lemkin resigned from the US War Department in 1947 to dedicate his full attention to lobbying for the convention. As an Advisor of Foreign Affairs, he was giving up the privileges of a colonel in the US Army and a salary of \$7,500. Over the summer, he moved in with friends on Riverside Drive in New York, and then borrowed money to pay for a cheap apartment on 102nd street.⁷⁵⁷ Without an income, Lemkin fell deeply into debt, and he developed serious health problems related to high blood pressure, sleep deprivation, and stress. However, without a job and living on loans from friends, he could dedicated all of his energies towards launching a world-wide movement to support the convention.

⁷⁵⁵ Schabas, *Genocide in International Law*, 154.

⁷⁵⁶ UN Doc. A/AC.10/41.

⁷⁵⁷ Szawłowski, “Raphael Lemkin’s Life Journey,” 45-48.

Lemkin understood that he needed the support of the most influential delegations. But, having learned from his failures at the League of Nations and Nuremberg, he now knew that simply because the delegates liked his ideas in 1946 did not guarantee that their governments would support his ideas in 1947. Instead of working to persuade the delegates of the major powers intellectually, Lemkin would have to persuade them politically. His campaign would work to maintain the support of his coalition of smaller states while mobilizing a legion of journalists, activists, social leaders, poets, and statesmen acting as private citizens to pressure the delegates of the world's more powerful states into supporting humanitarian law, at least nominally. Scholars have pointed out that human rights in the twentieth century have been advanced not by governments, but by social movements that exert influence and pressure through informal political channels, particularly after the mid 1970s.⁷⁵⁸ Lemkin can be seen as a harbinger of this political trend, which was novel terrain for an international lawyer.⁷⁵⁹ The eventual passage of the UN Genocide Convention is indicative of the larger phenomenon where the tireless effort of twentieth-century activists brought humanitarian institutions into existence by coordinating movements to lobby governments and international bodies to adopt these laws.⁷⁶⁰

In the summer of 1947, Lemkin began coordinating a global movement to support the convention through an impressive barrage of memos, telephone calls, and telegraphs.

⁷⁵⁸ Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley: The University of California Press, 2008). Richard Falk, *Achieving Human Rights* (New York: Routledge, 2009). Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2012).

⁷⁵⁹ Mira L. Siegelberg, "Unofficial Men, Efficient Civil Servants: Raphael Lemkin in the History of International Law," *Journal of Genocide Research*, 15 (2013).

⁷⁶⁰ Falk, *Achieving Human Rights*.

While not a mass movement, the movement Lemkin instigated resembled what Charles Tilly and Sidney Tarrow have termed contentious social movements, straddling the boundary between institutionalized and non-institutionalized politics.⁷⁶¹ Lemkin embarked on educational campaigns intended to build an organizational base with radio addresses broadcast across the world, from Guatemala to Burma, and speaking engagements with women's groups, Jewish groups, Christian charities, and any segment of global civil society that would grant him an audience. During this time, the World Jewish Congress and the Consultative Council of Jewish Organizations joined the World Alliance of Women as the movement's most important sources of institutional support.⁷⁶²

In addition to soliciting the formal support of influential non-governmental organizations (NGOs), Lemkin was also successful in diffusing control over the movement. He was so successful that, by 1949, he complained that he had lost control over the movement he inspired. Yet, in much of the scholarly and popular literature, Lemkin is erroneously presented as a lone advocate of the UN Genocide Convention, a sort of misunderstood prophet. While it is certainly true that Lemkin coined the word genocide, drafted the law, and lobbied tirelessly, the campaign to outlaw genocide succeeded because it was a movement, not a one-man crusade. James Rosenberg, chairman of the Human Rights Committee of the National Conference of Christian and Jews (NCCJ) in the US, became one of Lemkin's closest friends and a partner in leading

⁷⁶¹ Charles Tilly and Sidney Tarrow, *Contentious Politics* (Oxford: Oxford University Press, 2007), 124-125.

⁷⁶² Korey, *An Epitaph for Raphael Lemkin*, 48-49. Maurice Perlzweig of the World Jewish Congress was a close confidant of Lemkin, and would report back on the sentiment world leaders shared on the Genocide Convention. See, for instance, Perlzweig's letter to Lemkin about his meeting with the Italian Foreign Minister, and later the Vatican leadership, to discuss the Roman and Catholic positions on genocide. "Correspondence from Maurice L. Perlzweig," AJHS, Box 1, Folder 18, August, 29, 1947.

the movement. Rosenberg founded and chaired the US Committee for the UN Genocide Convention and coordinated the public relations campaign in the US to outlaw genocide over the better part of the next decade, lobbying elected officials and mobilizing Jewish support for the UN Genocide Convention.⁷⁶³

Pearl Buck, the winner of the 1938 Nobel Prize in Literature, was another important figure in the movement to enshrine the UN Genocide Convention. In a 1947 letter to Lemkin, simply dated “Sunday,” Buck enclosed what she called a “proposed manifesto” for the movement to use. The manifesto declared that the genocide committed by Hitler was one example of what had repeatedly taken place in history. “The weak, the helpless, the innocent, wherever they are, live in continuing fear,” she wrote, because “genocide in the world community is still allowed, condoned and sometimes even rewarded.” “Life in our world,” she continued in language clearly coordinated with Lemkin, “is enriched by the diversity of cultures and ideas which proceed from variety in racial, national and religious groups.” The “physical” and “spiritual life” of human groups, “united in ethnical, religious, and cultural ties, are a great living force in civilization,” she concluded. The UN Genocide Convention was necessary to raise the “standards of morality and international law” because “the arrogant continue ... as potential oppressors, unless and until the principles of human decency are transferred into international attitudes, statements and laws.”⁷⁶⁴

The American Jewish Historical Society archives contain hundreds of short letters and memos Lemkin send to his “friends,” asking about their health, families, concerns, or

⁷⁶³ Korey, *An Epitaph for Raphael Lemkin*, 49.

⁷⁶⁴ Pearl Buck to Raphael Lemkin, Correspondence and Proposed Manifesto, AJHS, Box 1, Folder 17, Dated Sunday (circa 1947).

work before updating them on the status of the effort to outlaw genocide. From these letters, it is clear that Lemkin had a gift for securing verbal promises of support. Many of the memos conclude by reminding the person of his or her pledge of solidarity. One such friend was Leon Blum. There is no evidence that the former Prime Minister of France was influential in building French support for the UN Genocide Convention. Yet Blum—a member of the modern left who survived imprisonment in the Buchenwald and Dachau camps—would seem a natural ally in the effort, and even made a special visit to Yale to visit Lemkin in 1948 and discuss the attempt to criminalize genocide. There were many others who Lemkin managed to bring into his movement, from the novelist Aldous Huxley to the Norwegian Chief Justice Paal Berg and Édouard Herriot.⁷⁶⁵

Lemkin wrote that his idea to lobby world figures came to him after a conversation with Frede Castberg, a professor of international law and a member of the Norwegian delegation. Castberg suggested to Lemkin in 1946 that he gain the support of a coalition of smaller countries in the UN because the agendas of the delegates were formed in close communication with their governments, and governments of the smaller states relied more heavily upon international law to preserve peace.⁷⁶⁶ Castberg had promised to try and influence the Norwegian delegates, but he reminded Lemkin that it was ultimately Oslo that needed to be influenced, not the delegates at the UN who served at the pleasure of the Oslo government. Some of the letters Buck and Lemkin sent were obviously strategic, sent to ministers and elected officials to solicit their support. However, the majority of the letters they sent were intended to influence the world's

⁷⁶⁵ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 191.

⁷⁶⁶ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 121.

capitals through public opinion. With Rosenberg's help, they sent hundreds of letters to artists, journalists, and civil society leaders, urging them to write editorials and publically speak about their support for a genocide convention. The list included the Norwegian poet and anti-fascist leader Ingeborg Refling Hagen, Vice President of the Swedish Red Cross Count Folke Bernadotte, Princess Julianna of Holland, the Colombian essayist Baldomero Sanín Cano, and Gabriel Mistral, the Chilean poet, diplomat, educator, and feminist who won the 1945 Nobel Prize for Literature. In the coming years, Mistral formed a close friendship with Lemkin and Buck, and became one of the strongest advocates for the convention.⁷⁶⁷

The New York Post reporter John Hohenberg remembers meeting Lemkin in his office at Lake Success. The stranger "seemed harmless" in his "well-worn double-breasted suit, scuffed black shoes, and a dark necktie askew against a none-too-clean white shirt collar," Hohenberg wrote. "You and I, we must change the world," the reporter remembered Lemkin announcing, to which he replied: "To change the world you must see *The New York Times*."⁷⁶⁸ Yet, Hohenberg recalled, Lemkin's charm transformed him from an "irritant" on first impression into a loveable, "well-meaning fanatic."⁷⁶⁹ *The New York Times* reporter Kathleen Teltsch was less admiring, and described Lemkin as a "shadow, a presence, floating through the halls and constantly pulling scraps of paper out

⁷⁶⁷ "MaKay Radio Announcement, September 3, 1947, Correspondence to Refling Hagen," AJHS, Box 1, Folder 18, September 3, 1947; "Drafts of Cable Communication, September 3, 1947," AJHS, Box 2, Folder 7, September 3, 1947; "Correspondence from B. Sanin Cano to Pearl S. Buck, November 15, 1947," AJHS, Box 2, Folder 7, November 15, 1947.

⁷⁶⁸ John Hohenberg, "The Crusade That Changed the U.N.," *Saturday Review*, November 9, 1968, 86.

⁷⁶⁹ Korey, *An Epitaph for Raphael Lemkin*, p. 46.

of his pockets.”⁷⁷⁰ He was not loved, Teltsch continued, “because he was known as a time consumer. If he managed to nab you, you were trapped. Correspondents on deadline used to run from him like mad. But he would run after them, tie flopping in the air, genocide story at the ready.”⁷⁷¹ This “unmitigated nuisance” carried himself with “exaggerated dignity,” Hohenberg wrote, and managed to persuade a handful of highly professional and respected journalists to abandon their ethics, their “Puritan objectivity,” and editorialize in their stories on his behalf.⁷⁷² Lemkin “virtually forced the United Nations to adopt his treaty outlawing genocide,” Hohenberg recalled. But only on the outside did it seem he was “one man against the whole world.”⁷⁷³ “Lemkin made a world figure of himself,” Hohenberg concluded: but he did it “with our considerable assistance.”⁷⁷⁴

Lemkin’s ability to cultivate strong relationships with reporters and journalists allowed the movement to leverage politically contentious claims through the media. His command was such that, at the very moment Shawcross began to coordinate the quiet British attack on the convention, Lemkin took to the British airwaves with a radio addresses reminding the British public that “genocide was never before punished in history” because “we were lacking real moral solidarity in protecting the basic values of our civilization, life, and culture.”⁷⁷⁵ In the next breath, he proclaimed that “decent

⁷⁷⁰ Power, *A Problem from Hell*, 51-52.

⁷⁷¹ Power, *A Problem from Hell*, 51-52.

⁷⁷² Korey, *An Epitaph for Raphael Lemkin*, 46.

⁷⁷³ John Hohenberg, *The Pursuit of Excellence* (Gainesville: University Press of Florida, 1995), 237.

⁷⁷⁴ William Korey, *An Epitaph for Raphael Lemkin*, 47.

⁷⁷⁵ “Broadcast on the Genocide Convention by Professor Raphael Lemkin recorded in New York on July, 1947 for release by the B.B.C in London the following days, July 9, 1947,” AJHS, Box 6, Folder 1, July 9, 1947.

societies have to pay the costs of genocide” and told the British public that Sir Shawcross had taken a leading role in supporting the convention, quoting him as telling the UN delegates that genocide “is a burning question which cannot wait, let’s declare genocide a crime and let’s do it now.” If the UK delegation was going to produce a historical record showing they supported the convention at the UN while working to kill the convention procedurally, then Lemkin would use Shawcross’s words against his actions. The radio address, of course, did not change the British position. However, it shows that Lemkin was willing to try to embarrass the British delegation, complementing Shawcross’s commitment to humanitarian law and thereby holding him accountable to his own declarations of support before the British public.

Whereas Lemkin preferred stubbornness and pugnacity, Pearl Buck was gifted in exerting a friendly influence. The novelist, born to missionary parents and raised in China, was notorious in certain circles in the US for denouncing missionary work as “uncharitable, unappreciative and ignorant” and so lacking in “sympathy for the people they were supposed to be saving, so scornful of any civilization except their own ... that my heart has fairly bled with shame.”⁷⁷⁶ In other circles, this criticism of Western chauvinism made her an adored humanitarian. While her stature as a world figure was important to building support for the movement to outlaw genocide, her sensitivity to Chinese affairs, culture, and philosophy—and her ability to speak several dialects of Chinese fluently—endeared her to her many of the Chinese delegates at the UN. Having framed the genocide convention within the context of outlawing the destructive forces of chauvinism and colonial arrogance, Buck called upon the Chinese delegates for support

⁷⁷⁶ Pearl S. Buck, “Is there a Case for Foreign Missions?” *Harper’s* 166 (January 1933), 143-155.

at strategic points in the tumultuous year of 1947. In contrast to the British, the Chinese delegation spoke openly against the convention but, at key moments, Buck could ensure that they would act procedurally to preserve the law.

One diplomat, Liu Chieh, seems to have been especially close to Buck. While Lemkin began his public relations campaign in the British media, Buck convinced the Chinese delegation to block the British and US efforts to encircle the convention in pointless committee reviews. Liu Chieh was presiding over Subcommittee 2 of the Legal Committee, which was dealing with the drafting of the convention in November, and was therefore in a position to ensure the committee process moved Lemkin's law along, instead of letting it die in endless reviews. "China has been in the vanguard of those who desire to see at all costs, a really living convention of genocide put into effect," Liu Chieh wrote to Buck in friendly terms: "We of the Chinese Delegation are especially aware of the urgency of the task before us ... in our opinion, one of the chief functions of this body will be to complete the study of the draft convention on genocide in order that there shall be no further delay in bringing before the General Assembly a final text to be adopted."⁷⁷⁷ With the Chinese delegation expediting the process and blocking the British moves to stall the convention, on November 21, 1947, the General Assembly was able to vote on, and pass Resolution 180 (II), ordering the ECOSOC to continue work on the convention through the spring in anticipation of the 1948 General Assembly in Paris.

6.3 THE AD HOC COMMITTEE DRAFT

⁷⁷⁷ "Correspondence from Liu Chieh to Pearl S. Buck, November 1, 1947," AJHS, Box 2, Folder 7, November 1, 1947.

As it became increasingly evident that the UN might enshrine a convention against genocide, the debates over the draft intensified. An ad hoc committee was established in the spring to refine the Secretariat Draft, looking specifically at what groups should be protected under the convention and what acts would constitute genocide. Of particular concern was whether “moral and sociological” acts of destruction were to be included as acts of genocide punishable under the convention.⁷⁷⁸ The committee members were also under directions to clarify who could be liable for genocide—rulers only, or rulers, officials, soldiers, and private citizens?⁷⁷⁹ Lastly, the committee had to sort out whether national or international courts would punish genocide, and what the relationship was between the UN Genocide Convention and the Nuremberg principles.⁷⁸⁰

The attack against including political groups was rekindled during the debates in the Ad Hoc Committee. Russian delegates, who sought to define genocide as closely as possible to fascist and Nazi ideologies, wanted to achieve two things: first, to remove political groups as protected groups and, secondly, to define genocide as a crime emanating from racial theories and national hatreds.⁷⁸¹ The Russian representatives argued the Nazis exterminated political opponents because they considered it a means towards their colonial project of destroying whole racial groups and, thus, genocide was

⁷⁷⁸ Schabas, *Genocide in International Law*, 70.

⁷⁷⁹ Schabas, *Genocide in International Law*, 70.

⁷⁸⁰ Schabas, *Genocide in International Law*, 71.

⁷⁸¹ Kuper, *Genocide*, 25.

not directly committed against political opponents.⁷⁸² Venezuela defended the states' right to handle domestic political affairs, and argued that including political groups would prevent states from dealing with dangerous political organizations, "hampering the action of Governments with regard to subversive activities."⁷⁸³ Moushong Lin of China added that political groups were transient in nature, with constantly shifting boundaries, and contained none of the "homogeneity" of ethnic groups, which the UN Genocide Convention sought to protect. Moreover, the Chinese delegation contended, the inability to define a political group empirically would render it difficult to prosecute genocide.⁷⁸⁴

It would be easy to interpret these critiques cynically and suggest that the UN member states were trying to protect their governments' right to kill, imprison, and destroy political opponents; however, Kuper argues, it is far more likely that the states feared that a convention protecting political groups would allow for international interference in their internal political affairs, especially if the convention included provisions for an strong international court.⁷⁸⁵ It is also likely that the Chinese delegation was honestly attempting to strengthen the convention. Removing political groups from the listed of protected groups, they argued, would help create a more robust international criminal court, with a clearer and more legitimate mandate to prosecute genocide with universal jurisdiction.⁷⁸⁶ Perhaps as a testament to Buck's lobbying, the Chinese delegation found inspiration in *Axis Rule in Occupied Europe* where Lemkin argued that

⁷⁸² United Nations, *Legal Committee, Summary Records, and Annexes*, Session 3, Part 1, October 14, 1948, 104.

⁷⁸³ Schabas, *Genocide in International Law*, 155. UN Doc. E/AC.25/SR.1, 4-8.

⁷⁸⁴ Schabas, *Genocide in International Law*, 71 and 155. UN Doc. E/AC.25/9; UN Doc. E/AC.25/SR.3.

⁷⁸⁵ Kuper, *Genocide*, 29.

⁷⁸⁶ Schabas, *Genocide in International Law*, 71 and 155. UN Doc. E/AC.25/9; UN Doc. E/AC.25/SR.3.

genocide could be committed through forced drug and alcohol use. The Chinese delegates pointed out the “Japanese occupation authorities in North-eastern China [who] utilized narcotic drugs” by forcibly imposing them upon Chinese citizens to “[undermine] the resistance and [impair] the physical and mental well-being of the Chinese people.”⁷⁸⁷ To the Chinese delegates, the convention offered a solution to China’s long history of imperial powers forcing narcotic drugs into Chinese markets.

As the Ad Hoc Committee was finishing the revised draft of the convention, the movement for a UN Genocide Convention had taken on a life of its own and Lemkin could now afford to return to work. James Rosenberg took the lead on the lobbying effort, and Lemkin joined Yale’s law faculty, giving courses on international law at the UN, the International Court of Justice, and international business transactions.⁷⁸⁸ Yale established a special Genocide Research Fund and provided Lemkin with research assistants, secretarial services, paid leave time, and funding to finance his lobbying efforts. With his faculty appointment, Lemkin began two book projects. The first, which he began writing in 1948, was tentatively titled *Introduction to the Study of Genocide*, and would provide a methodological sketch for studying genocide across the disciplines of history, sociology, political science, psychology, anthropology, economics, and the law. The second book project, which he began researching in 1948, was intended to be a three-volume work on the world history of genocide containing case studies that ranged from antiquity and the middle ages, to German colonial genocides in Africa. At times, he

⁷⁸⁷ Schabas, *Genocide in International Law*, 77. UN Doc. E/799, paragraph 17.

⁷⁸⁸ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 120.

wrapped both projects together into proposals to publishing companies, but they exist in his archives as two separate projects.

Lemkin's retreat to Yale was well timed. He was confident that the Ad Hoc Committee draft was moving along steadily, and a respite was in order. His health was deteriorating, as was his relationship with de Vabres and the French delegation. The American Jewish Committee even warned him that France was planning to sideline the convention as a result of Lemkin's abrasive tactics. With Lemkin dedicating himself to teaching and writing, the committee worked to repair relationships with the French delegates. They appealed to René Cassin, the jurist leading the campaign to draft the Universal Declaration of Human Rights, and secured his support for the convention, persuading him to intervene with de Vabres.

Mistral was also doing important work lobbying civic and political leaders in Latin America, attempting to warm them to the concept of genocide. In a letter dated March 11, Mistral informed Buck that most "politicians in South America avoid taking up this sad problem [of genocide] merely because of their patriotic vanity and because they do not want to admit certain criminal facts" of their own governments. However, she wrote, she was successfully appealing to her personal friend, the Chilean minister of foreign affairs, along with other "intelligent" and "well informed" statesmen who were "acquainted with the affairs of the world."⁷⁸⁹

The only delegations left to solidify were the British and the Americans. Rosenberg wrote to John Foster Dulles about his concern that the British opposition

⁷⁸⁹ "Correspondence from Gabriela Mistral to Pearl S. Buck, March 11, 1948," AJHS, Box 1, Folder 19, March 11, 1948.

would defeat of the UN Genocide Convention. Dulles replied that he had convinced Eleanor Roosevelt over dinner to support the convention.⁷⁹⁰ But the British could not be persuaded. Lemkin, who never shied from a fight, sensed an opportunity to publically humiliate the British over their involvement in genocide in their former colonies, and encouraged Pakistani Foreign Minister Sir Zafrulla Khan to charge India of committing genocide against Muslims during the partition of India. In February, Khan sent a letter to ECOSCO President Charles Malik outlining the genocide against Muslims that began in 1947. Out of 35 million Muslims in India, “one million Muslims have been destroyed and over five million driven from their homes” in the previous six months, he wrote. With millions more facing forced conversion or extermination, “the remaining Muslim population of India stands faced with physical and cultural annihilation.”⁷⁹¹ Under Lemkin’s suggestions, the charges were brought to the Security Council in January, May, and June, keeping genocide in the public eye throughout the first half of the year.

In July, Lemkin was forced to put his incipient research on hold and reenter the UN political circles. The Venezuelan ambassador, Perez Perozo, sent a telegram to Yale warning him that ECOSCO was planning to vote on whether or not to allow the September General Assembly in Paris to consider the UN Genocide Convention. Packing copies of the chapters of his books, Lemkin made an immediate trip to Switzerland. As he walked through Geneva, the city where he “had buried his hopes for a better world” in the interwar years. Lemkin was overcome with a sense of grief in this city where he had spend so many years working with the League of Nations. The old League of Nations

⁷⁹⁰ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 128.

⁷⁹¹ “Correspondence from Mohamed Zafrulla Khan to Charles Malik, February 4, 1948,” AJHS, Box 2, Folder 8, February 4, 1948.

headquarters was now housing the chambers for the ECOSCO, and Lemkin marveled at walking down the same corridors and seeing so many of the same faces as before. But now the hallways and elevators were less crowded and the old “lions of the League” had vanished. “Where are Paul-Boncour, de Valera, the former presidents of the Assembly? Where are the Politis, Venizelos, Sir Robert Cecil, Titulescu, Litinov?” Lemkin asked in his autobiography. “The blood of the victims of the last cases of genocide had not yet dried on the face of Europe and Asia,” and now Geneva and the former League of Nations building was nothing more than “a cultured cemetery of a dead world.”⁷⁹² Worse yet, the majority of the delegates on the ECOSCO were set on killing the UN Genocide Convention, Perozo informed Lemkin. Going over a list of the delegates together, Lemkin began counting votes. It was clear that “some new friends must be found.”

Lemkin visited one of his staunchest supporters, Major John Ennals, the general secretary of the Headquarters of the World Association of for the United Nations, and an ex-officio member of the Human Rights Commission of the National Conference of Christians and Jews. For several months, Ennals had been coordinating the international campaign for the UN Genocide Convention, creating a dossier of petitions and letters in support of the convention to distribute in Geneva. Among these documents were the letters from Khan urging the UN to adopt the convention on behalf of over thirty million Muslims “now facing extermination,” a letter pledging the support of the International League of Catholic Women—a group with over thirty million members world-wide—and many others representing organizations from nearly every country in the world.⁷⁹³ At a

⁷⁹² Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 134.

⁷⁹³ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 133.

moment's notice, Lemkin could dispatch telegraphs instructing hundreds of people around the world to write or telegraph a particular office of a delegate or politician. He would put this network to use, with great success.

Ennals contacted the Swiss press and organized two public lectures for Lemkin, who attempted to stir emotions by claiming that the UN Genocide Convention was necessary to make sure the countries of the world “feel that minorities and weaker nations are not chickens in the hands of a farmer, to be slaughtered, but that they are groups of people of great value to themselves and world civilization.” Lemkin, however, was not winning the delegates' hearts. In his own words, he “failed to see around me persons with flitting gleam in their eyes on whom I could rely.”⁷⁹⁴ This was due, in no small part, to a campaign the British Foreign Office was waging against the convention. While publically supporting the convention on record, the Foreign Office were pressuring and coercing nongovernmental organizations and interest groups to oppose the convention. They even managed to censure Ennals by forcing the British United Nations Association to force the World Association of for the United Nations to stop supporting the convention.⁷⁹⁵ Lemkin would have to seek out other delegates with power.

Lemkin called on was Brazilian Ambassador Gilberto Amado, a law professor, a famous novelist, and a connoisseur of good food and French wine. After they discussed Amado's latest novel and criticized a recent book by a colleague, the ambassador asked Lemkin what would happen at the ECOSCO meeting this month. “Well, Mr. Ambassador,” Lemkin replied, “that is for you to decide. Latin America is the reservoir

⁷⁹⁴ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 139.

⁷⁹⁵ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 138.

of active humanitarianism.” The Ambassador promised his support, and Lemkin quickly changed the conversation to Swiss food and French wine, and said good bye.⁷⁹⁶

The next day, on a bench under a tree in the garden, Lemkin met Mahmoud Azmi, an Egyptian journalist and scholar who was credited with being the first to coin the word for “culture” in Arabic. Lemkin began the conversation by recalling his college training in philology, bringing up the ancient Egyptian linguistic theory that words precede the things they signify. The conversation naturally moved into discussing the significance of the words they each coined. Words, Azmi said, “bring order into a system of thought.” “Yes,” Lemkin replied, “they help crystallize our thinking ... [and] become symbols for action.” Azmi, who would later become Egypt’s ambassador to the UN, listened intently and became a life-long supporter of Lemkin’s campaign, helping to ensure that Egypt later ratified the convention and enshrined the law into its domestic penal code.

Another ally came a few days later while Lemkin was staring at the water under the bridge over Lake Lemman. Turning around to the sound of footsteps, Lemkin saw the Canadian Ambassador Dana Wigless who greeted him, asking if he was worrying about the convention. “At least I have an excuse for not sleeping,” Lemkin replied: “What good excuse do you have for not being in bed at two o’clock at night?” The two headed out for a stroll. After passing the deserted train station, Wilgress asked Lemkin why the genocide convention was so important—to which Lemkin replied by asking Wilgress what field of study he was most interested in at University. History the ambassador said. “Genocide is an essential part of history,” Lemkin answered, reciting his recent research on the Assyrian genocides, where rulers obliterated entire nations for not paying tribute and

⁷⁹⁶ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 136.

boasted about, blinding, mutilating, skinning, hanging and killing the entire populations of cities, “all with the feeling of having fulfilled the command of their gods, who ordered them to do so in their dreams.” “No excuse before history ever occurred to them to be necessary,” Lemkin told his midnight companion, now captivated by the story. “Do you mean,” the Ambassador asked, “that they never considered those acts evil?” “Not in the least,” Lemkin replied, steering the conversation towards cases in Greek antiquity when the consciousness of the perpetrators became aroused and they refrained from committing genocide because they felt it was wrong. By the end of the conversation, Wilgress was telling Lemkin of the Canadian churches’ response to the Armenian genocide “as though he were trying to win *me* over to the Genocide Convention.”⁷⁹⁷

It was six in the morning when Lemkin returned to the hotel. Although Canada greatly opposed the convention, Wilgress personally supported it. At eleven o’clock the Canadian diplomat phoned to say he had arranged a meeting for Lemkin with Australian Minister of Foreign Affairs Dr. Herbert Evatt, a personal friend who would give his support to the convention. Polish delegates had already risen to the defense of the convention, saying that it would protect “the peoples of colonial independent territories.” They argued that the countries that opposed the genocide convention—namely the UK, but also France—did so out of “narrow nationalist and imperialist motives.”⁷⁹⁸ The Russians defended the convention as a means of fighting racialism, the “spiritual father” of genocide, and suggested that the General Assembly consider adding a provision outlawing racist propaganda. These lines of reasoning, however, would have only

⁷⁹⁷ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 140-143.

⁷⁹⁸ Cooper, *Raphael Lemkin and the Genocide Convention*, 139.

provoked US, French, and British delegates, likely to interpret them as ideologically driven. With the highest ranks of the Australian government in support of the convention, Lemkin finally had in Evatt the persuasive ally for which he had been searching.

The day before the convention was to be discussed, Evatt addressed the ECOSOC and recommended the draft be approved so the General Assembly could examine the convention in detail. Furthermore, he added that “the adoption of a convention on genocide should not necessarily be dependent upon the other work which the United Nations is doing in the field of human rights” since the convention was a “far more specific” legal document than the Universal Declaration of Human Rights.⁷⁹⁹ When the ECOSOC took up the Genocide Convention, the British delegates launched an immediate procedural attack. Public opinion had moved so much in the favor of condemning genocide, Lemkin wrote to Henry Noble MacCracken of the National Conference of Christians and Jews, that the UK, could not risk offending “high moral values” by openly stating during the committee meetings that they opposed outlawing genocide. The Canadian jurist who authored the first draft of the Declaration of Human Rights, John Humphrey observed in his diaries that “because of Lemkin’s lobbying and other efforts the public has become extremely interested in genocide and any postponement of the question now by Council would affect the latter’s prestige.”⁸⁰⁰ The UK’s strategy,

⁷⁹⁹ “Statement by the Rt. Hon. H. V. Evatt, K.C. M.P. Deputy Prime Minister and Minister of External Affairs of Australia to the Economic and Social Council, United Nations, 25 August 1948,” AJHS, Box 2, Folder 13, August 25, 1948.

⁸⁰⁰ Schabas, *Genocide in International Law*, 77.

Lemkin continued in his letter to MacCracken, was therefore based on procedural tactics, without publically questioning the validity of the idea or the law.⁸⁰¹

Lemkin briefed the Australian delegation on the strategy of the British opposition, and the delegate prepared a simple plan of defense. As expected, the British began explaining why the Genocide Convention should be subsumed over the Nuremberg Judgment. The Australian delegate waited patiently until the British delegate stumbled upon a factual and legal error and then asked him to repeat the point over and over so the body of the delegates would begin to concentrate on it. “Do you mean to say that the Nuremberg Judgment applies in times of peace as well as in times of war?” he asked. “The British delegate paused for a moment and answered in a weak voice,” Lemkin wrote, “which delighted me immensely, ‘yes.’”⁸⁰² “It was a marvelous piece of education work performed, outstanding among the many flat discussions that were so abundant at the sessions of the U.N.,” Lemkin observed. After reading from the Nuremberg Statutes to show how the two laws differed, and creating a favorable mood in the room, the Australian delegate went no further.⁸⁰³ The ECOSCO voted to approve the Ad Hoc Committee draft, and forward the convention to the General Assembly in Paris. The next step was for the UN Legal Committee to prepare a final draft.

6.4 THE SIXTH COMMITTEE DEBATES AND THE FINAL DRAFT

⁸⁰¹ “Correspondence to Dr. Henry Noble MacCracken, August 30, 1948,” AJHS, Box 1, Folder 19, August 30, 1948.

⁸⁰² Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 144.

⁸⁰³ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 145.

When debates over the convention began in the UN Legal Committee, also known as the Sixth Committee, opposition was immediately raised to Article II and Article III of the Ad Hoc Committee draft. Article II stipulated that “physical and biological genocide” could be committed against “national, racial, religious, or political groups, on grounds of the national or racial origins, religious belief, or political opinion of its members.” Article III defined “cultural genocide” as an act of genocide, and included “acts committed with the intent to destroy the language, religious, or culture of a national racial or religious group on grounds of that national or racial origin or the religious belief of its members,” such as forced schooling or banning publications, or preventing the use of libraries, museums, historical monuments, places of worship, or “other cultural intuitions and objects of the group.”⁸⁰⁴

One reason why the ECOSCO delegates in Geneva agreed to overcome British opposition and send the Genocide Convention to the General Assembly was not the Paris meetings would offer them a chance to shape the law in their favor. Lemkin knew that the delegates wanted a convention that could be used against their geopolitical opponents, not themselves.⁸⁰⁵ The US—segregated racially by law and following a policy of forced assimilation of Native Americans—began the debates demanding that cultural genocide be removed from the convention while political groups be included as potential victims. The USSR, in contrast, wanted a convention that could not apply to the Stalin’s dekulakization of the 1930s and ongoing Soviet political terror, and demanded that

⁸⁰⁴ UN Doc. E/794, 54-55.

⁸⁰⁵ Raphael Lemkin, “Correspondence to James N. Rosenberg, September 13, 1948,” AJHS, Box 1, Folder 19, September 13, 1948.

political groups be removed.⁸⁰⁶ Yet, the Soviet delegates wanted a law that could still hold the US guilty of genocide for the legal disenfranchisement, extrajudicial killings, and state-sanctioned terror committed against blacks, and therefore demanded that cultural genocide remain in the draft.

In a letter written in the middle of September, Lemkin urged Rosenberg to continue lobbying to include cultural genocide in the convention in order to preserve it for as long as possible. The British delegation was continuing to search for a way to bury the convention, Lemkin wrote to Rosenberg, while the ECOSCO President Charles Malik, “who professed initially to be a friend of the convention,” was now “a strong but hidden opponent.” With Malik providing procedural support, the British delegation was especially dangerous. The latest incarnation of their strategy was to weaken the convention through compromises until there was nothing left of the concept of genocide. Removing Article III on cultural genocide would reduce genocide to mass killing and make the law fall into line with the Nuremberg judgment and crimes against humanity, Lemkin wrote to Rosenberg.⁸⁰⁷ Once genocide had been reduced to the Nuremberg judgment, Lemkin felt, there would be no need for a Genocide Convention and the promise of humanitarian laws that applied to times of peace and were enforced by a standing international tribunal would be consigned to the scrap heap of history. While cultural genocide would inevitably have to be conceded to the US, Lemkin told Rosenberg, it was important to give it up strategically “in time, coldly, through

⁸⁰⁶ Beth Van Schaack, “The Crime of Political Genocide: Repairing the Genocide Convention’s Blind Spot,” *Yale Law Journal* 106 (1997), 2268.

⁸⁰⁷ Raphael Lemkin, “Correspondence to James N. Rosenberg, September 13, 1948,” AJHS, Box 1, Folder 19., September 13, 1948. On the British argument to reduce genocide to mass killing, see UN Doc. A/C.6/SR.64

bargaining and certainly not through giving arguments to our skillful opponents.”⁸⁰⁸

Cultural genocide had to be preserved so that it could be scarified in exchange for keeping international tribunals and having the convention apply to times of peace.

To make matters worse, the delegates from the UK were planning a devastating delay tactic.⁸⁰⁹ Before the Sixth Committee could proceed to the article-by-article study of the Ad Hoc Committee draft convention—which was required for the committee to approve a convention and forward it to the General Assembly—the draft convention was supposed to be reviewed by a sub-committee.⁸¹⁰ Given that the procedure was customary in legal drafting committees, the South African delegate took the lead and proposed that the convention be sent to the International Law Commission to be studied further.⁸¹¹ However, Lemkin had learned that Britain, Belgium, and South Africa strategically lined up the delegates on the sub-committee were against the convention.⁸¹² This would have mired the convention in sub-committee review indefinitely, preventing the Sixth Committee from completing the required article-by-article review and guaranteeing the convention would never make it to the floor of the General Assembly.⁸¹³

Lemkin was not to be undone. When he first arrived in Paris, he went to visit Evatt in the office of the Australian delegation. Evatt, who had just been elected president

⁸⁰⁸ Raphael Lemkin, “Correspondence to James N. Rosenberg, September 13, 1948,” AJHS, Box 1, Folder 19, September 13, 1948.

⁸⁰⁹ UN Doc. A/C.6/SR.66. See Shawcross.

⁸¹⁰ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 151.

⁸¹¹ UN Doc. A/C.6/SR.66. See Egeland.

⁸¹² On Belgium’s opposition, see Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, p. 148.

⁸¹³ UN Doc. A/C.6/SR.63; UN Doc. A/C.6/SR.65. For an in-depth review of the preliminary matters, see Schabas *Genocide in International Law*, 78-80.

of the General Assembly, was now in a position to choose the chairman of the Legal Committee. He asked Lemkin to name the delegate who would be most amenable to the genocide convention. A few days later, Evatt appointed Lemkin's choice, Ricardo Joaquín Alfaro Jované, the former president of Panama and the first UN delegate who supported Lemkin's resolution in 1946. Lemkin now had another powerful ally, and proposed to Alfaro that the committee "sidestep the subcommittee altogether" and "convert the entire Legal Committee into one big working group." The new chairman agreed with Lemkin's thinking. The Australian delegation would suggest the new procedure, and Lemkin would secure one European country to "stress the martyrdom of Europe under genocide" and try to carry the Latin American delegations and win the support "of the Eastern bloc."⁸¹⁴ That night, Lemkin dined with his longtime friends from the Philippines delegation, Quintin Paredes and Judge Ingles, and asked them to give a speech to support the new procedure after it was proposed.⁸¹⁵

On the arranged day, the US delegation introduced the resolution to not refer the convention to a subcommittee. As Ernest Gross told the Sixth Committee, expediency was necessary "before the memory of the barbarous crimes which had been committed faced form the minds of men."⁸¹⁶ Paredes swayed the Committee delegates toward Lemkin's proposal, speaking "with great feeling in fluent Spanish" to carry the Latin American delegates—for whom "an argument attains additional persuasive

⁸¹⁴ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 151-152.

⁸¹⁵ See Raphael Lemkin, "Correspondence to Quintin Paredes, December 17, 1949," AJHS, Box 2, Folder 2, December 17, 1949; Raphael Lemkin, "Correspondence to Judge Ingles, December 17, 1949," AJHS, Box 2, Folder 2, December 17, 1949.

⁸¹⁶ UN Doc. A/C.6/208.

force...whenever a foreigner presents it in their language.”⁸¹⁷ With the final support of the USSR, the US proposal to bypass the sub-committee won with thirty eight votes to eleven, and the Philippines’ proposal to proceed to article-by-article review was adopted unanimously.⁸¹⁸ Lemkin won the day.

From October to November, the Sixth Committee argued over each article of the convention. As Lemkin wrote in his autobiography, he initially thought his challenge would be to make sure the delegates did not produce a genocide convention written according to “the Nazi experience,” which “was not a sufficient basis for a definition of genocide for international purposes.” Jurists “cannot describe a crime by one example,” Lemkin wrote, but must “draw on all available experiences of the past ... The formulation must be made valid for all times, situations, and cultures.”⁸¹⁹ He quickly realized, however, that his task would be more basic, and much harder. He would have to fight to preserve as much of his concept of genocide as possible in the face of the narrow interests of the delegations on the Sixth Committee.

Because Lemkin had no official role to play, he could only move his position by convincing the delegates to do so. Often this involved lobbying for his positions, or orchestrating compromises. But, at the beginning of the Paris meetings, he turned towards unleashing hundreds of telegraphs requesting the support of civil groups and world leaders. When the third session of the General Assembly began in September 1948, the United States Committee for a United Nations Genocide Convention had gathered

⁸¹⁷ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 152. See UN Doc. A/C.6/SR.65.

⁸¹⁸ UN Doc. A/C.6/SR.66.

⁸¹⁹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 152.

petitions signed by 166 organizations from 28 countries, representing over 200 million people.⁸²⁰ Although Rosenberg failed to send the signatures to Lemkin in Paris in a timely fashion, the petitions were the sign of a powerful movement that would again play a role in Lemkin's contentious activism. By October, cables in support of the convention were flowing into UN offices, sent from groups ranging from the Quakers in the US to another Noble Prize winner, Sigrid Undest.⁸²¹

Despite the surge in lobbying and petition writing, Lemkin was not gaining traction in the committee meetings. He also found he was shut out of the parties that were "the main battlefields for political issues." In his autobiography, he complained bitterly that the receptions "could not be used for discussing a serious legal and moral item."⁸²² The delegates had little use for his philosophy or memos drawn from his book chapters during their social hours. Lemkin soon noticed that conversations changed topics and circles broke up when he approached, as people hushed their voices and avoided eye contact. "I was becoming a domesticated saint for the consumption of the U.N. Assembly," he wrote. "So I went to receptions, drank cocktails and danced, joked and refused to speak about genocide ... Still I was condemned to loneliness."⁸²³ What is more, his ideas were being poorly received by the French press and the public lectures his longtime Paris publisher organized were poorly attended. Given the importance of his

⁸²⁰ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 144. "Correspondence from Raphael Lemkin to Thomas Mahoney, December 28, 1948," AJHS, Box 2, Folder 2, December 28, 1948.

⁸²¹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 157.

⁸²² Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 153.

⁸²³ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 163.

relationship with the media over the previous two years, losing the public relations struggle in Paris was potentially devastating.

Making matters worse, the UK delegation was now openly opposing the convention. In addition to arguing that genocide was already incorporated under the Nuremberg charter, Shawcross began arguing in full that the only practical sanction against genocide was war. He argued that “genocide could not be committed without the connivance of the State,” making a law against genocide irrelevant to the prevention of genocide.⁸²⁴ By late October, he had taken to hollering across the committee meeting room: “Nuremberg is enough! A Genocide Convention Cannot be adopted!”⁸²⁵ After this outbreak, Lemkin recalled, “there was an ominous silence among the delegates” who were respectful of Shawcross’s reputation and stature.

After the meeting, Lemkin “sat with a sunken head at a luncheon table on the terrace of a small café near the Palais de Chaillot.” The weather was “caressingly warm,” he wrote; “The sun was shining, but it could not reach my frozen inner self.”⁸²⁶ The Lebanese delegate Karim Azkoul, one of Lemkin’s supporters, sat at the next table. When Lemkin asked him why he stopped attending the meetings, Azkoul informed him that he had been reassigned to the committee working on the Declaration of Human Rights. It was the beginning of trend where Lemkin’s supporters on the committee slowly

⁸²⁴ UN Doc A/C.6/SR.74

⁸²⁵ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 157. See UN Doc. A/C.6/SR.63.

⁸²⁶ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 157.

atrophied. In a letter to the American Jewish Conference, Lemkin reported that the Latin American delegates no longer attended the meetings out of boredom.⁸²⁷

The next morning, Lemkin convinced the Lebanese prime minister to reassign Azkoul to the Legal Committee. Then, sensing the British would seek the support of New Zealand, Lemkin moved to the office of the Prime Minister Peter Fraser, who informed him that his suspicions were correct and many in the New Zealand delegation were now considering opposing the convention. While he offered no promise of support, Fraser told Lemkin that Ann Newland, who was working on the draft declaration of human rights, would be sympathetic. Lemkin managed to convince Newland, a stalwart of the New Zealand Labour Party, to persuade her delegation that the Genocide Convention was a political necessity, and to “educate [laboring people] to support this good law.”⁸²⁸ The pendulum of political fortune was moving back towards Lemkin. Soon thereafter, Azkoul delivered a speech to the Legal Committee, refuting Shawcross’s argument that the only practical prevention of genocide was war. Lemkin remembered Azkoul as telling the committee that the British attorney general:

did everything he could to confuse us, but we refuse to be confused. The convention is essential for the protection of small nations. Big nations can protect themselves with arms, but our only protection is international law ... The majority of the nations want the convention, and we will not permit ourselves to be talked out of this important law by arguments in which we do not believe.⁸²⁹

⁸²⁷ Raphael Lemkin, “Correspondence to Jane Evans, October 28, 1948,” AJHS, Box 1, Folder 19, October 28, 1948.

⁸²⁸ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 159.

⁸²⁹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 159.

A day later, Begum Ikramullah of Pakistan stood up in support of the Genocide Convention, which “is written with the blood and tears of more than one million Moslems who perished through genocide during the partition of India in 1947.”⁸³⁰

Describing the beauty of the woman dressed in a sari, Lemkin wrote,

I watched the faces of the delegates when she spoke. It was as if an angel had entered this drab room and touched them with its wings. I saw a sign of preoccupation on the face of Sir Hartley, but I was so elated that I even liked him at that moment. I thought how true was the saying of the ancient Greeks, that only a wounded physician can heal. Here was a delegate speaking for a wounded people, brining these sufferings within the context of present history.⁸³¹

Afterwards in the corridor Shawcross approached Lemkin and complained that “the committee is becoming emotional,” which threatened to direct the committee’s work “in the wrong direction.”⁸³²

Getting the committee to move in the direction Lemkin desired would involve a great deal of concessions, however. By the end of October, Lemkin had lost the unconditional support of the Latin American delegations whose support he and Mistral had cultivated, and relied upon in the spring of 1948. As Lemkin explained in a letter to Jane Evans of the American Jewish Conference, Brazil, Uruguay, Mexico, Argentina, “and a few others” joined the Soviet bloc in opposing the inclusion of political groups during the Committee’s study of Article II.⁸³³ Gilberto Amado of Brazil told Lemkin

⁸³⁰ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 159. UN Doc. A/C.6/SR.63. The quote is taken from Lemkin’s autobiography, which differs from the account provided by the rapporteur.

⁸³¹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 159-160.

⁸³² Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 160.

⁸³³ Raphael Lemkin, “Correspondence to Jane Evans, October 28, 1948,” Raphael Lemkin Collection. Box 1. Folder 19. AJHS. October 28, 1948.

privately that “we do not commit racial genocide [in Latin America], but some of the revolutions which happen in our countries could be classified as destruction of political groups and we would not like to have our internal difficulties aired all the time by international bodies.”⁸³⁴ Lemkin prepared his first sacrifice.

POLITICAL GROUPS: WRITING SOVIET AND LATIN AMERICAN GENOCIDES OUT OF THE LAW

In October 1948 Lemkin turned on the principles of his previous legal, political, and social theory and lobbied the delegates to excise political groups from the draft, arguing that “the destruction of political opponents should be treated as the crime of political homicide, not as genocide.”⁸³⁵ Publically, he reasoned that including political groups in the convention would weaken the law. Firstly, he said political groups would be difficult to define legally since they lacked cohesiveness and distinctiveness.⁸³⁶ Secondly, he conceded, in the context of Latin American politics, recognizing a revolutionary regime that destroyed political opposition would “imply acceptance of genocide as legal” and “kill the Genocide Convention before it took root in world society.”⁸³⁷

The US had insisted on including political groups as a condition for supporting the convention. Why would Lemkin risk the support of the one power capable of bringing

⁸³⁴ Raphael Lemkin, “Correspondence to Jane Evans, October 28, 1948,” Raphael Lemkin Collection. Box 1. Folder 19. AJHS. October 28, 1948. Lemkin recalls the quotation differently in his autobiography. See Lemkin, *Totally Unofficial*, p. 161.

⁸³⁵ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 161.

⁸³⁶ UN Doc. E/447. Lemkin, *Totally Unofficial*, 161-162. See Korey, *An Epithet for Raphael Lemkin*, 39. For a comprehensive review of the debates over the inclusion of political groups, see Schabas, *Genocide in International Law*, 154-165.

⁸³⁷ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 162.

the western powers to support the convention? The answer was simple. Lemkin was counting votes. Remarkably, he lobbied to remove political groups from the convention by misrepresenting his previous social and legal theory, and went to great lengths to show that his reasoning was not a shift from his position in his previous work. Namely, he now argued that *Axis Rule* was concerned with the destruction of political institutions as a technique of genocide, as opposed to the destruction of political groups. Lemkin, however, was being slightly disingenuous. In *Axis Rule*, he did document the Axis persecution of right and left political groups as techniques of genocide. However, he also regarded as genocide the destruction of communist activities and the interment of political subversives in concentration camps.⁸³⁸ What is more, the destruction of political enemies was the very type of atrocity that Lemkin began his scholarly career writing about in the penal codes of fascist Italy and the USSR, which saw national consciousness as constituting political enemies.

Lemkin's willingness to remove such a central aspect of his theory of genocide from a law against genocide angered many in his movement. Members of the American Jewish Committee began to complain that Lemkin was "willing to throw anything and everything overboard to save the ship."⁸³⁹ Even Shawcross thought the only value to keeping the genocide convention would be that it prohibited the wholesale execution of political opponents. He alluded to Stalin's terror and argued that the protection of political groups was "a practical problem in Europe" because concentration and labor

⁸³⁸ Lemkin, *Axis Rule*, "Law No. 254 concerning the Prohibition of Certain Demonstrations, June 9, 1941," 381. And see, "Law No. 349 concerning the Prohibition of Communistic Associations and Communistic Activities, August 22, 1941," 381-382.

⁸³⁹ Korey, *An Epitaph for Raphael Lemkin*, 39.

camps “might still be in existence or make their appearance in the future.” As an international law, a genocide convention could be of some value because “to declare that political groups should be protected by domestic laws was wholly illusory” since “in certain States the ruling political parties would insist that they possessed an existence as stable as some religious or racial groups.”⁸⁴⁰

When the Sixth Committee voted to approve the inclusion of political groups, Lemkin believed that Shawcross was orchestrating the destruction of the convention. While it might seem Lemkin was paranoid, again he was actually counting votes. As Lemkin explained to Theodore Thackerey, the editor of *The New York Post*, the two-thirds majority needed to pass the convention could not be achieved without the support of the delegates from Latin America and the Soviet Bloc. “Already now a whispering campaign among the Delegates is spreading that the Genocide convention will not be approved by the Assembly because it contains ‘explosive matters’ such as political groups,” Lemkin wrote to Thackerey.⁸⁴¹ Lemkin—who was described in an article in *Collier’s* as “intensely political” because of his willingness to compromise and his obsession with determining the position of each delegation—explained the situation to Evatt who was on his way to lunch with John Foster Dulles.⁸⁴² The Assembly President agreed with Lemkin that the British were also counting votes and had calculated that the inclusion of political groups would ensure the defeat of the convention. Evatt promised to

⁸⁴⁰ UN Doc. A/C.6/SR.69

⁸⁴¹ Raphael Lemkin, “Correspondence to T. Thackerey, November, 23, 1948,” AJHS, Box 1, Folder 19, November, 28, 1948.

⁸⁴² Herbert Yahraes, “He Gave a Name to the World’s Most Horrible Crime,” *Collier’s*, March 3, 1951, 57. Korey, *An Epitaph for Raphael Lemkin*, 39; Lemkin, *Totally Unofficial*, 162.

speak to Dulles and John Maktos, the chair of the US delegation, and earn their support for a convention that did not include the protection of political groups.

With Evatt's support and a new round of cables streaming into Paris from Rosenberg's network, the US delegation reversed its position and supported the revision to remove political groups from Article II of the convention. In the Ad Hoc Committee draft, Article II established the intentionality of the crime, defining genocide as "any of the following deliberate acts committed with the intent to destroy a national, racial, religious or political group on the grounds of national or racial origin, religious belief, or political opinion of its members." The wording of Article II in the final draft of the Sixth Committee defined genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."⁸⁴³ This was the first of many sacrifices Lemkin would make, and the easiest. Ultimately Lemkin would also concede provisions mandating that the convention apply to countries under colonial rule as well as the criminalization of hate speech and propaganda intended to incite genocide.⁸⁴⁴

CULTURAL GENOCIDE: WRITING COLONIAL AND INDIGENOUS GENOCIDES OUT OF THE LAW

⁸⁴³ The final vote to remove political groups from the list of protected groups occurred towards the end of the drafting process, on November 29. UN Doc. A/C.6/SR.128.

⁸⁴⁴ On November 23, 1948, the Sixth Committee rejected the resolution applying the Genocide Convention to dependent territories: UN Doc. A/C.6/272. The final text of the convention, under article XII, allows countries the option of applying to dependent territories whose foreign policy they control. The Soviet Union delegation complained just before that final vote in the General Assembly that this allowed the imperialist countries to continue conducting policies of genocide—cultural and physical—in their colonies. UN Doc. A/PV.179; UN Doc. A/C.6/SR.87.

The most painful sacrifice Lemkin would make—one he fought hard to include—was Article III of the Ad Hoc Committee Draft on “cultural genocide.” According to the article, “genocide also means any deliberate act committed with intent to destroy the language, religion, or culture of a national, racial or religious group” through acts such as “prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group” or “destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.”⁸⁴⁵ As Lemkin explained, the article on cultural genocide represented the full breadth of his thinking on national cultural autonomy. “This idea was very dear to me,” he wrote: “It meant the destruction of the cultural pattern of a group, such as the language, the traditions, monuments, archives, libraries, and churches. In brief: the shrines of a nation’s soul.”⁸⁴⁶ As Lemkin was clear to spell out in *Axis Rule*, genocide was not the attempt to kill all of the members of a group; genocide was the attempt to destroy a nation as a social entity. Genocide could thus be achieved through mass murder, but it was not tantamount to mass murder. As such, genocide often began with assaults on a group’s cultural physical and social “characteristics.”

The Secretariat Draft—the draft that bears the closest resemblance to Lemkin’s theory of genocide—made no distinction between cultural genocide and physical genocide. Article I stated the “purpose of this Convention is to prevent the destruction of racial, national, linguistic, religious or political groups of human beings” and defined

⁸⁴⁵ UN Doc. Ad Hoc Committee Draft E/AC.25/12.

⁸⁴⁶ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 172.

genocide as “a criminal act directed against any one of the aforesaid groups of human beings, with the purpose of destroying it in whole or in part, or of preventing its preservation or development.” The article then established three categories that acts of genocide could fall under. First, acts “causing the death of members of a group or injuring their health” by “group massacres or individual executions,” “lack of proper housing, clothing, food, hygiene and medical care, or excessive work,” as well as biological and medical experiments upon victims and the deprivation of a livelihood and confiscation of property. The second category of “restricting births” included acts such as sterilization or compulsory abortion. The third category was acts “destroying the specific characteristics of the group” such as the forcible transfer of children, the forced exile of “individuals representing the culture of a group,” prohibitions on the use of the national language, the systematic destruction and censorship of books, the destruction of historical or religious monuments, and the “destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.”⁸⁴⁷

The inclusion of all of these acts of destruction in the Secretariat Draft—against both the individuals of a group and the symbols of a group—reflects Lemkin’s full thinking on genocide that he espoused in *Axis Rule*. As such, Lemkin felt, Genocide was always a political act, for it entailed the basic questions of interests or power. But genocide was also a social act, for the goal of genocide to restructure the social fabric of the world in accordance with the vision and perceived interest of the perpetrators. To delineate between the cultural and physical aspects of the act compromised the meaning of the concept because both aspects of group destruction were bound together.

⁸⁴⁷ UN Doc. E/477.

As the controversy moved into the next round of discussions, the Ad Hoc Committee affirmed that cultural genocide should remain in the convention text. However, those opposed to these provisions had already won a major victory, succeeding in recognizing that physical and cultural genocide were fundamentally different types of genocide, not different techniques of genocide. Even Lemkin himself began using the term “cultural genocide,” further strengthening the belief amongst the diplomats that two concepts were different.⁸⁴⁸ As a consequence, the drafters on the Ad Hoc Committee felt compelled to treat physical and cultural genocide in separate articles. Article II covered “physical and biological genocide,” while article III dealt with “cultural genocide.” This set the stage for the Sixth Committee to propose cutting Article III, thereby eliminating “cultural genocide” from the convention in one swift move.

In the Sixth Committee debates, France and Belgium proposed resolutions to delete the article and forward the matter of cultural genocide to the Third Committee working on human rights.⁸⁴⁹ The proposal unleashed some of the fiercest debates in the entire drafting process. The Egyptian, Pakistani, Venezuelan and Chinese delegations—with whom Lemkin and his supporters had cultivated especially close ties—all rose in defense of including Article III. Tsien Tai of China argued that cultural genocide could even be more harmful than physical genocide because “it worked below the surface and attacked a whole population, attempting to deprive it of its ancestral culture and to destroy its very language.” He even went so far as to claim that the current proposals to

⁸⁴⁸ UN Doc. E/623. Also see, for example, the support of cultural genocide offered by the Soviet Union: UN Doc. E/AC.25/7.

⁸⁴⁹ UN Doc. A/C.6/212; UN Doc. A/C.6/SR.65; UN Doc. A/C.6/217; UN Doc. A/C.6/222; For the opposition by the US, Iran, Sweden, and others, see UN Doc. A/C.6/SR.83.

move cultural genocide to the province of human rights or minority rights were purposefully misleading. He reminded the delegates that no convention for the protection of minorities existed at the time, not even in draft form. For the committee to claim that cultural genocide should be included in the convention to protect minorities was therefore a polite way of ushering Article III out of international law. Similarly, if cultural genocide were moved to the Third Committee, he pointed out, the violations outlined under cultural genocide would no longer be considered international crimes, and the obligations to suppress the acts would be far less binding since the declaration of human rights wielded moral force, not legal obligations.

Many delegates were under instructions from their governments to find creative ways of moving Article III out of the convention beyond the purview of international law. It is not clear how much the US opposition to Article III was directed by Washington; however, the US delegation's position was consistently informed by direct conversations with the State Department. What is more, scholars have documented that opposing cultural genocide was the single most important issue for the Canadian government, which instructed its delegates to vote against the entire convention if they could not successfully remove Article III.⁸⁵⁰ Sweden, likewise, openly admitted that including Article III in the convention would mean their government could be accused of committing genocide against the Lapps.⁸⁵¹

⁸⁵⁰ Schabas, *Genocide in International Law*, 212 n. 239. See UN Doc. A/C.6/SR.83 (Lapointe, Canada). Also see, "Commentary for the Use of the Canadian Delegation," NAC RG 25, Vol. 3699, File 5475-DG-1-40.

⁸⁵¹ UN Doc. A/C.6/SR.83 (Petren, Sweden).

The Sixth Committee debates over Article III did not revolve around what cultural genocide was or was not, but whether states had the right to commit genocide short of using physical and biological techniques, violence, or mass killing—although some did argue that states had a right to commit murderous genocide. Victor M. Pérez Perozo of Venezuela, with Lemkin, argued that the definition of genocide should not be restricted to only physical techniques. The shock to human conscience at the “outrages committed by the Nazis upon the cultural or religious life of groups they intended to destroy” was “adequate justification for the protection of human groups from cultural genocide could be found in present-day history,” he told the committee. The Sixth Committee had voted to include the forced transfer of children as an act of genocide, he pointed out, even though the individual children were not physically harmed and, oftentimes, enjoyed a more comfortable material existence with their new families. In such cases, he argued, there would be “no question of mass murder, mutilation, torture or mutilation,” yet the delegates obviously recognized the forcible transfer of children should be made illegal because it resulted in a “great loss to humanity in the form of cultural and other contributions” from the group being destroyed. IF this were so, then why not just outlaw cultural genocide?⁸⁵²

Reiterating the position that Foreign Minister Sir Zafrulla Khan had worked out with Lemkin, the Pakistani delegate Sardar Bahadur Khan argued that keeping Article III in the convention was a vital concern for thirty-five million Muslims who faced massacres as well as cultural extinction at the hands of “ruthless and hostile forces” in India. Those in opposition to cultural genocide, he contended, considered cultural

⁸⁵² UN Doc. A/C.6/SR.83 (Pérez Perozo, Venezuela).

genocide to be a less serious crime than physical genocide because their “materialistic philosophies prevented [them] from understanding the importance which millions of men in the world attached to the spiritual life.” Cultural genocide could not be divorced from physical and biological genocide, he continued, since the two crimes had the same object of destroying a national, racial, or religious group by exterminating its members or by destroying its special characteristics. All genocide therefore was cultural genocide, he reasoned, which should be reflected in the law.⁸⁵³

Egypt agreed with the Pakistani delegate about the relevance of Article III and the ongoing genocide resulting from the partition of India. He added that there were also genocides “being committed in the Holy Land” and in “certain metropolitan Powers in Non-Self-Governing Territories, which were attempting to substitute their own culture for the ancient one respected by the local population.” It was not the first time colonialism and the Israeli-Palestinian were discussed as genocide. The previous week, the Egyptian delegation argued that the convention should be able to hold more than states and state leaders responsible for committing genocide, and offered accounts of Zionist massacres of Palestinian villages before May 1948 as proof. Most recently during discussions over Article II, the Syrian delegation proposed including “measures intended to obliged members of a group to abandon their homes in order to escape the threat of subsequent ill-treatment” an act of genocide.⁸⁵⁴ A full convention with Article III intact

⁸⁵³ UN Doc. A/C.6/SR.83 (Sardar Bahdur Khan, Pakistan). The quoted passages are taken from the official report of Khan’s statement.

⁸⁵⁴ UN Doc. A/C.6/SR.81. The Syrian delegation was adamant about demonstrating that actions undertaken by the Israeli “so-called” government and the United Nations against Palestinians constituted genocide. See UN Doc. A/C.6/SR.68.

“would put an end” to the “dangerous examples of racial, national, and religious hatred” fueling the genocides occurring in Palestine and in colonial territories, Egypt argued.

The charges that India was committing genocide against Muslims painted the Indian delegation into a corner, especially since they were an early supporter of the convention and sympathetic to the possibility that the convention could be used to protect colonial territories. While expressing sympathy with principles of Article III, India denounced Pakistan’s claim concerning the fate of Muslim minorities as “unfounded” and joined the delegates calling for the article to be referred to the Third Committee working on human rights.⁸⁵⁵ The loss of Indian support for Article III was indicative of a larger pattern, where the delegations worked to support the convention, but remove aspects of the treaty that were not in the interests of their governments.

Momentum against cultural genocide continued to build.⁸⁵⁶ Brazil argued that outlawing the kinds of cultural destruction that were occurring in Palestine, India, and across the colonial world, would violate the inherent rights of a State that “might be justified in its endeavor to achieve by legal means a certain degree of homogeneity and culture within its boundaries.”⁸⁵⁷ The argument was a death blow to Lemkin, and provided New Zealand with the cover to argue that the cases the Egyptian delegation cited were not atrocities, but justified so long as they did not resort to physical violence. The Egyptian delegate’s argument for prohibiting cultural genocide, the New Zealand delegation argued, was tantamount to supporting the view that “the system of

⁸⁵⁵ UN Doc. A/C.6/SR.83 (Setalvad, India).

⁸⁵⁶ Johannes Morsink, “Cultural Genocide, the Universal Declaration, and Minority Rights,” *Human Rights Quarterly* 21 (1999).

⁸⁵⁷ UN Doc. A/C.6/SR.83 (Amado, Brazil).

government” of tribal peoples in Africa and the South Seas “should be protected.” Taking evidence from studies done in Tanganyika, it was contended that “the now existing tribal structure was an obstacle to the political and social advancement of the indigenous inhabitants.” Therefore, a genocide convention that protected the distinctive cultural traits of the local population “would be detrimental to the prestige of the United Nations.”⁸⁵⁸ The South African delegate concurred, believing that Article III posed a danger “where primitive or backwards people were concerned.”⁸⁵⁹

There were countries in Eastern Europe that supported Article III as a defense against Stalinist genocides. The Byelorussian Soviet Social Republic’s representative argued that restrictions on cultural life, the destruction of languages and religion, and nationalist hatred always accompanied physical genocide and “were always a feature of persecutions having as their object the destruction of groups” which occurred frequently in the “Ukrainian SSR, Poland, Czechoslovakia, and the Soviet Union.”⁸⁶⁰ But, on the whole, the Soviet bloc defended Article III because they sensed that an international law protecting national-cultural diversity could be useful for embarrassing capitalist and colonial countries, the Soviet bloc rose to defend Article III. The USSR added that even the language of referring to “cultural genocide” as something different from “genocide” was a rhetorical deceit, orchestrated by the US in order to remove the provisions of cultural genocide from the convention.⁸⁶¹ Even though Lemkin believed he could

⁸⁵⁸ UN Doc. A/C.6/SR 83 (Reid, New Zealand).

⁸⁵⁹ UN Doc. A/C.6/SR 83 (Egeland, Union of South Africa).

⁸⁶⁰ UN Doc. A/C.6/SR 83 (Khomussko, Byelorussian Soviet Socialist Republic).

⁸⁶¹ UN Doc. A/C.6/SR 83 (Morozov, Union of Soviet Socialist Republics).

leverage support for Article III, the ideological polemics against colonial destruction were not helping his case with Western delegations.

With the third General Assembly approaching, Lemkin decided an extended discussion on Article III would “have prevented the committee from finishing the drafting of the convention at the Paris Assembly.”⁸⁶² A petition originating in the Human Rights lobby gave Lemkin further incentive to speed the drafting process along. The letter, sent to every organization at the Paris Assembly, claimed that political fighting in the Sixth Committee would make it impossible to draft a Genocide Convention and urged the delegations to either redirect support for the convention towards the Declaration of Human Rights, or incorporate genocide under the declaration.⁸⁶³

The petition sent Lemkin into an aggressive frenzy to distinguish genocide from the Declaration of Human Rights, which has led scholars to believe erroneously that Lemkin was against the very concept of human rights.⁸⁶⁴ Lemkin believed the genocide convention was a matter of fundamental human rights.⁸⁶⁵ However, this did not mean that genocide should be listed under the Declaration of Human Rights. The difference between a convention and a declaration was not lost on Lemkin, who convinced Evatt to issue a statement on the importance of both projects. The Declaration of Human Rights was only an enunciation of general principles, Lemkin argued, and therefore held no binding force as international law. The Genocide Convention, on the other hand, would

⁸⁶² Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 173.

⁸⁶³ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 170.

⁸⁶⁴ Korey, *An Epitaph for Raphael Lemkin*, 40.

⁸⁶⁵ Raphael Lemkin, “Protection of Human Rights in the Forthcoming Peace Treaty with Axis Satellite Countries.” CUL, Box 4, Folder X; And Raphael Lemkin, Untitled Document, CUL, Box 4, Folder X.

be an international treaty, enforced both as international law and domestic law.⁸⁶⁶ Feeling that a less perfect law was better than no law at all, Lemkin “wanted to get the convention through the Paris Assembly at any cost, because I could never hope to have the president of the Assembly and the president of the Drafting Committee on my side at another Assembly.”⁸⁶⁷ When Evatt told Lemkin to oppose the inclusion of cultural genocide, he decided to move on towards other fights.⁸⁶⁸

INTERNATIONAL TRIBUNALS AND THE ENFORCEMENT OF THE LAW

Although Lemkin would lose what he felt was the intellectual essence of the genocide convention, he preserved the core of the law that established the legal machinery necessary for tribunals to prosecute genocide. William Korey is correct to observe that Lemkin had a sharp intuition as to what resolutions were viable in a given political climate. But he was obsessive about counting votes. It was not just a matter of guiding a convention through the Sixth Committee. Lemkin had to fight for a convention that the General Assembly would approve. He gave up lobbying for Article III on cultural genocide knowing that a majority of the delegates at the UN General Assembly would not approve a convention that both established an international criminal court *and* criminalized the cultural and “spiritual” destruction of nations and political groups.⁸⁶⁹ He had to choose which provision was more important, so he chose to preserve the articles that would guarantee the possibility of tribunals.

⁸⁶⁶ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 173.

⁸⁶⁷ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 173.

⁸⁶⁸ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 171.

⁸⁶⁹ Korey, *An Epitaph for Raphael Lemkin*, 43.

Lemkin's political finesse on the issue of international tribunals began in 1947, when Pella and de Vabres fought to include in the Secretariat Draft provisions for an international criminal court that the International Association for Penal Law had drafted in 1928.⁸⁷⁰ Lemkin disagreed, calling an international criminal court "premature" because the majority of the world's States would be unwilling to agree to the provision.⁸⁷¹ Pella denounced this as "legal dogmatism" espoused by jurists who act with "cautious reserve lest developments in international law should prejudice the freedom of action or reaction—of the state to which they belong."⁸⁷² Lemkin, however, was not being dogmatic or conservative. He was acting pragmatically. Instead of pushing for an international criminal court inside of the Genocide Convention, he argued that the convention should contain language allowing genocide to be prosecuted in domestic courts or a competent international tribunal.⁸⁷³

During the Sixth Committee's study of Articles VI, VII, and VIII, Lemkin's ability to orchestrate compromises would be put to the test when the articles that were already compromised were nixed. Although Lemkin had already fought to remove the references to establishing an international court, the Sixth Committee eliminated the words in Article VI that would allow genocide to be prosecuted by a "competent

⁸⁷⁰ Vespasian V. Pella, "Towards an International Criminal Court," *American Journal of International Law* 44 (1950): 37-68.

⁸⁷¹ Un Doc. E/477, Secretariat Draft.

⁸⁷² Pella, "Towards an International Criminal Court," p. 43.

⁸⁷³ Korey, *An Epitaph for Raphael Lemkin*, p. 43.

international tribunal.”⁸⁷⁴ For Lemkin, the loss of these three words undermined the entire convention. A new compromise was found by guaranteeing that political groups would not be protected under the convention and ensuring that no international tribunal would be mandated at the present moment. In exchange, the convention could contain language providing for the establishment of international tribunals in the future.⁸⁷⁵ The US re-introduced language referring the prosecution of genocide to international tribunals, which was resoundingly approved.

As a result, Article VI of the final draft of the convention refers the prosecution of genocide to a competent tribunal of the state in the territory of which the act was committed, or to an international tribunal whose jurisdiction both the contracting parties accepted. Scholars have observed that the convention was “essentially stillborn” because no such international tribunal was in existence at the time and the wording referring the prosecution of genocide to a court in the state was genocide was committed essentially meant that regime change was a prerequisite of domestic prosecutions.⁸⁷⁶ More than half a century later, however, Lemkin’s compromise came to fruition with the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994, and the International Criminal Court (ICC) which went into effect in 2002. The two *ad hoc* tribunals imposed by the Security

⁸⁷⁴ UN Doc. A/C.6/SR.100. Several States, including Afghanistan, Ecuador, Brazil, Poland, and Venezuela thought the phrase was too vague or the prospect unrealistic, while Belgium opposed it entirely. See Schabas, *Genocide in International Law*, p. 450-451; UN Doc. A/C.6/SR.97; UN Doc. A/C.6/SR.98.

⁸⁷⁵ UN Doc. A/C.6/SR.129; Lemkin, *Totally Unofficial*, 174.

⁸⁷⁶ Donald Bloxham and Devin O. Pendas, “Punishment as Prevention?: The Politics of Punishing Génocidaires,” in Donald Bloxham and A. Dirk Moses, eds., *Oxford Handbook of Genocide Studies* (Oxford: Oxford University Press, 2010), 623.

Council, the ICTY and ICTR, were anticipated by Article VI of the convention.⁸⁷⁷

Furthermore, the relationship between Article VI and the ICC, Schabas points out, “is beyond any question.”⁸⁷⁸

The issue of extradition and universal jurisdiction was another point of contention in the debates. During the article-by-article study, the Sixth Committee revised Article VII to eliminate Lemkin’s proposal of universal jurisdiction, making sure States were not obliged to extradite their own nationals charged with genocide.⁸⁷⁹ It also meant that the perpetrators of genocide could not legally be apprehended anywhere in the world. Although Lemkin organized a last-minute Lebanese proposal to recognize universal jurisdiction⁸⁸⁰—and held Venezuelan, Polish, Iranian and Chinese support on the issue⁸⁸¹—the US, USSR, the Netherlands, and France were alienated in opposition to universal jurisdiction.⁸⁸² The French delegation rejected Lemkin’s claim that genocide should be recognized as a crime with universal jurisdiction.⁸⁸³ Genocide, they argued, was not serious enough to warrant abandoning traditional territorial jurisdiction and allowing the national and leaders of states to be arrested outside of their own state for

⁸⁷⁷ Schabas, *Genocide in International Law*, 455. See: International Court of Justice, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) Judgment*, I. C. J. Reports 2007, February 26, 2007, paragraph 445.

⁸⁷⁸ Schabas, *Genocide in International Law*, 455.

⁸⁷⁹ Schabas, *Genocide in International Law*, 84.

⁸⁸⁰ UN Doc. E/AC.25/SR.8; UN Doc. E/AC.25/SR.20.

⁸⁸¹ UN Doc. E/AC.25/SR.1; UN Doc. E/AC.25/SR.8; UN Doc. E/AC.25/SR.3; UN Doc. E/AC.25/SR.8; UN Doc. A/C.2/218.

⁸⁸² UN Doc. E/623; UN Doc. E/AC.25/7; UN Doc. E/623/Add.3; UN Doc. E/AC.25/7. See Schabas, *Genocide in International Law*, 412-413.

⁸⁸³ UN Doc. E/AC.25/SR.8.

crimes committed inside of their state. Although he considered the French argument specious, Lemkin conceded defeat when his steady ally Alfaro, the committee chair, sided with the European powers to argue that universal jurisdiction was practically impossible because the States where genocide took place would consider the arrest of perpetrator—inside and outside of their sovereign borders—as an act of war.⁸⁸⁴

Lemkin's success in preserving the possibility of an international court in Article VI has made his failure to preserve universal jurisdiction in Article VII insignificant. The Israeli courts in the trial of Adolf Eichmann, for example, simply wrote universal jurisdiction into the crime of genocide as enshrined under Israeli law.⁸⁸⁵ The principle established in Israel set a precedent for the arrest and prosecution of Chilean, Argentine, and Guatemalan officials charged with genocide in courts in Belgium and Spain which gave themselves universal jurisdiction.⁸⁸⁶ The most notable of these was the prosecution of Augusto Pinochet who was arrested in London in 1998 despite local amnesty laws.⁸⁸⁷ Likewise, the ICTY, ICTR, and the ICC wrote universal jurisdiction into their statutes and justified it on the grounds of custom.⁸⁸⁸

⁸⁸⁴ UN Doc. A/C.6/SR.95; See Schabas, *Genocide in International Law*, 410.

⁸⁸⁵ Eichmann's appeal that the Israeli court did not have jurisdiction over the crime of genocide under Article VI of the Genocide Convention was rejected on the grounds that Eichmann was charged of genocide under Israeli laws against the Jewish people, which recognized the principle of universal jurisdiction. See, Attorney-General of the Government of Israel v. Eichmann, District Court of Jerusalem, December 12, 1961.

⁸⁸⁶ Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (Oxford: Oxford University Press, 2001), 181.

⁸⁸⁷ Richard J. Wilson, "Prosecuting Pinochet: International Crimes in Spanish Domestic Law," *Human Rights Quarterly* 21 (1999).

⁸⁸⁸ M. Cherif Bassiouni, "The History of Universal Jurisdiction and Its Place in International Law," in *Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes Under International Law*, eds. Stephen Macedo (Philadelphia: University of Pennsylvania Press, 2006), 54. The ICTY appeals chambers and judgments in the ICTR have dealt with the matter by finding that universal jurisdiction for genocide is now customary in international law.

Strikingly, Lemkin had argued that preserving the possibility for the Genocide Convention to be prosecuted in international criminal courts in the future was more important than maintaining universal jurisdiction. Lemkin did not anticipated future development in world affairs, and he was not a prophet. He was simply a good legislator with a talent for anticipating political and institutional constraints that shaped the viability of given law. Satisfied that Article VII, at the very least, prohibited genocidists from evoking political asylum to avoid prosecution, Lemkin took his gains with Article VI and moved on to a more important fight with Article VIII.

Article VIII affirms the right of States to call upon any organ of the UN to intervene to prevent genocide, or to call upon the Security Council to intervene militarily and establish tribunals. When the article was deleted from the draft entirely during the Sixth Committee's review, Lemkin panicked.⁸⁸⁹ The Egyptian delegate, on his behalf, complained to the committee chair that the UK and Belgium "had only the day before (98th meeting) secured the deletion of the last words of Article VII and were now attempting to secure the deletion of a whole article" in a blatant attempt to strip the convention of any legal or enforcement mechanisms. They legitimized the deletion of Article VIII, Egypt protested, by spuriously claiming that Article VIII was implied by the UN Charter.⁸⁹⁰ Scholars have pointed out that Article VIII does declare "nothing more than something to which all member States of the United Nations are entitled in any case."⁸⁹¹ Lemkin was fully aware that, legally, this was the case: the article simply

⁸⁸⁹ UN Doc. A/C.6/SR.101.

⁸⁹⁰ Un Doc. A/C.6/SR.101.

⁸⁹¹ Schabas, *Genocide in International Law*, 85.

affirmed the rights States were already given and the right of the UN Security Council to take action against genocide.⁸⁹² But political reality was always different than legal reality, to Lemkin. Yes, all member states had a right to call upon the security council to intervene in genocide—but what if members of the security council used their veto to prevent intervention, either because they were perpetrating genocide or because a genocide was advantageous to them?

Lemkin’s reasoning on the matter was not legal. It was political and institutional. With regards to the law, Article VIII of the Convention spelled out the rights and duties of the contracting parties, stipulating that cases of genocide could be brought up in all organs of the UN, not just the Security Council.⁸⁹³ Politically, however, the article established international control over acts of genocide by the UN and legitimized UN actions undertaken to prevent, suppress, and punish acts of genocide at the behest of any contracting parties. But, more importantly, the article guaranteed that cases of genocide could be brought up in all organs of the UN, besides the Security Council, so that the UN could take action to prevent, suppress, and punish genocide without risking a Security Council veto. “How can one veto the protection of life?” Lemkin asked in his autobiography. Yet, this was exactly what the Sixth Committee was threatening to do by proposing to delete Article VIII.

Lemkin believed that the legal and political vitality of the entire Genocide Convention hung in the balance of Articles VI and VIII. Without the possibility of courts and trials guaranteed by Article VI, the genocide convention would be nothing more than

⁸⁹² Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 175.

⁸⁹³ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 175.

a declaration of the world's sentiments—not a law. Without the political legitimacy provided by Article VIII, the law would be impotent. The evening after the Sixth Committee cut Article VIII from the convention, Lemkin found that the Paris night life took precedence over discussions of the genocide convention. “This evening I hated these receptions more than ever,” Lemkin recalled. If he had the reputation as a zealot, he earned it in defense of Article VIII, phoning the delegates’ hotel rooms until finally he connected with the chair of the US delegation, John Maktos, at midnight.

The day before, during the 101st meeting, Matktos had publically opposed the article on the grounds that the article “appeared superfluous.”⁸⁹⁴ It was a well known secret that, privately, the US opposed the article because—as the British delegation in Paris reported to the Foreign Office in London—they were “afraid of accusations which may be made against them as a government in respect to the negro and Red Indian populations of the United States” and wanted to ensure that any UN action against genocide would pass through the security council, where they held a veto.⁸⁹⁵ Frantically, Lemkin explained to Maktos the importance of Article VIII. To prevent and stop genocide “action by the U.N. is more important than action by the International Court of Justice, where it sometimes takes one year before a case is heard. The persons against whom an act of genocide is directed would all be dead by that time,” he pleaded.⁸⁹⁶ Maktos promised support. But Lemkin—accustomed to words of support being followed by actions to the contrary—continued his barrage of phone calls. By the Saturday

⁸⁹⁴ UN Doc. A/C.6/SR.101.

⁸⁹⁵ United Kingdom Delegation of Paris to Foreign Office, November 25, 1948, Public Records Office, FO371/72693. See Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 163.

⁸⁹⁶ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 175.

morning meeting, he had convinced Evatt and the Australian delegation to reintroduce the article and spear-head a push to pass it. When the vote passed, Lemkin recalled, “I felt like the pilot of an airliner who managed to restart a couple of dead motors.”⁸⁹⁷

During the last week of November Lemkin’s health deteriorated, preventing him from lobbying against a last set of articles. Article XIII brought the convention into force ninety days after twenty states ratified the treaty. Article XIV limited the duration of the convention to ten years from the time it came into force, after which the convention would remain in force for periods of five years, unless any of the contracting parties denounced it. There was nothing unusual with these two articles by themselves, Lemkin wrote.⁸⁹⁸ The “Trojan horse” was Article XV, stipulating that the Convention shall cease to be in force if the number of contracting parties falls below sixteen as a result of denunciations. Exhausted, Lemkin described himself as “a babysitter who takes a nap at the wrong time.”⁸⁹⁹ The inclusion of these two articles meant that his lobbying work had only just begun. Not only would he have to fight ensure the delegates at the UN signed the resolution on the Genocide Convention, he would have to make sure that the Genocide Convention was ratified by the parliaments of the world.

In the first week of December, the Sixth Committee approved the text of the draft and, on December 9, 1948, the General Assembly put the Convention for the Prevention and Punishment of the Crime of Genocide up for vote. At the final hour, the USSR proposed an amendment to make the convention apply to colonial territories and to

⁸⁹⁷ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 175.

⁸⁹⁸ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 176.

⁸⁹⁹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 176.

mandate the disbanding of racist organizations, which was rejected. Venezuelan withdrew its own last minute resolution to revive cultural genocide and criminalize the “systematic destruction of religious edifices, schools or libraries of the group.”⁹⁰⁰ In a roll call vote, the General Assembly adopted three resolutions: Resolution 260 A(III) Adopting The Convention on the Prevention and Punishment of the Crime of Genocide, and the Text of the Genocide Convention; Resolution 260 B(III) Study by the International Law Commission on the Question of an International Tribunal; and Resolution 260 C(III) Application with respect to Dependent Territories, of the Convention on the Prevention and Punishment of the Crime of Genocide, which recommended parties voluntarily make the convention applicable to their own colonial territories.⁹⁰¹ Resolution A, adopted unanimously, ushered into world affairs the idea that gross violations of human rights committed by states against their own citizens during times of peace could subject to international suppression and prosecution.⁹⁰²

On December 10, 1948, the General Assembly adopted the Universal Declaration of Human Rights.⁹⁰³ The day after that, Lemkin organized twenty-one signatures for the convention. Although an act of government, the signatures merely signified the state’s intention to ratify the treaty in parliament. That evening Lemkin went to bed with a fever, and was admitted to a hospital in Paris where he stayed for three weeks. None of the

⁹⁰⁰ UN Doc. A/PV.179; UN Doc. A/770.

⁹⁰¹ GA Res. 260 A(III); GA Res. 260 B(III); GA Res. 260 C(III); UN Doc. A/PV.179.

⁹⁰² Schabas, *Genocide in International Law*, 12.

⁹⁰³ GA Res. 217 A(III) International Bill of Human Rights: A Universal Declaration of Human Rights; UN Doc. A/810.

doctors could establish a diagnosis. Lemkin called it “genociditis: exhaustion from the work on the Genocide Convention.”

In retrospect, Lemkin described the Paris Assembly as “the end of the golden age for humanitarian treaties at the U.N.”⁹⁰⁴ His assessment was not unreasonable, considering that some scholars have dated the current Human Rights movement to the 1970s, not the 1940s.⁹⁰⁵ In the euphoria of December 9th, the French minister of foreign affairs, Robert Schuman, thanked Lemkin for his work. John Foster Dulles congratulated him on making a great contribution to international law. As Lemkin recalled in his autobiography, the world’s diplomats rejoiced and celebrated when the convention passed, but he was overcome with illness, depression, and a sense of foreboding. When “the lights in Palais de Chaillot went out,” Lemkin wrote, “the delegates shook hands hastily with one another and disappeared into the winter mists of Paris.”⁹⁰⁶ The Genocide Convention was now in the hands of the world’s politicians and statesmen—people “who lived in perpetual sin with history” and could hardly be trusted with “the lives of entire nations.”⁹⁰⁷ Within a decade, Lemkin would accuse France of evading culpability for committing genocide in Algeria and John Foster Dulles, as US Secretary of State, would oppose ratifying the genocide convention. With the governments that did try to ratify the convention, Lemkin ran into the same difficulty he found with the delegates from the *Ad*

⁹⁰⁴ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 173.

⁹⁰⁵ Moyn, *The Last Utopia*.

⁹⁰⁶ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 178.

⁹⁰⁷ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 115.

Hoc Committee and the Sixth Committee: they wanted “non-enforceable laws with many loopholes in them, so that they can manage life like currency in a bank.”⁹⁰⁸

⁹⁰⁸ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 217.

CHAPTER 7: THE FINAL YEARS, 1948-1959

The fact is that the rain of my work fell on a fallow plain, only this rain was a mixture of the blood and tears of eight million innocent people throughout the world. Included also were the tears of my parents and my friends.

—Raphael Lemkin, *Totally Unofficial*⁹⁰⁹

7.1 ON FALLOW PLAINS: THE THEORY AND POLITICS OF THE GENOCIDE CONVENTION

Hannah Arendt lamented that “no statesman, no political figure of any importance” could take the Genocide Convention and the Declaration of Human Rights seriously because they were sponsored by “marginal figures—by a few international jurists without political experience.”⁹¹⁰ But this is not so much a testament to the insufficient intellect of the jurists who drafted the Declaration of Human Rights and the Genocide Convention, so much as it is a testament to the political conditions under which these institutions were created. The statesmen at the UN were employed by governments that did not want humanitarian laws to which they could be held accountable. Yet, the activists and jurists, acting in an unofficial capacity, convinced the world and the world’s statesmen that humanitarian law was not an impediment to the power of states, but necessary for constructing the legitimacy of the international system of states, and even the states themselves.⁹¹¹ However, for the next two decades, the Genocide Convention

⁹⁰⁹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 132.

⁹¹⁰ On this point, see Seyla Benhabib, “International Law and Human Plurality in the Shadow of Totalitarianism: Hannah Arendt and Raphael Lemkin,” in *Politics in Dark Times: Encounters with Hannah Arendt*, ed. Seyla Benhabib (Cambridge: Cambridge University Press, 2010). Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace and Jovanovich, 1979), 292.

⁹¹¹ Jean-Marc Coicaud, *Légitimité et Politique: Contribution à L'étude du Droit et de la Responsabilité Politiques* (Paris: Presses Universitaires de France, 1997); and Hilary Charlesworth and Jean-Marc Coicaud (eds.), *Fault Lines of International Legitimacy* (Cambridge: Cambridge University Press, 2010).

and the Declaration of Human Rights would be largely dead letters, ignored in international affairs and world society.

The convention and the declaration are often seen as corresponding institutions, formed in response to the universal horror at the atrocities that accompanied the Second World War. Both are taken as expression of natural law, with the Universal Declaration following in the tradition of the Rights of Man and extending protections to individuals while the Genocide Convention seen as protecting human groups' rights of existence and enforcing a basic level of respect for diversity. However, to claim that genocide violates natural law is to assume, *a priori*, that moral outrage against genocide preexisted the Axis genocide. In fact, Lemkin argued, the opposite was true: the last two decades of world affairs before the Second World War demonstrated that genocide was an accepted social and political act, sanctioned as the right of the sovereign state to do what it pleases with its own populations.

Lemkin's ideas on genocide were certainly informed by the tradition of natural law; however, Lemkin was not a natural law theorist.⁹¹² "The history of genocide," he wrote in his *Introduction to the Study of Genocide*, "provides examples of the awakening of humanitarian feelings which gradually have been crystallized in formulas of international law." That is to say, the moral condemnation of genocide developed historically. The awakening of world consciousness against genocide, he continued, can be "traced to the times when the world community to an affirmative stand to protect human groups from extinction." Francesco de Vitoria and Bartolomé de Las Casas'

⁹¹² Andrew Fitzmaurice, "Anticolonilism in Western Political Thought: The Colonial Origins of the Concept of Genocide," in *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, A. Dirk Moses (New York: Berghahn Books, 2008).

natural law denunciation of Spanish atrocities in the Americas were the first “links in one chain leading to the proclamation of genocide as an international crime.”⁹¹³ However, these early natural law theorists cannot be seen as substantiating a critique of genocide because they framed the destruction of indigenous culture and beliefs in terms of religious or human progress.⁹¹⁴ Because genocide was celebrated as heroic, or morally good, the act was clearly not fully condemned according to any standard of unchanging moral principles that formed a basis of human conduct. Thus, for Lemkin, genocide could not be fully grounded in the natural law tradition, nor natural law.

In contrast, René Cassin consistently maintained that human rights rested on the foundation of religious and natural law, while transcending religious and ideological differences.⁹¹⁵ “The concept of human rights comes from the Bible, from the Old Testament, from the Ten Commandments,” Cassin wrote: “Whether these principles were centered on the church, the mosque, or the *polis*, they were often phrased in terms of duties, which now presume rights.”⁹¹⁶ Thus “thou shall not murder” becomes the right to life, and “thou shall not steal” becomes the right to own property. While “Judaism gave the world the concept of human rights,” for Cassin, human rights were not legitimized by their reference to Jewish particularism, but by their reference to universal principles. For the drafters of the Universal Declaration, the natural law foundations of human rights was

⁹¹³ Lemkin, “International Law and Relation.”

⁹¹⁴ Michael McDonnell and A. Dirk Moses, “Raphael Lemkin as Historian of Genocide in the Americas,” *Journal of Genocide Research* 7 (2005). Also see John Docker, “Are Settler-Colonies Inherently Genocidal? Re-reading Lemkin,” in *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, ed. A. Dirk Moses (New York: Berghahn Books, 2008), 92.

⁹¹⁵ Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley: The University of California Press, 2008), 19.

⁹¹⁶ Quoted in Ishay, *The History of Human Rights*, 19.

shared by the liberal tradition of rights and the world's other religious and philosophical traditions. The drafters explicitly looked beyond the Abrahamic faiths of Judaism, Christianity, and Islam—to the ten essential human freedoms and virtues of a good life in Hinduism, the Buddhist concepts of selflessness and the middle path, and Confucian injunctions against the desires of rulers, who have duties to heaven to have compassion towards the people.⁹¹⁷ For Lemkin, in contrast, there was no repudiation of genocide to be found in the great religious texts or the philosophical traditions of the world. The Genocide Convention, therefore, was not only about articulating universal principles; it was creating them, enforcing them, and introducing them into the sentiments of humankind.

Buck, Mistral, and Lemkin believed that words could change the world because, Lemkin wrote, “the history of language is the history of the human race” and “in many a word we find an enlightening vignette of history universal, international, national, social, individual.” “No word is a mere word,” he contended in *Introduction to the Study of Genocide*. A word is “a conglomeration of social, moral, economic, and scientific evolution.” Lemkin drew an analogy between his neologism genocide and Jeremy Bentham’s novel use of the term “international law” in *Principles of Morals and Legislation*. The previous term “laws of nations” had meant laws in between nations, Lemkin wrote. But, when Bentham used the adjective “international,” he signified laws of nations that operated within nations. Thus was born not only a new way of interpreting the social world, Lemkin believed. It was now possible to talk about international law, to make international law, and to act as if international law were real. The word both

⁹¹⁷ Ishay, *The History of Human Rights*, 20-21.

described and created social reality. Likewise, Lemkin added, the word “genocide” could describe and change the world, becoming “more than a means of communications between man and mankind, but an index of civilization.”⁹¹⁸

Lemkin believed, furthermore, that language and mental concepts played a role in preparing societies to mobilize towards genocide. War and genocide were “a vast field for application and creation of new words,” he wrote, because war and genocide demand “a sudden shift from innate human kindness to hatred of foreign nations (enemies).” Defining the “us” and the hated “enemy” was a semiotic process that could occur by placing a yellow Star of David upon the coat of a person, or by calling a person a “Jew,” Lemkin wrote. When the Allies began mobilizing for war against Germany, their propaganda machines likewise built support for war by presenting Germans as barbarians. Words such as “Hun” were revived from obscurity in the First World War and became a medium for channeling hatred against Germans, Lemkin wrote, pointing out that the word “Hun” was used by the Allies in the same manner that the words “Jew” or “Catholic” were used in previous genocides. These names, he continued, were “predestined to communicate a fact” but came to communicate a “judgment” in times of violence, facilitating genocide by creating the sense that the group deserved genocide.⁹¹⁹

This beginning of the genocidal process, Lemkin wrote, was facilitated by modern nationalism and the nation-state. These new forms of social organization were highly exclusionary and exalted the violent repression of minorities.⁹²⁰ Yet, nationalism by itself

⁹¹⁸ Lemkin, “Introduction: The New Word and the New Idea,” 1-4.

⁹¹⁹ Ibid.

⁹²⁰ Ibid, 7.

did not generate exclusionist ideologies, nor led to genocide. Rather, as Lemkin went to great lengths to argue in *Axis Rule in Occupied Europe*, genocidal ideologies emerged from clear political goals, and were legitimized by categorizing human society into groups. While Lemkin embraced the Genocide Convention as mechanism for protecting cultural diversity, his definition of a nation was fundamentally different than the definition of a nation espoused by organic nationalist ideologies. In *Introduction to the Study of Genocide*, Lemkin distanced himself from thinkers. Johann Gottlieb Fichte's theory of the union of the state, nation, and morality—where the highest principles of morality and right were attained by people living together in a biologically and spiritually reproducing society—was highly problematic for Lemkin.⁹²¹ Fichte's idea that humanity did not have one form but many forms was inferred from his reading of Herder's *Ideen zur Philosophie der Geshichte der Menschheit*, and represented a philosophical retreat from internationalism and republican ideals.⁹²² In Fichte's conception, the nation expressed an organic "will" which provided social cohesion by enforcing a strict vision of relativity.

Some have argued that Lemkin's ideas on nations can be reduced to Herderian thought, and that the Genocide Convention therefore protects organic nationalism. It is hard to deny that Lemkin was influenced by Herder,⁹²³ given that Lemkin discusses Herder's argument that the expansion of the European state trampled cultural diversity

⁹²¹ Ibid, 8.

⁹²² Micheline Ishay, *Internationalism and Its Betrayal* (Minneapolis: University of Minnesota Press, 1995), 100-101.

⁹²³ See Moses, "Raphael Lemkin, Culture, and the Concept of Genocide."

across European and in the colonial world.⁹²⁴ And, it is especially difficult to deny Herder's influence on Lemkin when we consider Herder's defense of cultural diversity and his belief that every nation and every culture had a right to exist.⁹²⁵ "Let the land be named to which Europeans have come without having sinned against defenseless, trusting humanity, perhaps for all aeons to come, through injurious acts, through unjust wars, greed, deceit, oppression, through diseases and harmful gifts!" Herder writes, condemning European colonialism: "Our part of the world must be called, not the wise but the *presumptuous, pushing, tricking* part of the earth; it has not cultivated but has destroyed the shoots of peoples' own cultures wherever it could be."⁹²⁶ Clearly, Herder's words echo in Lemkin's to some degree. Indeed, one could be forgiven for assuming that Lemkin had Herder in mind when he wrote that the genocide convention "brings into international law the very dignified concepts of nations, races, and religious groups as objects of protection."⁹²⁷ Lemkin, however, was not referring to a Herderian sentiment. In fact, the argument that the genocide convention can be reduced to a culturally relativistic, Herderian defense of vulnerable groups ignores Lemkin's own writings on the matter.

Lemkin was not retreating into a provincial, organic nationalism that denied the existence of a universal form of humanity or a universal human experience. He was searching for a way out of it, proclaiming an ecumenical vision of nationhood that

⁹²⁴ Johann Gottfried Herder, "On the Change of Taste (1766)," in *Herder: Philosophical Reader*, trans. Michael N. Forster (Cambridge: Cambridge University Press, 2002).

⁹²⁵ Isaiah Berlin, *The Proper Study of Mankind* (New York: Farr, Straus and Giroux, 1998).

⁹²⁶ Johann Gottfried Herder, "Letters for the Advancement of Humanity (1783-7)—Tenth Collection," in *Herder: Philosophical Reader*, trans. Michael N. Forster, (Cambridge: Cambridge University Press, 2002), 382. Emphasis in original.

⁹²⁷ Raphael Lemkin, "Draft Supplemental Remarks by Dr. Lemkin."

maintained a universal human subject. Lemkin's ecumenical vision accepted the premise that nations held unique existential experiences, but insisted on the fundamental equality of each national group. Lemkin also rejected the Romantic claim that an individual human being could be reduced to the nation or the culture. For Lemkin, the Genocide Convention provided a way of enshrining this ecumenical cosmopolitan ethics into international law to stand against what Michaline Ishay has termed "the withering of internationalism" in the philosophical and political realms of the global arena.⁹²⁸

It cannot be stressed enough that Lemkin opposed a relativistic, organic form of nationhood. He had always believed this nationalism was widely employed in the late nineteenth century by anti-Semitic and militarist thinkers such as Ernst Moritz Arndt, Heinrich von Treitschke, and Friedrich Ludwig to legitimize genocide.⁹²⁹ Fichte and Herder, Lemkin wrote, invented the idea of a singular German Volk that was present throughout the history in order to articulate a political expectation for the future that the various "German" peoples (Danes, Poles, Prussians, Austrians, Bavarians and so forth) would form one sovereign nation-state that would exclude anti-German elements. Lemkin was troubled by these communitarian movements that saw the nation as an objective and organic whole bound by language, blood and territory. It was a highly exclusionary and intolerant ideology used by the nation-state to elevate the defense of the nation into a moral good through idioms of national purity.⁹³⁰

⁹²⁸ Ishay, *Internationalism and Its Betrayal*, 101.

⁹²⁹ Lemkin, "Introduction: The New Word and the New Idea," 8.

⁹³⁰ Irvin-Erickson, "Genocide, the 'Family of Mind' and the Romantic Signature of Raphael Lemkin," 275.

Rebuking this relativistic nationalism in his unpublished papers, Lemkin explored two different philosophical avenues. In the first, Lemkin quoted John Stuart Mill's *Vindication of the French Revolution*, and wrote that such "nationalism makes men indifferent to the rights and interests 'of any portion of the human species, save that which is called by the same name and speaks the same language as themselves'." ⁹³¹ Lemkin went on to assert, following Mill, that "the new feelings of exclusive nationalism and of appeals to historic rights [are] barbaric [because] 'the sentiment of nationalism so far outweighs the love of liberty that the people are willing to abet the rulers in crushing the liberty and independence of any people not of their race and language'." ⁹³²

Lemkin, however, was not completely comfortable with Mill's liberal project because it still articulated an exclusionary claim that would have rejected the position of national cultural autonomy. For Mill, particular identities and minority identities had to be absorbed into a heterogeneous nation-state under the banner of citizenship, in order to guarantee political equality and individual rights. A nation, for Mill, was not a family of mind; a nation was a group of individuals who desired to be under a government that was their own political expression. The historian Eric Hobsbawm describes this belief with the equation "nation = state = people," where a nation is defined as a sovereign people and the nation is linked to a territory. ⁹³³ For Lemkin, this belief is what allowed for the wholesale expulsion and extermination of national minorities that plagued the interwar years. When a person expressed the sentiment of cultural nationalism and refused to join

⁹³¹ Lemkin, "Introduction: The New Word and the New Idea," 9. See John Stuart Mill, *Vindication of the French Revolution of February, 1848; in Reply to Lord Brougham and Others* (New York: Holt, 1873), 53.

⁹³² Lemkin, "Introduction: The New Word and the New Idea," 9.

⁹³³ Eric Hobsbawm, *Nations and Nationalism Since 1780: Programme, Myth, Reality*, 2nd ed. (Cambridge: Cambridge University Press, 2012), 19.

such a liberal nation-state, Mill wrote, that person abandoned the “privileges” of citizenship and rights in that state and was doomed to “sulk on his own rocks, the half-savage relic of past times, revolving in his own little mental orbit.”⁹³⁴ These “little mental orbits” that Mill disdained were of great value for Lemkin, who did not share a liberal notion of progress that thought of people who held on to their cultural identities as “half-savages.” While Lemkin agreed with Mill’s warning that cultural nationalism based on claims to historic group rights led people to support rulers who crushed the liberty of people of other languages or ethnicities, Lemkin also believed that nation-states could commit genocide when they insisted that particular identities had to be abandoned as a prerequisite for receiving liberal rights and political equality.

Looking for a more amenable solution to the problem of the organic nation and its cult of moral-national purity, Lemkin critiqued Fichte and Herder in a standard Hegelian line of reasoning. The position Lemkin articulated would have been known to any student of philosophy, such as Lemkin, who did postgraduate work in German Philosophy at the University of Heidelberg. In *The Philosophy of Right*, Hegel argued the modern state was “the actuality of the ethical Idea,” mediated through customs and self-consciousness, and “rational in and of itself.”⁹³⁵ A common reading of Hegel might therefore suggest that genocides committed by the state against “others” would be seen as venerable or heroic if they were done to preserve the interest of the state and the national community.⁹³⁶ In such a way, genocides do come to be seen as right, ethical, and even good—a view Lemkin

⁹³⁴ John Stuart Mill quoted in Hobsbawm, *Nations and Nationalism since 1780*, 34.

⁹³⁵ Georg Wilhelm Friedrich Hegel, *Hegel Elements of the Philosophy of Right*, (Cambridge: Cambridge University Press, 1991), 275 at §257.

⁹³⁶ Louis Rene Beres, “Genocide,” *Policy Studies Review* 4 (1985), 398.

shared.⁹³⁷ However, Hegel's idea of ethical life—which he contrasts to notions of abstract right and Fichte's attempt to apply morality to political principles—recognizes that what is ethical and right are not simply formed by a state justifying its actions, but emerge from the interplay of the individuals, civil society, and the state.⁹³⁸ Thus the state, drenched in blood, might be a sanctified killer, committing genocides and generating its own rationale. But, if words and concepts were channeling this hatred and legitimizing violence, then “one cannot help but wish that the use of words preaching friendliness and love would be carried out in time of peace with the same intensity as they are being used in times of war to spread hatred,” Lemkin wrote.⁹³⁹ Therefore, for Lemkin, one did not have to make recourse to the tenants of natural law in order to condemn and eventually prevent genocide. Entirely new concepts could be created by people who struggled to transform them into lived experiences—concepts that could overcome xenophobia and nationalist ideologies that legitimized genocide, concepts that could be conduits for peace and human freedom. If the state could be sanctified and genocide seen as right, then the state could be de-sanctified and genocide condemned and, ultimately, removed from the human condition.

Lemkin learned from his mistake with the crimes of barbarism and vandalism: one can invent a concept, but for the concept to change the social world it must meet the “popular tastes and needs of the age.” A concept becomes real, Lemkin wrote, by the very fact that people accept it and incorporate it into their own traditions, thereby proving that

⁹³⁷ Donna Lee-Frieze, “‘Simply Bread Out,’ Genocide and the Ethical in the Stolen Generations” in *Hidden Genocides: Power, Knowledge, Memory*, eds. Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson (New Brunswick: Rutgers University Press, 2013).

⁹³⁸ Allen Wood, *Hegel's Ethical Thought* (Cambridge: Cambridge University Press, 1990).

⁹³⁹ Lemkin, “Introduction: The New Word and the New Idea.”

the concept and the idea corresponds to the particular demands of an age.⁹⁴⁰ Mistral was especially helpful to Lemkin's efforts to bring his new word genocide into the world's consciousness, framing the Genocide Convention as a necessary institution in the post-Second World War world. For the last decade of her life, her essays and poetry returned often to the themes of the Holocaust and the Chilean genocide of Native Americans.⁹⁴¹ She found in Lemkin's concept of genocide, a way to critique both the state's practice of genocide as well as the state's practice of environmental degradation, by rejecting the sanctification of state power that makes human and ecological destruction possible.⁹⁴² Reflecting on her experience in lobbying in support for the Genocide Convention, Mistral wrote in 1956 that the word genocide was an effective tool in appealing to the hearts of statesmen during the late 1940s because the neologism introduced to the world, for the first time, "a moral judgment over an evil in which every feeling man and woman concurs."⁹⁴³ Not only did the word describe a phenomenon that had never been named, Mistral wrote, but the act of naming the feeling denounced the phenomenon that had previously been taken as noble, and even ethical. Mistral had a point. While there were many humanitarian movements over the course of the previous century that tried to denounce wars of extermination and massacres of denationalization, these humanitarian movements were hindered, or sometimes co-opted, by realpolitik, without ever

⁹⁴⁰ Lemkin, "Introduction: The New Word and the New Idea."

⁹⁴¹ See Gabriela Mistral and Victoria Ocampo, *This America of Ours: The Letters of Gabriela Mistral and Victoria Ocampo*, ed. Elizabeth Horan and Doris Meyer (Austin: University of Texas Press, 2003), 198.

⁹⁴² See Louis Rene Beres, "Genocide," *Policy Studies Review* 4 (1985), 398-401. Gabriela Mistral, *An Appeal to World Conscience: The Genocide Convention* (New York: United Nations Department of Public Information, 1956).

⁹⁴³ Mistral, *An Appeal to World Conscience*.

articulating a moral denunciation of the atrocity to the same degree that human rights movements employing the word genocide have been able to accomplish.⁹⁴⁴

7.2 COLD WAR, GENOCIDE, AND THE CIVIL RIGHTS MOVEMENT

Despite Lemkin's belief that words could change the world, the world changed little during his lifetime. The American Bar Association (ABA), along with a contingent of Nuremberg judges and the Southern wing of the Democratic Party, spearheaded a campaign in Washington to oppose the ratification of the Genocide Convention.⁹⁴⁵

Among other things, the three groups feared the convention would grant the Civil Rights movement international legitimacy and cause a constitutional crisis. Article II of the convention, a Senate sub-committee warned, could also be applied to anyone accused of lynching blacks.⁹⁴⁶ Ratifying the treaty could potentially subject the US to the jurisdiction of international courts, the groups argued, allowing Cold War enemies to interfere in the domestic affairs the US and US citizens.⁹⁴⁷ This was a plausible danger. The US was still legally segregated and the US constitution allowed for slavery to be used as a punishment for a crime.⁹⁴⁸ Should slavery and its legacy be considered genocide, then the US constitution would be in violation of international law.

⁹⁴⁴ Rodogno, *Against Massacre*.

⁹⁴⁵ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 189.

⁹⁴⁶ See Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 196-197.

⁹⁴⁷ George A. Finch, "The Genocide Convention," *The American Journal of International Law* 43 (1949). For a review, see Korey, "America's Shame: The Ungratified Genocide Treaty," in *Genocide and Human Rights: A Global Anthology*, ed. Jack Nusan Porter (New York: University of America Press, 1982), 285.

⁹⁴⁸ See Barbara Esposito and Lee Wood, *Prison Slavery* (Washington, D.C: Committee to Abolish Prison Slavery, 1982). Also see Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008). The Thirteenth Amendment to the United States Constitution, ratified in 1865 and still in effect today, reads: "Neither

In 1966 US Ambassador to the UN Arthur Goldberg, a former Supreme Court Justice, urged President Lyndon B. Johnson to support the ratification of UN conventions on human rights, slavery, forced labor, the political rights of women, and the Genocide Convention.⁹⁴⁹ Goldberg told Johnson that the Eisenhower administration in the 1950s was reluctant to ratify any Human Rights treaty because of domestic fears that foreign treaties would supersede the constitution and encroach upon US sovereignty. These fears culminated with a series of wildly popular proposals by Republican Senator John Bricker in 1953 to amend the US constitution to suspend the president's power to enter into foreign treaties.⁹⁵⁰ Eisenhower, furious at having to fend off Bricker's attack from within his own party, complained to his press secretary: "if it's true that when you die the things that bothered you most are engraved on your skull, I am sure I'll have there the mud and dirt of France during invasion and the name of Senator Bricker."⁹⁵¹ Although he never tired of championing the US liberation of the Nazi camps, Eisenhower, who Lemkin viewed as an ally, was forced to withdrawal his support for the Genocide Convention.⁹⁵²

To overcome this political resistance, Lemkin turned to the support of the Lithuanian, Polish, and Ukrainian Diasporas to lobby elected officials. Lemkin was

slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

⁹⁴⁹ US Department of State, *Foreign Relations of the United States, 1964-1968: Organization and Management of U.S. foreign policy United Nations, Volume 33*. (Washington, DC: Government Printing Office, 2004), 830-831.

⁹⁵⁰ Richard O. Davies, *Defender of the Old Guard: John Bricker and American Politics*. (Columbus: The Ohio State University Press, 1993); Duane Tananbaum, *The Bricker Amendment Controversy: A Test of Eisenhower's Political Leadership* (Ithica, NY: Cornell University Press, 1988).

⁹⁵¹ US Department of State, *Foreign Relations of the United States, 1952-1954. General Economic and Political Matters (In Two Parts): Volume I, Part 2*. (Washington, DC: Government Printing Office, 1983), 1846.

⁹⁵² Power, *A Problem From Hell*, 70.

hoping to use his speeches against Soviet genocides to frame the Genocide Convention in anti-Communist terms. Such was the case with Lemkin's address on the Ukrainian Genocide in 1953, which was part of his campaign to build support for ratifying the Genocide Convention. This speech, described above, as well as Lemkin's other public addresses, should not be reduced to the anti-communist rhetoric of the US in the 1950s, however. The speeches, despite their motivations, reflected the full breadth of his theoretical work on genocide, stretching back to his early work on the Soviet penal codes of the 1920s. The famine was more than a brutal, physical attempt to break peasant resistance to collectivization, Lemkin argued. The famine was the third part of a "four-pronged" attack on the Ukrainian nation as a family of mind, the most violent tactic the Kremlin leadership used in their genocide.

It is now widely accepted that Stalin orchestrated grain shortages in Ukraine between 1932 and 1933. However, there has been great controversy over whether or not the famine that killed over four million people qualifies as genocide.⁹⁵³ The arguments center around a central problem concerning the identity of the victims: Did Stalin intend to starve the Ukrainian peasantry because they were political enemies, because they were peasants, or because they were Ukrainians?⁹⁵⁴ The question seems to mock the horrors of death and the dignity of the victims. Yet, scholars maintain, the question is important because Article II of the convention prevents genocide from being legally determined if

⁹⁵³ Conquest, *Harvest of Sorrow*; Serbyn, "The Ukrainian Famine of 1932-1933 as Genocide in the Light of the UN Convention of 1948;" Norman Naimark, *Stalin's Genocides*.

⁹⁵⁴ See Serbyn, "The Ukrainian Famine of 1932-1933 as Genocide." And see Naimark, *Stalin's Genocides*.

the victims of the famine were killed in their capacity as a political or economic group.⁹⁵⁵

In Lemkin's speech these questions never entered his mind. He was clear about the genocide: the "full force of the Soviet axe has fallen" on the "religious, intellectual, [and] political," leadership of the Ukrainian nation.⁹⁵⁶ The purposeful starvation of the peasantry was as part of a larger, systematic attempt to destroy the Ukraine as a nation.⁹⁵⁷ As such, it was "an indispensable step in the process of 'union' that the Soviet leaders fondly hope will produce the 'Soviet Man,' the 'Soviet Nation'."⁹⁵⁸

Lemkin's comments on the Ukrainian genocide are significant because it shows that he continued to consider political groups and cultural genocide as primary victims of genocide even though these groups were removed from the Genocide Convention. This perspective is sustained in his draft chapter on the sociology of genocide in *Introduction to the Study of Genocide*, where he writes that "social groups, namely racial, religious, national, linguistic, and political groups" are exposed to genocide "when they constitute a minority or subjected majority within the community or sphere of control in which they are destroyed."⁹⁵⁹ The Kremlin "will gladly destroy the nations and the cultures that have long inhabited Eastern Europe," Lemkin said in his speech, because genocide was "an essential part of the Soviet programme for expansion, for it offers the quick way of bringing unity out of the diversity of cultures and nations that constitute the Soviet Empire." This unity, however, was not a unity of ideas and of cultures as Lenin and

⁹⁵⁵ Lyman H. Legters, "The Soviet Gulag: Is it Genocidal?" in *Toward the Understanding and Prevention of Genocide*, ed. Israel Charny (Boulder, CO: Westview Press, 1984), 65.

⁹⁵⁶ Lemkin, "Soviet Genocide in the Ukraine," NYPL, Reel 3, Box 2, Folder 16, 2-3.

⁹⁵⁷ Serbyn, "The Ukrainian Famine of 1932-1933 as Genocide in the Light of the UN Convention of 1948."

⁹⁵⁸ Lemkin, "Soviet Genocide in the Ukraine," 1.

⁹⁵⁹ Lemkin, "The Concept of Genocide in Sociology." See Jacobs, *Lemkin on Genocide*, 34 n. 31.

Stalin propagandized. The “unity” was being created “by the complete destruction of all cultures and of all ideas save one—the Soviet.”⁹⁶⁰

It has been argued that “political reality pushed Lemkin into a vicious circle,” driving him to tell audiences what they wanted to hear in order to solicit their support in order to garner support for his campaign.⁹⁶¹ Sadly, Lemkin’s drive to satisfy McCarthy-era paranoia and present the Genocide Convention as a tool for battling communism led him into a fierce battle with the Civil Rights Congress and several prominent leaders of the US Civil Rights Movement. Like many other émigré intellectuals of his generation, Lemkin had difficulty sympathizing with the African American civil rights movements in the US. To his credit, Lemkin was aware of his own ignorance of racism in US society. In his autobiography, he describes with embarrassment his first experience in the US when his train stopped at Lynchburg Virginia and he asked the black porter at the station “if there were indeed special toilets for Negroes.”⁹⁶² Lemkin lamented that it took him many years to realize that he had insulted the man.

In 1951, the Civil Rights Congress, a communist organization in the US advocating for civil rights, published a petition charging the US with committing genocide against its black population.⁹⁶³ The petition, *We Charge Genocide*, carrying the signatures of many intellectuals and activist, was simultaneously delivered to the UN offices in New York by Paul Robeson and in Paris by the petition’s lead author, William

⁹⁶⁰ Lemkin, “Soviet Genocide in the Ukraine,” 8.

⁹⁶¹ Weiss-Wendt, “Hostage of Politics: Raphael Lemkin on ‘Soviet Genocide’,” 556-557.

⁹⁶² Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 100.

⁹⁶³ Civil Rights Congress, *We Charge Genocide: The Historic Petition to the United Nations for Relief from a Crime of the United States Government Against the Negro People* (New York: Civil Rights Congress, 1951).

Patterson.⁹⁶⁴ The prominent scholar W.E.B. Du Boise was supposed to have delivered the Paris petition but was prohibited by the State Department from leaving the country after being indicted as an unregistered foreign agent.⁹⁶⁵ The petition was meticulously researched, and remains an outstanding piece of scholarship. It charged the US State with committing genocide against the US black population—from the local to the federal level. The coauthors of the petition sought to indict the US for killing “10,000 Negroes” between 1945 and 1951 through extra-judicial killings, by a non-independent judiciary that was racially prejudiced in its application of the death penalty, by the police in the back rooms of police stations in every US city, in jail cells, and by the Ku Klux Klan, an organization that operated as a semi-official arm of the government in some US states and was legally chartered as a benevolent society. The petition drew parallels between the US treatment of blacks and the pogroms that marked the beginning of the Nazi Genocide, and even pointed to parallels between the Nazi party’s Jewish laws prohibiting interbreeding to the laws across many US states that prohibited blacks and whites from inter-marrying. It cited the “genocidal doctrines” of white supremacists in the US and documented cases of looting, arson, lynching, torture, terror, rape, the killing of children, and the suppression of voting rights that were perpetrated against black communities by whites who were acting with the complicity—or the sanction—of the government.⁹⁶⁶

In an interview with *The New York Times*, Lemkin dismissed *We Charge Genocide* as part a communist-orchestrated “maneuver to divert attention from the crimes

⁹⁶⁴ William L. Patterson, *The Man Who Cried Genocide: An Autobiography* (New York: International Publishers, 1971), 184.

⁹⁶⁵ Gerald Horne, *Black and Red: W. E. B. Du Bois and the Afro-American response to the Cold War 1944–1963* (Albany: State University of New York Press, 1986), 178-181.

⁹⁶⁶ Civil Rights Congress, *We Charge Genocide*, 3-10.

of genocide committed against Estonians, Latvians, Lithuanians, Poles and other Soviet-subjected peoples.”⁹⁶⁷ Later, Lemkin wrote an editorial in *The New York Times* that claimed the US was guilty of discrimination and violations of Human Rights, not genocide, because the “negro population ... is increasing in condition of evident prosperity and progress.”⁹⁶⁸ As John Docker observes, this was a strange narrowing of his own definition of genocide.⁹⁶⁹ Lemkin’s cosmopolitanism, Docker writes, was defeated by the same euro-centrism that led Hannah Arendt to deny the dignity and complexity of non-Western societies and the African-American intellectual tradition, and caused Adorno and Horkheimer to refer to jazz as non-cultural music and stylized barbarity. In the white-supremacist South of the 1950s, Docker notes, highway billboards announced “this is Klan country” and called for the US to pull out of the UN. Yet, here was Lemkin, the world’s leading expert on genocide and humanitarian law, lending his authority to help maintain white supremacy in the US while “belittling those who courageously fought for civil rights.”⁹⁷⁰

Oakley Johnson, one of the co-authors of *We Charge Genocide*, wrote to Lemkin in a plea for understanding and sympathy. After asking if he had “ever lived in the South in a Negro section,” Johnson wrote to Lemkin that “the white police, white newspapers, white officials, white judges and white juries do not just ‘frighten a Negro’. They

⁹⁶⁷ “U.S. Accused in U.N. of Negro Genocide,” *New York Times*, December 18, 1951, 13.

⁹⁶⁸ Raphael Lemkin, “Nature of Genocide; Confusion with Discrimination Against Individuals Seen,” *New York Times*, June 14, 1953, E10.

⁹⁶⁹ John Docker, “Raphaël Lemkin, Creator of the Concept of Genocide: A World History Perspective,” in *Key Thinkers and Their Contemporary Legacy: Humanities Research Vol. XVI. No 2.*, ed. Ned Curthoys (Canberra: The Australian National University E Press, 2010).

⁹⁷⁰ Docker, “Raphaël Lemkin, Creator of the Concept of Genocide.”

terrorize all Negroes, regularly, systematically, all the time.” When discrimination is enforced by the laws, polices and courts, when children are systematically terrorized and critically wounded, when people are denied hospital treatment because of their skin color, he asked Lemkin: “Isn’t there a potential element of genocide?”⁹⁷¹ Lemkin responded by branding Robeson, Patterson, and the petition co-authors as “un-American elements serving foreign powers.”⁹⁷²

There is no shortage of irony in Lemkin’s denunciation of Robeson and Patterson. In an attempt to appease a xenophobic and racist white establishment in the US to help his cause in moving the US to ratify the genocide convention, Lemkin failed to see that he, too, was an outsider being rejected as un-American. These were more than the reviews in scholarly journals that accused Lemkin of being unscientific because he was a Pole and a Jew.⁹⁷³ Antisemitism and xenophobia followed him through the US government. During Lemkin’s testimony before the US Senate subcommittee in 1950, for instance, Senator Howard Alexander Smith from New Jersey openly warned against acceding to a law whose “biggest propagandist” was “a man who comes from a foreign country,” “spoke with broken English,” and represented “a people”—Jews—who “ought not to be the ones who are propagandizing” for a genocide convention.⁹⁷⁴ Appealing to a xenophobic and racist white establishment that wanted nothing to do with the UN

⁹⁷¹ “Correspondence from Oakley Johnson to Raphael Lemkin,” AJHS, Box 1, Folder 9, June 24, 1953.

⁹⁷² Patterson, *Man Who Cried Genocide*, 191.

⁹⁷³ Melchior Palyi, “Review Essay on Axis Rule in Occupied Europe,” *American Journal of Sociology* 51 (1946).

⁹⁷⁴ Quoted in Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 198.

Genocide Convention, Lemkin alienated a movement that had already embraced his ideas and was ready to support his life cause.

When evaluating Lemkin's thoughts on genocide, race and racism in the US, it is important to consider his scholarly manuscripts that he was working on at the time. The scholarly writings he intended to publish were much more sympathetic than his blundering attempts to publically discuss race and genocide in US society.

Modern racism, Lemkin wrote in *Introduction to the Study of Genocide*, formed during the era of European colonial expansion to justify exploitation, then fomented with the rise of nationalist ideologies.⁹⁷⁵ This admixture of racism and "politically aggressive" nationalism, Lemkin wrote, "when coupled with a strive for power, aggrandizement, internal anxieties, and disrespect for minorities" can "create a climate, which, with certain conditions, might be used for the perpetration of genocide."⁹⁷⁶ Namely, racism and nationalism produced "fear and impatience in dealing with vexing problems represented by a group of human beings," which generated "the temptation of attempting a final solution for the problem by liquidating the group."⁹⁷⁷ While race ideology "reached its peak in those modern totalitarian nations which evolved ideas of racial unity and destiny," Lemkin wrote, "its deepest roots have been cast in the non-totalitarian culture of North America" and "there dig into the same soil as the equally powerful roots of liberalism and democracy."⁹⁷⁸ In North American society, he concluded, racist ideologies were far more extreme than they were in Europe; however, the tradition of

⁹⁷⁵ Lemkin, "The Nature of Prejudice," NYPL, Reel 3, Box 2.

⁹⁷⁶ Lemkin, *The Hitler Case*, AJHS, Box 7, Folder 13.

⁹⁷⁷ Lemkin, *The Hitler Case*, AJHS, Box 7, Folder 13.

⁹⁷⁸ Lemkin, "The Nature of Prejudice."

liberalism and democracy mitigated against the horrors of racism and nationalism that were seen in Europe and the colonial world.

In the backdrop of this analysis, it must be remembered that Lemkin insisted that race was not a scientific concept, but a concept used to justify colonialism and genocide. At best, race was a “vague category” with little to no sociological value, he wrote.⁹⁷⁹ In fact, Lemkin believed, the “racial identity [of the American Negro] is in many cases approaching a fiction.” Thus, the “American Negro” was not a racial category according to Lemkin. It was a “socioeconomic status.”⁹⁸⁰ Lemkin drew no distinction between whites and blacks in the US, and saw both as belonging to the same sociological nation. Furthermore, in his scholarly writings, Lemkin tended to treat all of America as a whole unit, referring to the countries of the Americas together in the same breath of analysis the way scholars in the US speak of “Europe” and “Africa” as autonomous wholes. Lemkin therefore sympathized deeply with the relationship between genocide and the development of race thinking in North America—and wrote extensively of genocides committed against Native Americans and African slaves—but he had trouble seeing the specific issues of white supremacy and racism against blacks in the US in the 1940s and 50s. In denying that African-Americans were a different nation, Lemkin denied the validity of the central claim of *We Charge Genocide*: that a distinct “negro” group experience was being targeted for extermination.

⁹⁷⁹ Lemkin, “The Concept of Genocide in Sociology.”

⁹⁸⁰ Lemkin, “The Concept of Genocide in Sociology.”

Scholars have not hesitated to label Lemkin's ideas racist, or even him a racist.⁹⁸¹

These accusations are based on Lemkin's public reaction to *We Charge Genocide*, as well as the research essays written by Lemkin's graduate assistants on colonial genocides in Namibia and Congo that survive in his archives. Clearly, Lemkin believed that the German and Belgium colonial regimes committed genocide in these colonial territories, or else he would not have included these essays in his research notes for his planned book, *The History of Genocide*. Yet these writings—written by graduate assistants whom Lemkin directed—have been incorrectly attributed to Lemkin and, consequently, Lemkin has been criticized for viewing the African victims as inherently weak, or as “savages” and “cannibals” who were also helped by the civilizing aspect of colonialism.⁹⁸² The problem is that Lemkin did not write these essays which patronize Africans for not being developed enough to resist European genocide.

For the sake of the argument, let us imagine that the biases of Lemkin's research assistants can be ascribed to Lemkin. Like the great Liberal thinkers such as John Locke or Immanuel Kant, Lemkin's ideas can be redeemed by one simply fact: it is possible to critique Lemkin's beliefs from Lemkin's own principles. In other words, in his criticism of *We Charge Genocide*, Lemkin was being a bad “Lemkinite.” However, when we consider Lemkin's scholarly manuscripts in closer detail, the accusations of racism appear to be overstated. This makes it all the more important to interpret Lemkin's ideas through consideration of his unfinished works.

⁹⁸¹ Ann Curthoys and John Docker, “Defining Genocide,” in *The Historiography of Genocide*, ed. Dan Stone (Houndmills: Palgrave MacMillan, 2008).

⁹⁸² Dominik J. Schaller, “Raphael Lemkin's view of European Colonial Rule in Africa: Between Condemnation and Admiration,” *Journal of Genocide Research*, 7 (2005).

7.3 THE LATE WORKS: THE HISTORY OF GENOCIDE, FROM ANTIQUITY TO ALGERIA

That Lemkin was never awarded a book contract nor a permanent faculty position in the US is an intellectual tragedy. At the height of Lemkin's success in December of 1948, the dean of the Yale Law School, Eugene Rostow, celebrated Lemkin by contrasting him to other "intellectuals" who "make the worst possible allies" because they "fear a fight" even when they know they are right and "tend to run out when they should be most stubborn." Rostow—who would later become the undersecretary of state in the Johnson administration—invited Lemkin "back home" to Yale to write a book about the Genocide Convention "to make sure that the victory is not lost."⁹⁸³

Lemkin, however, was not fully accepted by the Yale faculty, who grew weary of his long absences from his lecturing duties and considered him a "loner" and a fanatic.⁹⁸⁴ While Rostow remained a loyal supporter, Dean Wesley Sturges complained of Lemkin's "extreme devotion to the cause of Genocide" and instructed the university to cut off his telephone and telegraph privileges in December 1949 because he "could see no reform in sight" for Lemkin's extravagance.⁹⁸⁵ Lemkin's insistence on incorporating philosophy, political theory, history, sociology, anthropology, linguistics, art, literature, and social psychology into his law classes did not endear him to his colleagues, either. But it was his

⁹⁸³ "Correspondence from Eugene R. Rostow to Raphael Lemkin," AJHS, Box 1, Folder 6, June 31, 1948.

⁹⁸⁴ See Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 207.

⁹⁸⁵ "Correspondence from Wesley A. Sturges to Russell H. Grele," AJHS, Box 1, Folder 13, December 22, 1949.

failure to publish a book was troublesome to the Yale faculty.⁹⁸⁶ Publishing companies and academic presses did not believe there was a need for books on genocide. As an editor at Simon and Schuster put it: “If Lemkin does not win the Nobel prize, I think the audience for such a book would be very small. I know several relatively well-read college students who not only have never heard of Lemkin but could not define genocide.”⁹⁸⁷ Tanya Elder describes the cycle of Lemkin’s anonymity succinctly: Although he was nominated many times for the Nobel Peace Prize—three times by the Harvard Law Professor Paul Freund in 1950, 1951, and 1955; once again in 1950 by Jorge Villagomez Yépez, and once by the progressive congressman Emanuel Celler in 1958—few people in the general public outside of UN or government circles knew who he was. At the same time, book manuscripts on genocide were unexciting to publishers because so few people had even heard of the word genocide, let alone cared enough to read a book about an obscure man who coined an obscure word, and wrote an obscure law.⁹⁸⁸ In the summer of 1951, Yale did not renew Lemkin’s contract.

For the next five years, before securing a professorship at Rutgers University School of Law in 1956, Lemkin’s yearly salary was made up of small grants from organizations and interest groups and small loans. Without fulltime employment and suffering from poor health, Lemkin could not dedicate the time necessary for completing his scholarly projects. Dying young, and never securing a publisher convinced that books on genocide would sell, Lemkin left these projects unfinished, and unpublished. Besides

⁹⁸⁶ See Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 207.

⁹⁸⁷ “Simon and Schuster Letter to Lemkin,” NYPL, Reel 1, Box 1, Folder 2.

⁹⁸⁸ Elder, “What You See Before Your Eyes: Documenting Raphael Lemkin’s Life by Exploring his Archival Papers, 1900-1959.”

the manuscripts for his autobiography *Totally Unofficial* and *Introduction to the Study of Genocide*, Lemkin also left unfinished drafts for an ambitious three-volume *History of Genocide* that contained almost 70 proposed chapters.

The case studies of this manuscript ranged from Assyrian genocides in Antiquity to Mongolian and Moorish cases, but focused particularly on modern genocides. Under this heading of “modern,” Lemkin considered cases of seventeenth-century genocides of the Incas committed by the Spanish empire and twentieth-century genocides committed by Germany in colonial Africa, where he considered mass rape, torture, terror, and slave labor as the primary techniques of genocide used to Germanize South West Africa. Lemkin accused the German colonial regime of inciting rebellions through the seizure of tribal lands, the maladministration of justice, brutal floggings, forced labor, taxation, and violations of native rights and customs. The rebellions provided the German colonial administration with the cover necessary for shooting between 200,000 to 300,000 people in a span of two decades, Lemkin found.⁹⁸⁹ The 100-page manuscript on genocide in the Congo Free State, prepared for Lemkin by one of his research assistants, traced the genocide committed by rubber companies operating with the sanction of European states, and documented the atrocities committed by the Belgium colonial regime which employed genocide as a primary means of terrorizing native tribes in order to shatter their ability to forcibly resist enslavement.⁹⁹⁰

⁹⁸⁹ Raphael Lemkin, “Germans in Africa,” AJA, Box 6, Folder 9, And see Lemkin, “Hereros,” AJA, Box 6, Folder 12.

⁹⁹⁰ Raphael Lemkin, “Belgium Congo,” NYPL, Reel 3, Box 2, Folder 7.

In *Introduction to the Study of Genocide*, Lemkin wrote that “colonialism cannot be left without blame” when analyzing the “generating forces of genocide.”⁹⁹¹ After all, he concluded, a significant “generating force of genocide” were the expectations of political and economic gains that were supposed to be achieved by annihilating a group. Yet colonial terror and genocide were not parts of the past, but continued into the present, Lemkin wrote. In the last years of his life, Lemkin developed these ideas most fully in his research on French genocides against Algerians and Muslim Arab culture. In 1956, he collaborated with Chief of the U.N. Arab States Delegation Office, Muhammed H. El-Farra, to produce an article calling for the U.N. to bring up France in charges of genocide. The text that survives in Lemkin’s archives contains his annotations and comments. It is notable that El-Farra wrote—in language that closely resembles Lemkin’s—that France was following a “long-term policy of exploitation and spoliation” in their colonial territories, squeezing nearly one million Arab colons into poverty and starvation in “conditions of live [that] have been deliberately inflected on the Arab populations to bring about their destruction.”⁹⁹² The French authorities, El-Farra continued, “are committing national genocide by persecuting, exiling, torturing and imprisoning arbitrarily and in conditions pernicious to their health, the Algerian leaders” who are responsible for carrying and promoting Algerian national consciousness and culture, including teachers, writers, poets, journalists, artists, and spiritual leaders in addition to political leaders.⁹⁹³

⁹⁹¹ Lemkin, “Description of the project.”

⁹⁹² Muhammad El-Farra *Algeria and the United Nations* (New York: The Arab Information Center, September 15, 1956). NYPL, Reel 5, Box 5, Folder 2, p. 16.

⁹⁹³ El-Farra, *Algeria and the United Nations*, p. 24.

In 1957, after joining the Rutgers faculty, Lemkin continued to research and advocate for potential legal and humanitarian responses to the genocide France was committing in Algeria. In a document that dates to 1957, Lemkin accused the French state of committing genocide under the pretext combating terrorism.⁹⁹⁴ The Fourth French Republic, he wrote, had turned to a strategy of breaking the “bodily and mental integrity” of the Algerian people to prevent Algeria from seceding and to integrate Algerians into the Republic as French citizens. The French colonial powers were targeting the various groups in Algeria who constituted the “patriotic element,” Lemkin wrote, because they were “the bearers of national consciousness and they provided the forces of cohesion.” Political leaders and charismatic leaders who appealed to an Algerian consciousness that was distinct from a French identity were eliminated, Lemkin wrote, and a “nation-wide campaign of violence and torture” became “a governmental institution” used not only “[to extort] information about the rebels” but also “[to affect], on a mass scale, the bodily and mental integrity of the people.”⁹⁹⁵ Whereas Hitler employed death camps, and Stalin mass famine, Lemkin argued that the primary weapon of the French genocide was psychological trauma inflicted through torture and state terror designed to shatters the bonds of social solidarity amongst the Algerian nation.

In *Introduction to the Study of Genocide*, Lemkin planned to dedicate a chapter to on the study of genocide in individual and social psychology.⁹⁹⁶ As discussed above, he drew upon Erich Fromm and Theodor Adorno to hypothesize on how the Nazi genocide

⁹⁹⁴ Lemkin, “Genocide,” NYPL, Reel 4, Box 3, Folders 1-2. I date the document at least to early 1957 because Lemkin mentions a previous memo written in February 1957.

⁹⁹⁵ Lemkin, “Genocide,” 1.

⁹⁹⁶ Lemkin, “The Concept of Genocide in Social and Individual Psychology.”

generated social legitimacy. However, he dedicated an equally substantial amount of space for the psychological “injury” of the victims of genocide. While all seventeen of Lemkin’s footnotes are lost to history, it is clear Lemkin draw on Elie Cohen’s work on the psychological consequences of Nazi concentration camps.⁹⁹⁷ The victims of genocide, Lemkin wrote, suffer a “loss of social aspirations, controls, and emotions such as altruism and resistance.” The experience of genocide conditions “responses to certain situations which were used to symptomize danger to them,” he added, providing an example of the manifest panic survivors of the Nazi genocide felt years later every time a stranger knocked on the door. The terror of genocide inflicts “permanent psychological injury” and arrests the “development of the child victim,” he wrote, which is “perhaps the most shocking and tragic result of genocide.”⁹⁹⁸ Individual psychological injury—trauma we might now say—becomes social psychological injury, and contributes to the perpetrator’s attempt to liquidate the social group of the victims. In his writings on the Algerian genocide, Lemkin wrote that French terror, alone, would constitute genocide according to strictest interpretation of the UN Genocide Convention.

Although he had lost the article on “cultural genocide,” Lemkin still believed that “the Genocide Convention protects specifically the minds of the people because it is through the mind that the nation exists and transfers its national heritage.” Through terror, not mass killings, the French were seeking to annihilate an Algerian national consciousness and thus could be charged with genocide under Article II (b) of the convention, causing serious bodily or mental harm. But this violent destruction of the

⁹⁹⁷ See Steven Leonard Jacobs, ed., *Lemkin on Genocide*, 33 n. 28 and n. 29. Elie Cohn, *Human Behavior in the Concentration Camp* (New York: Grossett & Dunlap, 1953).

⁹⁹⁸ Lemkin, “The Concept of Genocide in Social and Individual Psychology.”

Algerian “family of mind” was made all the more devastating by a political and economic system that placed political representation, land resources, and wealth in the hands of French colonists while the Algerian population was forced to live in extreme poverty in conditions plagued by infectious diseases and high child mortality rates, in addition to being subjected to state terror.⁹⁹⁹ In so far as he argued that genocide and state terror were helping to enrich the French republic, Lemkin might have found common ground with Franz Fanon’s *The Wretched of the Earth*, where Fanon wrote “this colonial war [in Algeria] that very often takes on the aspect of a genuine genocide” has become “a breeding ground for mental disorders” and “radically disrupts and shatters the world.”¹⁰⁰⁰ Lemkin might have agreed with Jean-Paul Sartre’s sentiment in his Preface of Fanon’s text, that his “fellow countrymen” in France “know all the crimes committed in our name” but do not “breath a word about them to anybody” for “fear of having to pass judgment on [our]selves.”¹⁰⁰¹

Legally, Lemkin argued, the French government understood its policies constituted genocide and worked to redefine humanitarian laws so that they could not be held guilty. This was the reason why French delegates proposed a revision to the Genocide Convention that removed heads of state, government officials, or private individuals as parties who could be held responsible for genocide, Lemkin wrote. Instead, French delegates had insisted that those responsible for genocide should be only “authorities of state or private individuals ‘acting at the instigation or with the toleration

⁹⁹⁹ Lemkin, “Genocide,” 1.

¹⁰⁰⁰ Franz Fanon, *The Wretched of the Earth*, trans. Richard Philcox (New York: Grove Press, 2004), 182-183.

¹⁰⁰¹ Jean-Paul Sartre, “Preface,” in Franz Fanon, *The Wretched of the Earth* (New York: Grove Press, 2004), lxii.

of such authorities’.” The proposal was purposeful nonsense, Lemkin reasoned, for the provision shifted culpability to corporate bodies such as “authorities” which prevented any individual from being held guilty of genocide. In colonial territories, this would have essentially made genocide a legal act. With no individuals to bring to trial, the courts in the colonial territories would be responsible for bringing up charges against their own standing governments—which was nothing short of a laughable expectation.¹⁰⁰²

A few months before Lemkin wrote his essay on Algeria, the French government provoked his ire by responding to a Security Council inquiry over their handling of the Algerian civil war. In a statement to the security council that Lemkin kept in his papers, the French Ambassador Hervé Alphand said that the French government did not “dispute the facts” about the treatment of “the Algerian problem.” Alphand admitted that the French government committed human rights violations in Algeria, but cited the doctrine of national sovereignty and insisted that their treatment of Algerians was a domestic affair. To those such as Lemkin who suggested that the Algerians were a different nation, Alphand asserted that Algeria was within France’s legal jurisdiction and the people living in Algeria were citizens of France even if they were “not the same colour, do not speak the same language, or practice the same religion as the other people of France.”¹⁰⁰³ France “has the right to ask to be trusted,” he continued, because it “was not a colonialist power,” but was making Algeria a part of the republic and “trying, for all concerned, to progress towards peace.”¹⁰⁰⁴ The Algerian civil war was an unfortunate but necessary

¹⁰⁰² Lemkin, “Genocide,” 3.

¹⁰⁰³ Hervé Alphand, *Ambassador Alphand’s Speech to the Security Council on June 26th 1956*, NYPL, Reel 4, Box 3, Folders 5, 1.

¹⁰⁰⁴ Alphand, *Ambassardor Alphand’s Speech*, 4-5.

step in the civilizing project. And France would not “abandon, tomorrow, on the Mediterranean shores, people deeply faithful to us, to a minority of killers of women and children who would, in most horrible manner, throw them back towards barbarity, fanaticism, anarchy and poverty.”¹⁰⁰⁵ Lemkin called this French policy genocide.

It is worth noting that Lemkin’s contemporary Hannah Arendt commended the French for their “restraint” in dealing with the rebellious Algerians. In restraining from outright violence, Arendt wrote in *On Violence*, the French had kept open the possibility for political change. This is a position similar to that of the French ambassador. Her argument was based on a claim she made in *The Origins of Totalitarianism*, where she had argued that totalitarian rule was fundamentally apolitical, for the totalitarian regime used violence to atomize the public realm where freedom and liberty rested, which dismantled political life. In *On Violence*, she wrote that politically speaking, violence and power are opposites; violence can destroy power but remains utterly unable to create power, for violence prevents the formation of human associations from which political power flows. In totalitarian domination established through violence, at the climax of terror, “power disappears entirely.”¹⁰⁰⁶ Politics was completely impossible in any human society where the public sphere (the polis) had been eroded, paving the way for the citizenship and rights of the victims to be denied. Arendt believed the French in Algeria were not allowing colonization to turn into totalitarian rule and mass-death, to their credit. For Arendt, contrary to Lemkin, individuals were not being violently targeted in

¹⁰⁰⁵ Alphand, *Ambassador Alphand’s Speech*, 4.

¹⁰⁰⁶ Hannah Arendt, “On Violence,” in *Crisis of the Republic* (New York: Harcourt Brace, 1972), 155.

large enough numbers in Algeria—either through state terror of killings—and therefore the possibility of forming a political community in Algeria was still alive.

Ambassador Alphant mirrored Arendt's sentiment when he said that France's "open objective" in the Algerian question "is free elections" and "to build schools, to promote social and economic reforms, to bring destitute populations to a standard of living which will enable them ... to manage their own destiny."¹⁰⁰⁷ Alphant framed the "Algerian question" within the language of universal equality and progress, where France was trying to provide Algerians with the privileges and rights of citizenship in the French state. Lemkin saw something quite different: France was intentionally destroying an Algerian national pattern and replacing it with a French national pattern, in order to make Algeria easier to govern and control economically so that power and wealth could be kept in the "hands of the French colonists" while the French usurpers of sovereignty could claim the moral high ground and present genocide as progress in advancing human rights.¹⁰⁰⁸ This French colonization of Algeria was essentially the same as Axis policy in Europe, Lemkin believed, because both genocides sought to destroy the cultural diversity of the occupied territories for the political and economic gain of the perpetrators. Both actions by the perpetrators were directed towards the destruction of the cultural, social, and political institutions of victim groups—their economies, their intelligentsia, as well as the lives of their individual members—in order to destroy their various national, ethnic, and religious ways of life.

For scholars such as Irving Louis Horowitz, who made early and important

¹⁰⁰⁷ Alphant, *Ambassador Alphant's Speech*, 4.

¹⁰⁰⁸ Lemkin, "Genocide," 1.

contributions to genocide studies, the Lemkin's ideas on the relationship between terror and genocide conflict with the spirit of Western law "based upon individual punishment for specific deeds" and with Western morals, which "are equally built upon individually internalized codes of conduct."¹⁰⁰⁹ Horowitz, seeking to correct Lemkin, wrote that "actual genocides involve real deaths" while the destruction of a culture or a "national pattern" through political, economic, or other means is merely "symbolic genocide."¹⁰¹⁰ Horowitz, who explicitly follows Hannah Arendt, sees the social group as consisting of individuals who act, think, and communicate together, and calls for an individualist understanding of genocide. Genocide therefore "means the physical dismemberment and liquidation of people on large scales, an attempt by those who rule to achieve the total elimination of a subject people; genocide does not mean simply depriving people of their cultural heritage or of opportunities for education, welfare, or health, however hideous such deprivations must be."¹⁰¹¹ This destruction was anything but "symbolic" for Lemkin.

From this starting point, Horowitz defines "actual" genocides as "a structural and systematic destruction of innocent people by a state bureaucratic apparatus."¹⁰¹² The word "innocent" is necessary in Horowitz's study because it "sets [genocide] apart from other social evils," and recognizes that "the victim is 'punished' for being part of some

¹⁰⁰⁹ Irving Louis Horowitz, *Taking Lives: Genocide and State Power*, 5th ed. (New Brunswick: Transaction Publishers, 2002), 45.

¹⁰¹⁰ Horowitz, *Taking Lives*, 43.

¹⁰¹¹ Horowitz, *Taking Lives*, 83.

¹⁰¹² Horowitz, *Taking Lives*, 23.

particular group, tribe, race, or religion” and not for some other offense.¹⁰¹³ In his perspective, genocide is a meaningful concept not because of the cultural destruction entailed in the definition, but because the victims are targeted for no other reason besides their culturally-conditioned identity and are therefore “innocent” of any other wrongdoing.¹⁰¹⁴

Genocide therefore ceases to be genocide when the victims are acting unethically, or are guilty of a crime or moral wrongdoing. If we were to apply Horowitz’s definition to the Algerian case, for instance, the case would not be a genocide because the people who Lemkin called the Algerian patriots had turned to terrorism and a violent insurgency in order to resist French rule—and were surely not innocents in any sense of the word. Lemkin, by contrast, considered the French counter insurgency strategy to be one aspect of a larger French genocide against the Algerian family of mind. Lemkin certainly realized that the victims of genocide were, indeed, largely innocent. But they did not have to be.

There is merit to Lemkin’s perspective. The argument that genocide becomes a different phenomenon when a third party judges the victims to not be innocent is hard to sustain. Scientifically, the proposition is problematic because it suggests that the empirical world changes according to whether or not a third party is able to determine whether the victims were real or imaginary enemies—as if the scholar’s determination of the actual guilt or innocence of the victims changes why and how the perpetrators thought and acted. It is also ethically fraught because determining the victims of genocide to be

¹⁰¹³ Horowitz, *Taking Lives*, 29-30.

¹⁰¹⁴ Horowitz, *Taking Lives*, 23-28.

innocent can legitimize everything the victims do—even if they are violating the rights of the perpetrators, sometimes several generations later.¹⁰¹⁵ The belief in the inviolability of the victims has even legitimized genocides by former victims against former perpetrators.¹⁰¹⁶

In connecting genocide to colonial practices that destroy cultural diversity, Lemkin saw that genocidal terror and violence could achieve tremendous political gains. The Algerian genocide, like the Nazi genocide, Lemkin argued, was pragmatic. The removal of the targeted nation was in the perceived interests of the perpetrators, so that the victims were cast as a kind of evil—guilty of being who they were—who had to be removed so as to purify the national body, or bring progress and order to the human cosmos. Both were intended to create new social, cultural, and political constellations in the occupied territories that the perpetrators perceived as advantageous. Conducted through both non-violent and violent means, the genocides ensured that although the respective Axis and French powers lost the military battle, they would win the peace by restructuring the “national patterns” of their respective occupied territories. As Daniel Feierstein observed, Lemkin saw genocide as an attack on cultural diversity, pernicious because it was a social practice that sought to reorder the structure of human society in accordance with the institutions and patterns of the oppressor group.¹⁰¹⁷

¹⁰¹⁵ Daniel Feierstein, “Beyond the Binary Model: National Security Doctrine in Argentina as a Way of Rethinking Genocide as a Social Practice,” in *Hidden Genocides: Power, Knowledge, Memory*, eds. Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson (New Brunswick, NJ: Rutgers University Press), 79.

¹⁰¹⁶ Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton, NJ: Princeton University Press, 2001); Nicholas Robins and Adam Jones, eds., *Genocides by the Oppressed: Subaltern Genocide in Theory and Practice* (Bloomington: Indiana University Press, 2009).

¹⁰¹⁷ Feierstein, *El Genocidio Como Práctica Social*.

7.4 THE FINAL YEARS

Lemkin's writings on the genocide in Algeria mark the beginning of a trend where he became less and less concerned with shaping his ideas in order to appease world powers. There were two factors that likely shaped his increasing willingness to combat what he felt were the hypocrisies of Western liberal democracies that continued to commit genocide while proclaiming a uphold world humanitarian standards. First, France, the UK, and especially the US—his home in exile—rejected international humanitarian law. Repeatedly, the US government had show that it considered the Holocaust and genocide to be moral hangs up that distracted world affairs from more important issues.¹⁰¹⁸ A second possible reason could be that Lemkin now had gainful employment in 1956 and 1957 as a Professor of International Law at Rutgers University. This gave him the time and resources he needed to restart his scholarly projects, invigorating him with a new sense of creativity. Over the last three years of his life, Lemkin's writings grew even more compassionate for the victims of genocide and increasingly intolerant of those who suggested that genocide was an unavoidable aspect of human nature or world affairs.

In his effort to demonstrate humanity was not fated towards genocide, Lemkin turned to the anthropologist Ruth Benedict, who became one of his main academic sources in *Introduction to the Study of Genocide*. In her classic text, *Patterns of Culture*, Benedict created a framework for understanding how individuals were shaped by their

¹⁰¹⁸ Falk, *Achieving Human Rights*, 92.

culture, and how culture was shaped by individual and social objects.¹⁰¹⁹ While she built on existing theories of cultural functionalism, Benedict claimed that culture was not a fixed object and therefore could not be dealt with typologically. Rather, the critic had to look to an area “beyond cultural relativity” to see how cultures were constantly changing, adjusting to challenges or adapting to meet the demands of crisis.¹⁰²⁰ The text is crucial for understanding Lemkin’s writings on the difference between cultural change and cultural genocide. “Graduate changes occur by means of the continuous and slow adaptation of the culture to new situations,” Lemkin wrote, echoing Benedict. No culture can exist without changing, he added, but the process of graduate change also ensures that a given culture may slowly disintegrate over time. Genocide, by contrast, was premeditated and marked by an attempt to purposefully destroy a culture in order to destroy a people.

It is important to document Lemkin’s intellectual indebtedness to Benedict because scholars have tended to focus on Bronisław Malinowski’s influence upon Lemkin. These scholars correctly documented Lemkin’s indebtedness to Malinowski’s theory of cultural functionalism, which provided him with a belief that culture was necessary for maintaining the physical well-being of people because it integrated social institutions and coordinated practices, beliefs, and actions to allow people to peruse and sustain their material and biological needs.¹⁰²¹ A standard interpretation of Lemkin posits that Lemkin followed Malinowski to claim that there was no separation between the form

¹⁰¹⁹ See Virginia Heyer Young, *Ruth Benedict: Beyond Relativity, Beyond Pattern* (Lincoln: University of Nebraska Press, 2005), 2.

¹⁰²⁰ Margaret Mead, *Ruth Benedict* (New York: Columbia University Press, 1974).

¹⁰²¹ Moses, “Raphael Lemkin, Culture, and the Concept of Genocide,” 25-26.

and function of cultural symbols and institutions, meaning that human cultures are actual entities whose various aspects are intrinsically interrelated. As a result, a genocidal attack on one aspect of a culture, therefore, would work to undermine other aspects of the culture.¹⁰²² This interpretation is right in regards to Lemkin's belief on how genocide effects culture; however, it overlooks the fact that Lemkin did not view genocide as the "deculturation" of a people. As discussed above, Lemkin did not define nations and cultures as synonymous; they were two different concepts. The "destruction of cultural symbols is genocide," Lemkin wrote, when "it implies the destruction of their function" and subsequently "menaces the existence of the social group which exists by virtue of its common culture."¹⁰²³

In a sign of Lemkin's increasing sensitivity to those who suffered the horrors of racism and genocide in the US, Lemkin turned to Ruth Benedict's 1939 *Race: Science and Politics*, which draws parallels between Nazi racism and American racism. In *Introduction to the Study of Genocide*, Lemkin used the book to bring together Nazi antisemitism with the American racism, and grew far more sensitive to the injustices of the US. Through Benedict, he came to believe the Chinese Exclusion acts of 1879 and 1924, the internment of Japanese-Americans in concentration camps during the Second World War,¹⁰²⁴ and the lynching of African Americans were all acts of genocide in the US connected to the same types of race thinking that underscored the Nazi genocide.¹⁰²⁵

¹⁰²² Butcher, "A 'Synchronized Attack': On Raphael Lemkin's Holistic Conception of Genocide," 266.

¹⁰²³ Lemkin, "The Concept of Genocide in Anthropology."

¹⁰²⁴ Raphael Lemkin, "Genocide in Economics," NYPL, Reel 3, Box 2, Folder 3.

¹⁰²⁵ Lemkin, "The Concept of Genocide in Social and Individual Psychology." Also see, Lemkin, "The Concept of Genocide in Sociology."

Citing Benedict, Lemkin argued that racism was a political problem and a component of genocide because racist dogmas, cloaked in religious and scientific themes, made it possible to economically exploit and exterminate “without embarrassment.”¹⁰²⁶

Benedict’s crucial thesis was not lost on Lemkin: cultural beliefs based on racist dogmas may have allowed for economically and politically motivated racist acts to continue in society without rebuke, but social scientists had an ethical responsibility to help change these cultural beliefs.¹⁰²⁷

How does one stop genocide? Even before the world’s most powerful governments refused to support the Genocide Convention and prosecute genocide, Lemkin’s answer to this question involved the interaction between the law and culturally determined beliefs, collective morals, and norms. He articulated this position in *Axis Rule in Occupied Europe*, where he argued that prosecuting genocide did nothing to bring the victims back to life, but the moral force of the law work could prevent future genocide. Lemkin maintained this position for the rest of his life. In 1951 he spoke at a luncheon hosted by the American Jewish Congress to celebrate the Genocide Convention entering into force: “Since last Friday, January 12, genocide is no longer a word, a promise, a hope,” he told his audience. “It is already a law which can be enforced. In practical terms, this law means no more extermination, no more mass killings, no more concentration camps, no more sterilizations, no more breaking up of families.”¹⁰²⁸ With his “liberal

¹⁰²⁶ Lemkin, “Genocide in Economics,” NYPL, Reel 3, Box 2, Folder 3. Lemkin’s citation is drawn from Ruth Benedict, *Race: Science and Politics* (New York: Viking Press 1945), 161.

¹⁰²⁷ Lemkin, “Diffusion versus Cultural Genocide,” NYPL, Reel 3, Box 2, Folder 3. Lemkin’s citation is drawn from Ruth Benedict, *Race: Science and Politics* (New York: Viking Press 1945), 161.

¹⁰²⁸ Lemkin, “Text of Statement by Dr. Raphael Lemkin at Testimonial Luncheon in his Honor by New York Region of the American Jewish Congress at the Hotel Pierre, Thursday, January 18th,” NYPL, Reel

faith” in international law, Lemkin believed that the spirit of the law was more important than the force of the law when it came to abolishing genocide. He provided an example, claiming that the Genocide Convention could effectively prevent and stop genocides by leveraging political pressure against offending regimes, or by legitimizing sanctions against genocidists, or even military intervention. But the greatest sanction “will be condemnation by world opinion,” the “most powerful weapon now in [our] times.”¹⁰²⁹

Enamored with legal monism that dominated the discussion of the law at the UN, but mindful of the lessons of positive legal theory he learned studying the Soviet and Italian penal codes, Lemkin saw international law as a conduit for influencing the moral constitution of human society. He even provided what he felt to be a concrete example of his theory to the Jewish Congress:

We are asked how can the Genocide Convention deal with cases of genocide if committed in the Soviet Union? The answer is simpler than we think ... If a case of genocide committed in the Soviet Union is put before world opinion as a criminal case, not as a political matter, then the Soviet Union will have to take into consideration the human reactions of the western world and especially of its present friends and supporters.

Lemkin concluded his talk to the congress the same way he concluded most of his other talks: “In this respect, the Genocide Convention can work only if we will have the decision to make it work. It can work only when our conscience will be constantly kept awake and when we will press for actions under this new law. But our task will be easier because we have a law.”¹⁰³⁰

2, Box 1, Folder 34. The document is undated, but the author places the dates to January 18th, 1951, a week after the Genocide Convention came into force on Friday, January 12th, 1951.

¹⁰²⁹ Lemkin, “Text of statement by Dr. Raphael Lemkin.”

¹⁰³⁰ Lemkin, “Text of statement by Dr. Raphael Lemkin.”

Turning back to Benedict's theory on the way cultural values can change in relation to challenges faced by a society or individuals, Lemkin cited the *Patterns of Culture* to argue that "cultural relativity can be a doctrine of hope rather than despair" when it fosters a universal respect for diversity.¹⁰³¹ Here is the heart of what A. Dirk Moses calls Lemkin's "ecumenical cosmopolitanism."¹⁰³² Lemkin believed that a cosmopolitan respect for the unique, existential experiences of human social life was a universal human good precisely because it was existential experiences that made humans human. Our unique cultural experiences—generated by the nations or "families of mind" we belonged to—was what all humans had in common in the *oikoumenē*, the inhabited earth. "In our present endeavors at unifying the world for peace," Lemkin continued: "this doctrine [of cultural relativity] has a two-fold significance. It means that we must respect every culture for its own sake. It also means that we must probe beyond specific cultural differences in our search for a unified conception of human values and human rights. We know that this can be done."¹⁰³³

This ecumenical cosmopolitanism, which led him to affirm the principles of national-cultural diversity espoused by Simon Dubnow, Otto Bauer, and Karl Renner, is what animated Lemkin's claim that genocide was driven by a "fury or calculated hatred" directed "against specific groups which did not fit into the pattern of the state [or] religious community or even in the social pattern" of the oppressors. The families of mind that were targeted were most often religious, racial, national, ethnical or political

¹⁰³¹ Lemkin, "Diffusion Versus Cultural Genocide," NYPL, Reel 3, Box 2, Folder 3.

¹⁰³² Moses, "Lemkin, Culture, and the Concept of Genocide," 24-25.

¹⁰³³ Lemkin, "Diffusion Versus Cultural Genocide."

groups. But the victim nation “selected for destruction” could be any group “considered extraneous and dangerous for various reasons,” such as “those who play cards, or those who engage in unlawful trade practices or in breaking up unions.”¹⁰³⁴ Since he saw nations as imagined communities as actively producing culture, it was nations that the Genocide Convention sought to protect.

In the description of his research project for *Introduction to the Study of Genocide*, Lemkin wrote that the “philosophy of the Genocide Convention is based on the formula of the human cosmos” to protect human groups “not only by reason of human compassion but also to prevent draining the spiritual resources of mankind.”¹⁰³⁵ The interaction between culture-bearing groups is what prevents cultures from becoming “static,” Lemkin wrote.¹⁰³⁶ Cultural interactions between national groups is how cultures change and how world civilization progresses, he wrote. These interactions are the seat of human creativity, of thought, of human vitality, and virtue—enriching the lives of individuals. This sentiment underpins one statements on the Genocide Convention:

We need the specification because a variety of nations, races and religious groups represent a great enrichment of our civilization. World culture is like a subtle concerto. It is nourished and gets life from the tone of every instrument. When you destroy one instrument, the harmony is destroyed. That is the reason why the world has been fighting Genghis Khan and Hitler, because it was felt that a brutally imposed, national or racial pattern by one nation or race over the entire world would be an end of civilization.¹⁰³⁷

¹⁰³⁴ Lemkin, “The Nature of Genocide,” 14.

¹⁰³⁵ Lemkin, “Description of the project,” 1.

¹⁰³⁶ Lemkin, “Diffusion versus Cultural Genocide,” NYPL, Reel 3, Box 2, Folder 3.

¹⁰³⁷ Lemkin, “Draft Supplemental Remarks by Dr. Lemkin.”

Protecting national cultural diversity under liberal international law, by making it illegal to purposefully destroy national cultural diversity, protected this central aspect of human freedom, Lemkin believed.

Lemkin's metaphor of the "concerto," where each culture-bearing group enriches human civilization is an allusion to Mazzini, who wrote that each nation plays its own "instrument" to produce a single harmonious "symphony of nations."¹⁰³⁸ Mazzini, for Lemkin, represented a golden age of nationalist thought during the Spring of Nations in 1848, before nationalism grew militant and xenophobic. "The prophet of the nineteenth century idea of nationality in a humanist, democratic form with a strong admixture of romanticism," Lemkin wrote, Mazzini posits a belief that nationality is what provides people with "citizenship in the world."¹⁰³⁹ It was only when all people were given national cultural autonomy that "an international federation of free nations could be created," Lemkin wrote.¹⁰⁴⁰

This protection of national cultural diversity could ground human freedom, Lemkin believed, because an individual's life was enriched and made meaningful by a diverse breath of experience. It was not true that one person belonged to one nation, or held one monolithic identity, he argued. Speaking of his own identity as a person born in imperial Russia who considered himself Polish and then American, Lemkin told *The Christian Century* in a 1956 interview that, even though he was born into a Jewish family

¹⁰³⁸ Moses, "Raphael Lemkin, Culture, and the Concept of Genocide," 23. For an analysis of Mazzini and Herder's thought, see Michael Walzer and David Miller, *Thinking Politically: Essays in Political Theory* (New Haven: Yale University Press, 2007), 212. For one of Lemkin's direct references to Mazzini, see Lemkin, "Introduction: The New Word and the New Idea," 8.

¹⁰³⁹ Lemkin, "Introduction: The New Word and the New Idea," 8.

¹⁰⁴⁰ Lemkin, "Introduction: The New Word and the New Idea," 8. This connection already made in Moses, "Holocaust and genocide," 533-55.

in Poland, he did not consider himself to be only Polish or Jewish because he did “not belong exclusively to one race or one religion.”¹⁰⁴¹ To be human was to belong to many nations at once. To be cosmopolitan was to acknowledge and welcome that. Genocide, in so far as it destroyed national cultural diversity and disrupted this “symphony” of nations, assaulted the individual and all of humanity.

On August 29, 1959, Lemkin collapsed on 42nd Street in New York City while on his way to his discuss the manuscript of *Totally Unofficial* with his agent, Naomi Burton. The New York City Police Department carried him to a nearby station where he died. One of Lemkin’s closest friends in the last months of his life, Nancy Ackerly, described a man in peace, friendly, kind, and well-cultured, who found pure joy in visiting art galleries in New York and telling jokes with friends in Spring Valley.¹⁰⁴² Lemkin was buried in the Mount Hebron Cemetery in Queens, with a simple gravestone that read, “Beloved Brother and Uncle, Father of the Genocide Convention.” The American Jewish Committee paid for the funeral. A service was held at Riverside Church, and the burial was attended by a small group of friends, a Korean ambassador and the Israeli press attaché.

Describing his life’s effort to create a meaningful law, Lemkin wrote that “the fact is that the rain of my work fell on a fallow plain, only this rain was a mixture of the blood and tears of eight million innocent people throughout the world. Included also were the tears of my parents and my friends.”¹⁰⁴³ It seemed that the Genocide Convention was

¹⁰⁴¹ Bartlett, “Pioneer vs. an Ancient Crime.”

¹⁰⁴² Donna-Lee Frieze, editor, “Introduction: The ‘Insistent Prophet’,” in Raphael Lemkin, *Totally Unofficial* (New Haven: Yale University Press, 2013).

¹⁰⁴³ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 132.

Lemkin's unrequited passion. As *The New York Times* eulogized his life: "In this country he had a distinguished career as a teacher, lecturer and writer, but the burden of his days was his crusade against slavery, degradation, and murder ... Death in action was his final argument—a final word to our own State Department, which has feared that an agreement not to kill would infringe our sovereignty."¹⁰⁴⁴ After the funeral, Lemkin's personal papers and manuscripts were carted off to his cousin's basement, unceremoniously, then distributed to the three libraries where they are housed today.

¹⁰⁴⁴ "Raphael Lemkin: Crusader, *New York Times*, August 31, 1959. Available from <http://query.nytimes.com/mem/archive/pdf?res=F70615FA3C551B7B93C3AA1783D85F4D8585F9>. And see: "Raphael Lemkin, Genocide Foe, Dies; International Law Professor Instrumental in Pushing Convention Through U.N." *New York Times* August, 30, 1959. Available from, <http://query.nytimes.com/mem/archive/pdf?res=F70D16FD3E5F1A7B93C2AA1783D85F4D8585F9>

CONCLUSION: THE “CRIME OF CRIMES”

Trough this natural right of hospitality, i.e. the right of strangers ... continents distant from each other can enter into peaceful mutual relations ... bringing the human race nearer and nearer to a cosmopolitan constitution.
—Immanuel Kant, Perpetual Peace

8.1 GENOCIDE AND THE COLD WAR: FROM APATHY TO OUTRAGE

The bipolar structure of world politics during the Cold War had a direct impact on the Declaration of Human Rights and the Genocide Convention. In the 1940s and 1950s, the USSR tried to force the UK and France to uphold the Declaration and the Convention in colonial countries, and tried to prevent the US and UK from undermining the right of self-determination and the right of rebellion in the colonies—the two rights that liberalism widely accepted as fundamental safeguards against tyranny.¹⁰⁴⁵ At the same time, the Eisenhower administration skirted around the UN security council to adopt a UN resolution authorizing military force in the Korean conflict,¹⁰⁴⁶ removed Eleanor Roosevelt from her duties in the UN, and withdrew support for the Declaration of Human Rights and the Genocide Convention under domestic political pressure stemming from McCarthy-era xenophobia and the Bricker amendments.¹⁰⁴⁷ As the Cold War developed, the USSR opposed an international criminal court and the Genocide Convention on the grounds that they could be used by American diplomats to intervene in Soviet affairs.¹⁰⁴⁸

¹⁰⁴⁵ Roger Normand and Sarah Zaidi, *Human Rights at the UN: The Political History of Universal Justice* (Bloomington: Indiana University Press, 2008), 140-141.

¹⁰⁴⁶ Chi Young Pak, *Korea and the United Nations* (Leiden: Martinus Nijhoff, 2000), 110.

¹⁰⁴⁷ René Cassin, *La Pensée et l'Action* (Boulogne-sur-Seine: F. Lalou, 1972).

¹⁰⁴⁸ Schabas, *Genocide in International Law*, 102.

For the next two decades, international politics went silent on the issue of humanitarian law and human rights, as the US and the USSR worked together to weaken international legal institutions that could limit their own respective power. Since the fall of the Berlin Wall in 1989, it has become commonplace to assume that democracy and respect for human rights were, or are, inevitable in the course of world politics. However, as Cold War battle lines were drawn around the world, democracy and human rights were often seen as mutually exclusive concepts.¹⁰⁴⁹ The ascent of democratic and human rights movements in world affairs was anything but preordained.

There are two schools of thought on the emergence of the current global human rights movement in the 1970s, which breathed new life into Lemkin's law. The first school holds that the movement emerged from a confluence of the natural rights tradition and Enlightenment universalism, and expresses norms and values that have existed across human history, embodying a full spectrum of religious, philosophical, and legal traditions.¹⁰⁵⁰ In this school, when the Cold War impasse began to thaw, the human rights movement revived the institutions that were created in the 1940s as a response to the atrocities of the Second World War.¹⁰⁵¹ The second school of thought, to the contrary, argues that the global movement of the 1970s broke from previous human rights frameworks because people, globally, felt that the utopian visions of human rights—in liberal, communist, socialist, and the United Nations forms—had failed. In this second school, the experience of the Holocaust was a peripheral concern in the 1970s, as

¹⁰⁴⁹ Mark Mazower, *Dark Continent: Europe's Twentieth Century* (New York: Alfred Knopf, 1999). Roger Normand and Sarah Zaidi, *Human Rights at the UN: The Political History of Universal Justice*, 199.

¹⁰⁵⁰ Ishay, *The History of Human Rights*.

¹⁰⁵¹ Falk, *Achieving Human Rights*.

“genocide consciousness” integrated into the human rights movement mainly because the Genocide Convention provided enforcement mechanisms that had practical value in later decades.¹⁰⁵²

Nevertheless, both perspectives agree that the Genocide Convention became indispensable to those caught between the Warsaw Pact and NATO during the Cold War because it was the only instrument available that could “compel accountability for human rights violations” and contained the potential to govern.¹⁰⁵³ The convention’s first political test occurred in the wake of the wars of decolonization in the 1960s, which produced a new wave of UN member states across Asia and Africa.¹⁰⁵⁴ With the outbreak of mass atrocities over the next decade—in Tibet, Nigeria, Rwanda, Uganda, Indonesia and East Timor, Cambodia, Vietnam, Bangladesh, Guatemala, and Brazil, to name only a few—the world turned to the Genocide Convention in the hope that it could enforce international human rights standards.¹⁰⁵⁵ In all of these cases, however, the UN failed to act because the major powers viewed these genocides as irrelevant to world affairs and international peace.¹⁰⁵⁶ Intervention was left to individual states, such as the Indian

¹⁰⁵² Moyn, *The Last Utopia*, 220.

¹⁰⁵³ Schabas, *Genocide in International Law*, 643.

¹⁰⁵⁴ See A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford: Oxford University Press, 2001).

¹⁰⁵⁵ Schabas, *Genocide in International Law*, 642; Helen Fein, “Accounting for Genocide after 1945: Theories and Some Findings,” *International Journal of Group Rights* 1 (1993). On genocide in Vietnam, see Jean-Paul Sartre’s report to an International Tribunal convened by Bertrand Russell charging the US with genocide: Jean-Paul Sartre, *On Genocide: A Summary of the Evidence and the Judgments of the International War Crimes Tribunal*, ed. A. El Kaim-Sartre (Boston: Beacon Press, 1968).

¹⁰⁵⁶ Philip N. S. Rumney, “Getting Away with Murder: Genocide and Western State Power,” *The Modern Law Review*, 60 (1997); Kenton Clymer, “Jimmy Carter, Human Rights, and Cambodia,” *Diplomatic History* 27 (2003); Spencer, *Genocide Since 1945*, 56-77.

intervention in Bangladesh and the Vietnamese invasion of Cambodia to oust the Khmer Rouge.¹⁰⁵⁷

The Vietnamese backed government in Cambodia convicted Pol Pot of genocide, although the guilty verdict was predetermined.¹⁰⁵⁸ When Vietnam protested the Khmer Rouge holding Cambodia's seat in the UN General Assembly, arguing the genocidal Khmer Rouge "did not represent anybody," the US and China helped engineer the results of the UN Credentials Committee to demonstrate that the Khmer Rouge government in exile was the locally legitimate government.¹⁰⁵⁹ The irony that the US backed a genocidal regime was not lost on US Senator George McGovern who observed that, "after all those years of predictions of dominoes falling and Communist conspiracies, it was the Vietnam that went in and stopped Pol Pot's slaughter."¹⁰⁶⁰

That the US ratified the Genocide Convention in 1988 was somewhat of a historical accident. During a state visit to Germany, President Ronald Reagan shunned Holocaust memorial sites and laid a wreath on the graves of SS soldiers, whom he referred to as war victims.¹⁰⁶¹ In the fury that ensued, Reagan was backed into forcing the US government to sign the treaty. The next year, the collapse of the USSR invigorated

¹⁰⁵⁷ Samuel Totten and Paul R. Bartrop, "The United Nations and Genocide: Prevention, Intervention, and Prosecution," *Human Rights Review* 5 (2004).

¹⁰⁵⁸ Gregory Stanton, "The Cambodian Genocide and International Law," in *Genocide and Democracy in Cambodia: The Khmer Rouge, The United Nations and the International Community*, ed. Ben Kiernan, (New Haven: Yale University Southeast Asia Studies, 1993).

¹⁰⁵⁹ Benny Widyono, *Dancing in Shadows: Sihanouk, the Khmer Rouge, and the United Nations in Cambodia* (New York: Rowman & Littlefield, 2008), 28-29. See UN Doc. A/34/500. Powers documents the US manipulation of the Credentials Committee: Powers, *A Problem from Hell*, 120.

¹⁰⁶⁰ Quoted in Widyono, *Dancing in Shadows*, p. 28. Also see Powers, *A Problem from Hell*, 146.

¹⁰⁶¹ See Richard Jay Jensen, *Reagan at Bergen-Belsen and Bitburg* (College Station: Texas A&M University Press, 2007).

world politics with the hope that the UN could finally take a more active role in preventing mass atrocities now that the world was no longer divided into two competing spheres of influence.

In 1989, Trinidad and Tobago revived the efforts to establish an international criminal court to help deal with the country's drug trafficking problems.¹⁰⁶² Three years later, the International Law Commission produced a report listing the "gravest crimes ... which undermine the very foundation of the community of nations," over which an international court should have jurisdiction.¹⁰⁶³ The commission named the Genocide Convention as the one instrument in international law that can "directly bind the individual and make individual violations punishable."¹⁰⁶⁴ That summer, Secretary General Boutros Boutros-Ghali produced a report arguing that strengthening international law around the Genocide Convention could guarantee peace, not work as an impediment to it.¹⁰⁶⁵

It was not just the horrors the crime signified, but the institutions the Convention envisioned, that transformed genocide from an unknown word into the twentieth-century's "crime of crimes." While the General Assembly began working to establish an international criminal court in 1994, the UN International Law Commission recommended that genocide be adopted as a crime with "inherent jurisdiction," giving the court jurisdiction over the crime in the states that were a party to the 1948 Convention.

¹⁰⁶² Schabas, *Genocide in International Law*, 102. See General Assembly Resolution 44/89.

¹⁰⁶³ UN Doc. A/47/10, "Report of the International Law Commission on the Work of Its Forty-fourth Session, 4 May-24 July 1992," paragraph 102.

¹⁰⁶⁴ See Schabas, *Genocide in International Law*, 102.

¹⁰⁶⁵ GA Doc. A/47/277-S/2411, *An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peacekeeping: Report of the Secretary-General*.

This decision placed genocide “at the apex of the pyramid of international crimes.”¹⁰⁶⁶

The Commission found the absence of universal jurisdiction in the Convention was inconsequential; it was far more important that the states that had ratified the Convention were treaty bound to respect the court’s jurisdiction over the crime. For all other crimes, such as crimes against humanity, war crimes, torture, or apartheid, states would have to voluntarily grant the court jurisdiction.¹⁰⁶⁷ Lemkin had taken a risk when he sacrificed universal jurisdiction in Article VII in order to guarantee Article VI that referred the prosecution of genocide to an international tribunal. Explaining why they included genocide in the statute with inherent jurisdiction, the Commission wrote in 1994 that the statute “can thus be seen as completing in this respect the scheme for the prevention and punishment of genocide begun in 1948.”¹⁰⁶⁸ Lemkin’s gamble—or, foresight—was to create a law anticipating legal institutions and a political reality that did not exist in the 1940s, but might exist in the future.

In 1993 the International Criminal Tribunal for the Former Yugoslavia was established with genocide in its jurisdiction and the office of the UN High Commissioner for Human Rights was created.¹⁰⁶⁹ While the US and France took responsibility for instituting the ICTY,¹⁰⁷⁰ the initial idea and pressure came from Human Rights Watch

¹⁰⁶⁶ Schabas, *Genocide in International Law*, 104.

¹⁰⁶⁷ Schabas, *Genocide in International Law*, 104.

¹⁰⁶⁸ Schabas, *Genocide in International Law*, 104. See UN Doc. A/CN.4/SER.A/1994/Add.1 “Report of the International Law Commission to the General Assembly on the Work of Its Forty-sixth Session, 1994” paragraph 28.

¹⁰⁶⁹ Andrea Bartoli, Tetsushi Ogata, and Gregory Stanton, “Emerging Paradigms in Genocide Prevention,” *Politorbis* Vol. 47, No. 2 (2009).

¹⁰⁷⁰ Pierre Hazan, *Justice in a Time of War: The True Story Behind the International Criminal Tribunal for the Former Yugoslavia* (College Station: Texas A&M Press, 2004), 14-15.

and a grassroots advocacy campaign.¹⁰⁷¹ As excitement grew over the possibility of a criminal court and enforcement mechanisms capable of safeguarding world peace, the Rwandan genocide occurred under the watchful eye of world powers.¹⁰⁷² In the time it took the commissioner's appointee to study the situation, nearly 800,000 people died.¹⁰⁷³ It was clear that the powerful benefactors of the UN and UN organizations wanted only a façade of humanitarian institutions, and that the US was willing to allow genocide to occur so long as it did not infringe upon its political interests.¹⁰⁷⁴ The Clinton administration even became notorious for its absurd contortions of the English language to avoid saying the word genocide, lest the utterance compel action.¹⁰⁷⁵ In November 1994, the Security Council established a second *ad hoc* tribunal in Rwanda to prosecute genocide, war crimes, and crimes against humanity at the request of the Rwandan government. The world community again proclaimed "never again," and then Dutch peacekeepers chose not to defend a UN safe haven and allowed Serb forces to massacre 8,000 Muslim men and boys.

The failure of the world powers to prevent genocide in Rwanda and Yugoslavia can only be described as "willful neglect."¹⁰⁷⁶ This neglect, justified through political

¹⁰⁷¹ Donald Bloxham and Devin O. Pendas, "Punishment as Prevention?: The Politics of Punishing Génocidaires," 628.

¹⁰⁷² Normand and Zaidi, *Human Rights at the UN*, 258.

¹⁰⁷³ Linda Melvern, *The Rwandan Genocide and the International Community* (London: Verso, 2004); Colette Braeckman, *Rwanda, Histoire d'un Génocide* (Paris: Fayard, 1994).

¹⁰⁷⁴ Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca: Cornell University Press, 2002), 105.

¹⁰⁷⁵ Philip Gourevitch, *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families* (New York: Farrar, Picador 1998), 152-153.

¹⁰⁷⁶ Andrea Bartoli, Tetsushi Ogata, and Gregory Stanton, "Emerging Paradigms in Genocide Prevention."

calculations and a genuine fear of provoking wider military conflicts,¹⁰⁷⁷ accompanied early failures of the ICTY and ICTR to hold perpetrators accountable.¹⁰⁷⁸ In the view of many, the ICTY was intended to be ineffectual given that the US and France supported the ICTY from within the Security Council, but refused to adequately fund it. The eventual success of the tribunal was due not to the support of the community of states, but the political acumen of the two chief prosecutors Richard Goldstone, who cultivated private resources to support the ICTY, and Louise Arbour who made the tribunal politically relevant by indicting Milosevic in 1999 for his ongoing crimes in the Balkans.¹⁰⁷⁹

Unipolarity did not bring the renaissance in humanitarian law and human rights. When the Rome Statue of the International Criminal Court was adopted in 1998, US President Bill Clinton did not send the statue to the US Senate for ratification. The following administration under George W. Bush announced hostility towards the ICC, which came into effect in 2002, on the grounds that the court could interfere with US sovereignty or be used to prosecute US citizens and military personnel.¹⁰⁸⁰ When the

¹⁰⁷⁷ Benjamin A Valentino, *Final Solutions: Mass Killing and Genocide in the Twentieth Century*, (Ithaca, N.Y.: Cornell University Press, 2004).

¹⁰⁷⁸ Payam Akhavan, "Pushing War Crimes in the Former Yugoslavia: A Critical Juncture for the New World Order," *Human Rights Quarterly* 15 (1993); Neil J. Kriz, "Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights," *Law and Contemporary Problems* 59 (1996); Naomi Roht-Arriaza, "Combating Impunity: Some Thoughts on the Way Forward," *Law and Contemporary Problems* 59 (1996); and M. Cherif Bassiouni, "Searching for Peace and Achieving Justice: The Need for Accountability," *Law and Contemporary Problems* 59 (1996).

¹⁰⁷⁹ Donald Bloxham and Devin O. Pendas, "Punishment as Prevention?: The Politics of Punishing Génocidaires," in *Oxford Handbook of Genocide Studies*, eds. Donald Bloxham and A. Dirk Moses, (Oxford: Oxford University Press, 2010), 628. Also see John Hagan, *Justice in the Balkans: Prosecuting War Crimes in the Hague Tribunal* (Chicago: University of Chicago Press, 2003).

¹⁰⁸⁰ See William A. Schabas, "The United States Hostility to the International Criminal Court: It's All About the Security Council," *European Journal of International Law* 15 (2004).

Bush administration justified unilateral military action in Iraq on the grounds that the war was a humanitarian intervention to uphold international standards of human rights and democracy, it was hard to argue that US exceptionalism in the field of human rights enforcement was little more than a cover for US imperialism.¹⁰⁸¹ This sentiment grew stronger as it became evident that there were no weapons of mass destruction in Iraq, and the administration “retroactively elevated” the unearthing of mass graves, mass torture, and genocide prevention as the reason for going to war.¹⁰⁸²

When a crisis in Sudan broke out, a grassroots humanitarian social movement pressured the Bush administration to act. Secretary of State Colin Powell labeled the atrocities in Darfur genocide, and in early 2005 the US Congress passed the Darfur Accountability Act.¹⁰⁸³ Bush quickly wrote to congressional leaders requesting that provisions about the Darfur legislation be deleted from appropriations bills, meaning that intervention was authorized but not payment. Bush now had the political cover to present himself as a humanitarian, but do nothing.¹⁰⁸⁴ When asked for solutions to genocide in Darfur, those advocating for US intervention refused to consider negotiating with the Sudanese President Omar al-Bashir, and could only propose military intervention or more economic sanctions, risking a further humanitarian crisis in a state with one of the

¹⁰⁸¹ Normand and Zaidi, *Human Rights at the UN*, 259.

¹⁰⁸² Micheline Ishay, “Human Rights in the Age of Empire,” in *Planetary Politics: Human Rights, Terror, and Global Society*, ed. Stephen A. Bronner, (Lanham: Rowman & Littlefield, 2005).

¹⁰⁸³ Samantha Power, “Dying in Darfur,” *The New Yorker*, August 30, 2004; Colin L. Powell, The Crisis in Darfur, Written Remarks to the Senate Foreign Relations Committee September 9, 2004, in *Congressional Record, V. 150, PT. 13, July 22, 2004 to September 14, 2004* (Washington, D.C.: Government Printing Office, 2009), 17866-17867.

¹⁰⁸⁴ David Luban, “Calling Genocide by its Rightful Name: Lemkin’s Word, Darfur, and the UN Report,” *Chicago Journal of International Law*, 7 (2006): 306. Nicholas D. Kristof received a copy of Bush’s letter: “Day 113 of the President’s Silence,” *New York Times* (May 3, 2005), A25.

world's most impoverished populations.¹⁰⁸⁵ The 4 million deaths in Congo, nearly 2 million deaths in Uganda, and many other crises that occurred at roughly the same time as the Darfur crisis, did little to inspire responsible humanitarian actions in the West.

8.2 GENOCIDE PREVENTION

Lemkin's theory can contribute to the ongoing pursuit of peace and genocide prevention. For Lemkin, preventing genocide required two things. The first was to recognize that genocide is an intentional act, and therefore a choice. In the sixty years since the publication of *Axis Rule*, scholars have sustained Lemkin's innovative observation that the attempt to physically annihilate an entire group is usually the last choice genocidists make in a dynamic attempt to destroy the victim group. Scholars have also upheld Lemkin's belief that mass killing, though extreme, is a rational and understandable act.¹⁰⁸⁶ Lemkin believed that human choice was evident throughout the entire genocidal process, which involved interrelated systems of classifying and targeting victims while coordinating strategies and actions intended to destroy the group, all according to an evolving rationale. Because genocide was not inherent in human actions or pathological, and because genocide always involved these perceived interests, Lemkin argued that it was always possible to prevent genocide without war, even in the midst of the darkest of totalitarian or genocidal regimes.¹⁰⁸⁷

¹⁰⁸⁵ Stephen Eric Bronner, *Peace out of Reach: Middle Eastern Travels and the Search for Reconciliation* (Lexington: The University Press of Kentucky, 2007), 105.

¹⁰⁸⁶ Manus Midlarsky, *The Killing Trap: Genocide in the Twentieth Century*, (Cambridge: Cambridge University Press, 2005).

¹⁰⁸⁷ Raphael Lemkin, "The Concept of Law in Genocide," NYPL, Reel 3, Box 2, Folder 4.

The second task, for Lemkin, was to discern the factors that conditioned the choice to commit genocide. It is “useless to apply to [the study of genocide] the same standards and methods used by chemists or biologists” who are “content” with merely asking “how” something occurred, Lemkin wrote. Rather, the study of genocide, if it is to stop and prevent genocide, must ask “three types of ‘Why’” questions.¹⁰⁸⁸ These were the “why of objectives or goals,” the “why of motivations,” and the “why of designs or methods.” From these questions, Lemkin argued, one could ascertain the interests behind genocide and the reason for targeting a specific group. As outlined in the chapters above, Lemkin did not think about interests purely in instrumental terms. He acknowledged that perpetrators could be motivated by interests that were structured around what Max Weber termed *wertrational*, or value and belief-orientated rationality.¹⁰⁸⁹ For example, in the Axis genocide, Lemkin believed that biological pseudoscience structured the choice to commit genocide, and then the choice to physically kill entire nations. Understanding this rationale and interests was the basis for securing the end of genocide.

Lemkin proposed a number of “stopgaps” that could be useful in preventing genocide. While he considered armed humanitarian intervention as one such “stopgap,” and within the realm of ethical possibilities, he believed it was a morally and legally fraught enterprise that always threatened the foundations of international law.¹⁰⁹⁰ There were other measures that could be undertaken, which connected the means and ends of

¹⁰⁸⁸ Raphael Lemkin, “Reflections on Cure and Treatment,” NYPL, Reel 3, Box 2, Folder 3/4.

¹⁰⁸⁹ Max Weber, *Economy and Society*.

¹⁰⁹⁰ Lemkin, “The Concept of Law in Genocide.”

genocide prevention.¹⁰⁹¹ These included the outlawing and suppression of hate speech, exclusionary propaganda, social discrimination, and other “preparatory” acts that were among the first techniques of genocide, and the easiest to prevent. This was a belief that Lemkin was committed to from the time he contributed to the Polish Penal Code, writing the article that outlawed propaganda intended to incite a populace towards violence. However, a more powerful “stopgap,” Lemkin insisted, rested in the UN’s right “to interfere with the internal tensions of other nations” to engage in “peaceful debate and arbitration” with a genocidal regime or genocidal group so that “desired action may be secured from other states...upon the basis of *quid pro quo*.”¹⁰⁹²

Lemkin’s insight into the relationship between the law and negotiations was nuanced. Firstly, he felt the Genocide Convention could genocide through the *quid pro quo* of international relations, where a state would agree to halt genocidal practices in exchange for receiving other benefits. What international laws or treaties against genocide offered, however, was a set of sanctions to structure the negotiations around material interests. Without this threat—whether it be a military threat, the threat of withholding the recognition of a government, or the threat of arresting state leaders for trial anywhere in the world—“the matter cannot be considered as part of international law,” and can only be dealt with on the grounds of “international courtesy” or “as a precept of morality.”¹⁰⁹³

¹⁰⁹¹ Lemkin, “Reflections on Cure and Treatment.”

¹⁰⁹² Lemkin, “Reflections on Cure and Treatment.”

¹⁰⁹³ Lemkin, “The Concept of Law in Genocide.”

Secondly, Lemkin did not see genocide as something committed by states, but by individuals acting as a group, often through the institutions and offices of a state. Likewise, he did not view international relations as the relations of monolithic states, nor did he view international law as a set of arrangements and covenants between states. Because “it is the governments of the states which act as the machinery for enforcement,” Lemkin wrote, it has “been rational to confuse [agents] of enforcement with subjectivity, and to regard states alone as the subject of all the rights which they protect.”¹⁰⁹⁴ Lemkin’s view on international law departs from the Grotian tradition that sees the international community not as an association of citizens, but an association of communities, *genus humanum*. The Grotian perspective in international law presents the State as the exclusive actor in international affairs, and the exclusive party to legal proceedings and treaties.¹⁰⁹⁵ The “ultimate analysis,” Lemkin wrote, will find “that international law is always and necessarily concerned with the conduct of individuals.”¹⁰⁹⁶ Thus, the carrots and sticks of diplomacy did not have to shut down an entire “behemoth” state in order to stop genocide. They simply had to reach the individuals conducting a genocide who stood to benefit from the state-sanctioned genocide.

Many scholars, statesmen, and activists have doubted that diplomacy can end genocide because they assume that genocide is either a decentralized, pathological act with perpetrators at every level of society, or an act impelled by the momentum of a huge

¹⁰⁹⁴ Lemkin, “The Concept of Law in Genocide,” Reel 3, Box 2, Folder 4.

¹⁰⁹⁵ Lemkin’s revision of the Grotian principle was a common theme amongst his contemporary jurists. See Lauterpacht, *International Law, The Collected Papers: The Law of Peace Vol. 2*, 436.

¹⁰⁹⁶ Lemkin, “The Concept of Law in Genocide.” The jurist Lemkin draws upon for this claim, Lord Stowell, famously argued that foreigners could also be subject to the law of nations while sitting under the authority of the courts of Great Britain. On this development in international law, see Lauterpacht, *International Law, The Collected Papers: The Law of Peace Vol. 2*, 266.

bureaucratic enterprise beyond the control of anybody in the state.¹⁰⁹⁷ When genocide is viewed in such terms, diplomacy is thought to be impossible because one is left to negotiate with either everyone or no one. From this premise, the only sanction against genocide is war. When Shawcross made the exact same argument in the UN Sixth Committee Debates, arguing that war was the only way to prevent genocide, not the law, the Czechoslovakian delegation accused the UK delegate's position as purposeful "defeatism."¹⁰⁹⁸ This conundrum was evident with the policy debates during the Darfur genocide, where anything short of military intervention and the immediate arrest of the Sudanese president were widely interpreted as a humanitarian failure, and negotiations denounced as legitimizing the Bashir regime.¹⁰⁹⁹

Lemkin saw things differently. Since genocide was a political act, negotiations were always possible. It was for this reason that Lemkin fought to preserve Article VIII of the Genocide Convention, which allowed the contracting parties of the treaty to bypass the UN Security Council, and empower the various UN organizations, offices, and the General Assembly to prevent genocide, guaranteeing a wide range of multi-lateral, peaceful methods of intervention. In recent decades the Security Council has successfully resolved conflicts in the aftermath of genocides in Cambodia, Namibia, Guatemala, and

¹⁰⁹⁷ John G. Heidenrich, *How to Prevent Genocide: A Guide for Policy Makers, Scholar, and the Concerned Citizen* (Westport: Greenwood, 2001), 95.

¹⁰⁹⁸ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 147.

¹⁰⁹⁹ For an excellent analysis of the politics of the Darfur genocide, the challenges faced by the international community in providing for the security of the people of Darfur, and the potential ways of resolving the conflict, see Joyce Apsel, "The Complexity of Destruction in Darfur: Historical Processes and Regional Dynamics," *Human Rights Review* 10 (2009).

Macedonia.¹¹⁰⁰ And, a growing body of evidence suggests that Lemkin was not wrong about the role of multilateral mediation. Diplomatic interventions supported by the General Assembly or other UN organs have stopped or averted genocides in Macedonia, Burundi, Guinea and Kenya, where the military was persuaded to remain neutral and not intervene in cycles of political violence.¹¹⁰¹

For Lemkin, however, the law in its moral and coercive capabilities was the most effective stopgap to prevent genocide.¹¹⁰² While Lemkin certainly approached the law in legalist terms, he did not restrict the value of the Genocide Convention to legalism. Justice and due process were important, he believed, but it was more important for the law to integrate the world in a cosmopolitan order.¹¹⁰³ In this regard, Lemkin remained a student of Kelsen's theory that international law contained the promise of peace in so far as it was able to invert provincialism and sovereignty.¹¹⁰⁴ Viewing the law as a political tool, not just a juridical mechanism wielding bureaucratic authority, offered Lemkin a way of escaping one of the central problems with the modern human rights system: the force of the judicial system and formal institutional constraints, on national or global levels, can only be manifested with all of their rigor *after* the rights of the subject have

¹¹⁰⁰ Kishore Mahbubani, "Multilateral Diplomacy," in *The Oxford Handbook of Modern Diplomacy*, eds. Andrew F. Cooper, Jorge Heine, and Ramesh Thakur (Oxford: Oxford University Press, 2013), 250.

¹¹⁰¹ René Provost and Payam Akhavan, *Confronting Genocide* (New York: Springer, 2010), 3-4, 77; Andrea Bartoli, Tetsushi Ogata, and Gregory Stanton, "Emerging Paradigms in Genocide Prevention," and Stephen R. Weissman, *Preventing Genocide in Burundi: Lessons from International Diplomacy* (Washington, D.C.: United States Institute of Peace, 1998).

¹¹⁰² Lemkin, "Reflections on Cure and Treatment."

¹¹⁰³ Lemkin, "The Concept of Law in Genocide."

¹¹⁰⁴ Hans Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts: Beiträge zu Einer Reinen Rechtslehre* (Tübingen: Verlag von J.C.B. Mohr, 1922), 319-320.

been violated.¹¹⁰⁵ The task of the Genocide Convention, in Lemkin's mind, was not merely to establish retrospective tribunals to bring past actions to justice, but to leverage moral and political pressure to prevent current genocides, while seeking to prevent future genocides by denouncing the act and diffusing cosmopolitan norms that would prevent people from considering genocides as possible course of action.

When it came to preventing future genocides, Lemkin did not view the law in teleological terms. There was nothing inherent in legalism or the process of the law that could guarantee a desired outcome. This is different from current liberal discourses surrounding rule of law movements, which often presuppose a set of norms, one of which is that transitional justice regimes foster reconciliation and prevent genocide in a linear process that begins by ending impunity, allowing a society to make "progress" by moving from an illiberal state to a liberal one.¹¹⁰⁶ The primary assumption is that the punishment of the guilty through the liberal rule of law fosters a respect for liberal rights and safeguards the rights-bearing subject.¹¹⁰⁷

One legalist discourse in this liberal tradition considers liberal standards of justice to be "global" standards.¹¹⁰⁸ Others involve various idioms of justice, from retributive

¹¹⁰⁵ Marcelo Raffin, *La Experiencia del Horror: Subjectividad y Derechos Humanos en las Dictaduras y Postdictaduras del Cono Sur* (Buenos Aires: Editores del Puerto, 2006).

¹¹⁰⁶ Alexander Laban Hinton, "Introduction: Toward an Anthropology of Transitional Justice," in *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, ed. Alexander Laban Hinton, (New Brunswick: Rutgers University Press, 2010), 1-24.

¹¹⁰⁷ Kamari Mazine Clarke, *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa* (Cambridge: Cambridge University Press, 2009).

¹¹⁰⁸ On the consequences of confusing a particular legalism for the universal, see Erin K. Baines, "The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda," *The International Journal of Transitional Justice* Vol. 1, No. 1 (2007).

and restorative justice, to distributive justice.¹¹⁰⁹ In all of these discussions, the most common justification of trials is deontological, that an ethical duty exists to hold the perpetrators responsible for their actions regardless of punishment or type of justice meted out. Another justification is, in Robert Jackson's words, to "stay the hand of vengeance." A third is that trials individualize the responsibility of perpetrators, satisfying the duty of issuing judgment while preventing entire ethnic groups and communities from being blamed. The fourth is that criminal trials deter future genocidists by making genocide an act that carries consequences.¹¹¹⁰

Lemkin shared none of these beliefs. Throughout all of his writings, Lemkin barely mentioned anything related to the value of criminal tribunals, besides a vague deontological justification of trials and a brief mention that the victims should receive some sort of reparation through courts. With regards to the Nuremberg tribunals, for instance, he had nothing to say about improving due process and did not concern himself with the relationship between the courtroom and peace. Rather, he railed at the "timidity" of the IMT for not seizing the opportunity to reinvent international law, pierce the shield of state sovereignty, and expand the reach of humanitarian law into times of peace.¹¹¹¹

For those who take seriously a liberal or legalist perspective, Lemkin's views can be troubling. When it came to prosecuting genocide, justice was not about fairness for Lemkin. Nor was justice restorative. As he argued in *Axis Rule*, reparations for the victims of the Axis genocide were necessary, and could take the form of payments and

¹¹⁰⁹ For an excellent overview see, Ernesto Verdeja, "Transitional Justice," in *Genocide Matters: Ongoing Issues and Emerging Perspectives*, eds. Joyce Apsel and Ernesto Verdeja, (London: Routledge, 2013).

¹¹¹⁰ Verdeja, "Transitional Justice and Genocide," 172.

¹¹¹¹ Lemkin, *Autobiography*, pagination unclear. See Lemkin, *Totally Unofficial*, 118-119.

the return of stolen and destroyed property and cultural artifacts. However, he never connected these reparations to a larger project of restoring the losses of genocide because no act could ever restore the nations and lives that were lost in genocide. What is more, like John Rawls, Lemkin believed the subjects of international law were rights-bearing individuals, not states or communities. Yet Lemkin insisted that international law articulate a cosmopolitan defense of national autonomy by outlawing genocide. This contrasts sharply with liberal positions, such as Rawls's increasingly influential belief that international law and human rights should uphold the liberal rule of law over cosmopolitan values, because cosmopolitan values could be used to protect illiberal societies that violate the liberal rights of individuals.¹¹¹²

What is more, even though Lemkin was in many ways writing from a Kantian perspective, Kant's central demand that courts affirm the principle of equality and reciprocity through retributive justice simply cannot be found in Lemkin's writings.¹¹¹³ After all, what measure of reciprocity could a court possibly find when a genocidist is found guilty of inciting the destruction of nations? If a maximum penalty is execution, how was this proportional to the murder of millions? In such a case, a criminal trial would require not the prosecution of a few leaders, but thousands. "Pushed to its logical conclusion," scholars have noted, bringing all of the perpetrators of genocide to trial in order to maintain proportionality "would seem to require reciprocal genocide."¹¹¹⁴ Kant admitted this limitation on retributive justice when he wrote that justice based on

¹¹¹² John Rawls, *The Laws of Peoples* (Cambridge: Harvard University Press, 1999).

¹¹¹³ Immanuel Kant, *The Metaphysics of Morals*, trans. Mary J. Gregor (Cambridge: University of Cambridge Press, 1996), 105.

¹¹¹⁴ Bloxham and. Pendas, "Punishment as Prevention?: The Politics of Punishing Génocidaires," 632.

individual reciprocity was impossible when “the number of accomplices to [murder] is so great that the state, in order to have no such criminals in it, could soon find itself without subjects.”¹¹¹⁵ In such cases, Kant argued, exceptions could be made to lessen the penalty but still uphold the pronouncement of guilt necessary to uphold the principles of equality, proportionality, and retribution. Contemporary theorists have followed in this tradition, arguing that societies and states have been remarkably successful in balancing a need for salient forms of justice against the competing demands of vengeance and collective forgiveness after mass atrocities.¹¹¹⁶ Such forms of justice have ranged from collective memorialization projects to promises of amnesty in exchange for testimony in truth commissions. However, once again, these themes cannot be found in Lemkin’s theory. For Lemkin, Kant’s reciprocity did not come from the justice of the courtroom, but through institutions and mechanism guaranteeing that reciprocity would be a lived experience.

Retributive justice is the cornerstone of the theory that criminal prosecutions can prevent genocide, since it is assumed that the punishment of criminals prevents people from committing the same crime. The ICC, the ICTY and ICTR, and the hybrid tribunals in Sierra Leone and Cambodia are widely legitimized by the claim that by punishing past atrocities they offer a judicial deterrent to future atrocities by ending the immunity enjoyed by sovereigns.¹¹¹⁷ Lemkin agreed that the responsibility of state sovereignty had to be “directed towards the welfare of people,” and that the *domaine réservé* cannot grant

¹¹¹⁵ Kant, *The Metaphysics of Morals*, 107.

¹¹¹⁶ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998).

¹¹¹⁷ Alex J. Bellamy, *Responsibility to Protect*, (Cambridge: Polity, 2009).

a leader “the right to kill millions of innocent people.”¹¹¹⁸ Lemkin also agreed that those found guilty of conducting, organizing, and inciting genocide should be punished. However, no substantive link can be found in Lemkin’s writings between ending impunity and preventing future genocides on retributive grounds.

For those who advocate extricating genocide studies from the field of law, Lemkin’s later writings might prove to be a surprising source of inspiration.¹¹¹⁹ By the end of his life, it was the moral and political capacity of the law mattered to Lemkin, not legalism. After all, his criticism of the Hague Regulations in *Axis Rule* was that humanitarian law was not relevant to historical conditions. The Genocide Convention improved the situation, he felt. However, there were no guarantees of fairness, retribution, restoration, or a more liberal world. There was only the hope that genocide might be averted or removed from human actions, either through political uses of the law, or through a diffusion of norms.¹¹²⁰ For Lemkin—a survivor of Tsarist repression, pogroms, and the Holocaust—the matter was quite simple. Freedom of speech and worship, political rights, civil rights, Human Rights, equality, justice, and the pursuit of a good society were important endeavors. But more important was the guarantee of life itself and a cosmopolitan respect for national diversity, the well-spring of human creativity and the great animator of world civilization.¹¹²¹ “First we make existence safe,”

¹¹¹⁸ Lemkin, *Autobiography*, “Introduction.”

¹¹¹⁹ Jacques Semelin, *Purify and Destroy: The Political Uses of Massacre and Genocide* (New York: Columbia University Press, 2013), 310.

¹¹²⁰ Mark Levene, “From Past to Future: Prospects for Genocide and its Avoidance in the Twenty-First Century,” in *Oxford Handbook of Genocide Studies*, eds. Donald Bloxham and A. Dirk Moses (Oxford: Oxford University Press, 2010), 657.

¹¹²¹ Korey, *An Epitaph for Raphael Lemkin*, 40.

Lemkin wrote, explaining the value of the Genocide Convention, “then we work to improve it.”¹¹²²

8.3 INTERNATIONAL TRIBUNALS: DEFINING THE CRIME OF CRIMES

In the last two decades, international tribunals have been used extensively as political instruments, such as the indictment of Milosevic in 1999. But there is little evidence that they have succeeded in preventing genocides.¹¹²³ In fact, The ICTY might have prolonged conflict by fueling resentment.¹¹²⁴ Likewise, the assumption that retributive justice deters future genocide remains a hypothetical question, nor is there any way to empirically substantiate the success of past tribunals.¹¹²⁵ The ICC indictment and arrest of six Kenyans on charges of crimes against humanity in the summer of 2011 has done little to prevent similar crimes in neighboring countries.¹¹²⁶ Likewise the presence of the ICTR in the mid-1990s did nothing to stop the Rwandan government’s support of genocidal atrocities in other countries in the late 1990s. In fact, Rwanda’s participation with the ICTR and its cooperation in a Western-dominated security structure granted the

¹¹²² Yahraes, “He Gave a Name to the World’s Most Horrible Crime,” 56.

¹¹²³ Hunjoon Kim and Kathryn Sikkink, “Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Justice,” *International Studies Quarterly* 54 (2010). Bloxham and. Pendas, “Punishment as Prevention?: The Politics of Punishing Génocidaires.”

¹¹²⁴ Eric Stover and Harvey W. Weinstein, eds., *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004).

¹¹²⁵ Bass, *Stay the Hand of Vengeance*.

¹¹²⁶ Prosecutor v. Francis Kirimimuthaura, Uhuru Muigai Kenyatta & Mohammed Hussein Ali, Case No. ICC-01/09-02/11; and, Prosecutor v. William Samoeiruto, Henry Kiprono Kosgey & Joshua Arap Sang, Case No. ICC-01/09-01/11.

Rwandan government an exception from intervention in the genocidal violence the government sponsored in the Great Lakes region.¹¹²⁷

Despite these political and legal failures, genocide tribunals have been effective in other ways, as Lemkin had hoped. Through these trials the word and concept of “genocide” has entered in the lexicon of humanity. This is partly because the tribunals are often “national theaters” of sorts, where judges, lawyers, defendants, and witnesses employ their own “poetics” and engage in a sophisticated act of “legal storytelling” that shapes collective memory of mass atrocities. These trials are “monumental spectacles” and serve as a forum where national identity and memory are engaged, maximizing “their pedagogic impact.”¹¹²⁸ Courtroom proceedings provide national and global communities with a way of ordering the atrocities, establishing a historical record of facts and judgments.¹¹²⁹ This historical record is important because, as Gregory Stanton has argued, the last stage of genocide is denial. After polarizing society and then attempting to exterminate a group, genocidists attempt to remove any evidence that the group existed. Works of art are destroyed, languages banned, culturally significant buildings raised. Mass graves are dug up and bodies burned. Evidence is destroyed and victims are blamed. Many, however, have challenged the legitimacy of the historical records that are produced by the criminal tribunals, which are based not on historiography but a need to establish courtroom evidence, which misses larger historical processes. The Nuremberg

¹¹²⁷ Adam Jones, “The Great Lakes Genocide: Hidden Histories Hidden Precedents,” in *Hidden Genocides: Power, Knowledge, Memory*, eds. Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson (New Brunswick: Rutgers University Press, 2013), 141.

¹¹²⁸ Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick: Transaction Publishers, 1997), 68-69.

¹¹²⁹ Lawrence Douglass, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2001).

tribunal, for instance, largely wrote the “final solution” out of the historical record it produced.¹¹³⁰ Yet the tribunals, which cannot restore past lives and produce troublesome historical accounts, are important because they make denial impossible.¹¹³¹

Some have argued that the historical memory of trials is used to legitimize the expansion of liberal regimes that are forms of neocolonialism.¹¹³² Such arguments from the stand point of the left, through well meaning, do not contribute to a cosmopolitan, progressive position on humanitarian law and international tribunals. The demand for a robust human rights regime has not come from the so-called hegemonic powers in the West, especially the US. In fact, since the 1990s, the tendency around the world has been to incorporate international law into domestic jurisdictions through “a strong cosmopolitan interplay of local and global dynamics.”¹¹³³ International justice regimes in developing countries are often legitimized by claiming that they help transition society from a “totalitarian” and genocidal past into peaceful and “free” market democracies, potentially limiting the economic and political autonomy of post-colonial countries. However, just because a tribunal is shrouded in the language of liberal justice and rights-bearing individuals does not mean that the people and societies who are engaged in the

¹¹³⁰ Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Foundation of Holocaust History and Memory* (Oxford: Oxford University Press, 2001).

¹¹³¹ Gregory Stanton, “The Eight Stages of Genocide,” in *The Genocide Studies Reader*, eds. Samuel Totten and Paul R. Bartrop (New York: Routledge, 1996).

¹¹³² Noam Chomsky, *The New Military Humanism* (London: Pluto Press, 1999).

¹¹³³ Daniel Levy and Natan Sznaider, *Human Rights and Memory* (Philadelphia: Penn State, 2011), 98.

justice process are thinking about justice and rights in Western or liberal terms, for better or worse.¹¹³⁴

The trial of Adolf Eichmann in Jerusalem in 1960 was the first tribunal to do this, incorporating genocide in the Israeli penal code to shape an understanding of the crime that fit a local context—even if this “local context” was nothing more than a need to legitimize the new state of Israel.¹¹³⁵ The Eichmann trial set a precedent for domestic prosecutions of genocide in Cambodia and Equatorial Guinea which, like the Jerusalem trials, were both intended to legitimize new political regimes by denouncing the *ancien régime*.¹¹³⁶ The 1979 Cambodian tribunal found Pol Pot and the leadership of the Khmer Rouge guilty of genocide for attempting to purify Cambodian society of the influence of Westernization brought about by French colonialism, evacuating cities, eliminating scientifically based medicine, and eliminating groups who represented a political and social opposition to the establishment of an agriculturally based society, namely, the Buddhist clergy, the educated, urban elites, and Cham, Vietnamese and Chinese minorities.¹¹³⁷

While the Eichmann trial captured a large global audience, it was largely interpreted as a matter of Israeli or Jewish affairs. In the next decade, the Vietnamese-backed Khmer Rouge trial and the trial of Macias Nguema in Equatorial Guinea were

¹¹³⁴ Kamari Mazine Clarke, *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa* (Cambridge: Cambridge University Press, 2009), 26.

¹¹³⁵ Arendt, *Eichmann in Jerusalem*.

¹¹³⁶ John Quigley, *The Genocide Convention: An International Law Analysis* (Farnham: Ashgate, 2013), 25, 191.

¹¹³⁷ Howard J. De Nike, John Quigley, and Kenneth J. Robinson, eds., *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary* (Philadelphia: University of Pennsylvania Press, 2011).

interpreted as show trials and failed to capture public attention, having little to no impact on international law and politics. Thus it was the ICTY, after the Cold War, that reintroduced the concepts of genocide and crimes against humanity back into world affairs.¹¹³⁸ The revival of these two concepts provided jurists, activists, and scholars in the Americas and Europe with an opportunity to re-engage the memory of the Holocaust in a way that would have a direct impact on world politics.¹¹³⁹ This was matched by a more basic question over what genocide meant, and how the concept could be applied to contemporary conflicts in the former Yugoslavia, East Timor, Cambodia, sub-Saharan Africa, the Great Lakes region of Africa, among others.¹¹⁴⁰

The ICTY drove this initial global process of defining genocide. The Trial Chamber took the position that, because the UN delegates purposefully excised cultural genocide from the convention, the definition of genocide had be limited to the physical or biological destruction of a group. In this decision, the courts upheld the transformation of the crime from Lemkin's more expansive concept to a very specific type of killing or physical attack, done with the intention of destroying the group. Such acts "calculated to bring about physical destruction" were not necessarily limited to mass killings, and could include the deprivation of resources and food necessary for survival, or detention in camps.¹¹⁴¹ This interpretation was in line with the findings of the Eichmann verdict, which held Eichmann guilty of genocide, even though he killed no one, because he

¹¹³⁸ Levy and Sznajder, *Human Rights and Memory*, 98.

¹¹³⁹ Edward T. Linenthal, *Preserving Memory: The Struggle to Create America's Holocaust Museum* (New York: Columbia University Press, 2001).

¹¹⁴⁰ Martin Shaw, "Genocide in the Global Age," in *Handbook of Globalization Studies*, ed. Bryan S. Turner, (London: Routledge, 2010).

¹¹⁴¹ Schabas, *Genocide in International Law*, 191-292.

operated the German railroad system knowing that he was delivering Jewish victims to their death in an attempt to physically destroy the Jews as a group.¹¹⁴²

The ICTY ruling that genocide was an act of mass killing or physical violence against individual members of a group sustained the most prominent understanding of genocide held by scholars since 1948. Pieter Drost, one of the first to study genocide, for example, defined the act as the deliberate destruction of physical life of individual human beings by reason of their membership of any human collectivity.¹¹⁴³ Likewise, Vahakan Dadrian defined genocide as the “successful attempt by a dominant group ... to reduce by coercion or lethal violence the number of a minority group whose ultimate extermination is held desirable;”¹¹⁴⁴ Horowitz as “the structural and systematic destruction of innocent people by a state bureaucratic apparatus” because of their group membership;¹¹⁴⁵ Israel Charny as the “mass killing of substantial numbers of human beings, when not in the course of military action against military forces of an avowed enemy;”¹¹⁴⁶ and Frank Chalk and Kurt Jonassohn as “a form of one-sided mass killing in which a state or other authority intends to destroy a group, as that group is defined by the perpetrator.”¹¹⁴⁷

The ICTY interpretation of the convention, however, marked a drastic break from scholars who had defined genocide as the mass murder or physical attack of individuals

¹¹⁴² Schabas, *Genocide in International Law*, 192.

¹¹⁴³ Pieter Nicolass Drost, *The Crime of State, Vol. 2, Genocide* (Leyden: A. W. Sijthoff, 1959).

¹¹⁴⁴ Vahakn Dadrian, “A Typology of Genocide,” *International Review of Modern Sociology* 5 (1975).

¹¹⁴⁵ Horowitz, *Taking Lives*, 23.

¹¹⁴⁶ Israel W. Charny, “Toward a Generic Definition of Genocide,” in *Genocide, Conceptual and Historical Dimensions*, ed. George J. Andreopoulos, (Philadelphia: University of Pennsylvania Press, 1994), 75.

¹¹⁴⁷ Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analyses and Case Studies* (New Haven: Yale University Press, 1990), 23.

because of their group membership or identity.¹¹⁴⁸ In this school of thinking, genocide is an act inflicted upon individuals because of intolerance and prejudice, or as a “political policy” targeting individuals “to assure conformity and participation of the citizenry.”¹¹⁴⁹ In contrast to this school, the ICTY determined that to reduce genocide to a form of persecution or hate crime, committed against an individual because of the individual’s identity, would be out of step with the intention of the drafters of the Genocide Convention. The UN drafting process, the ICTY found, had reduced Lemkin’s concept of genocide from a protection of national-cultural existence to a guarantee that people would not be killed in an attempt to destroy a group to which they belong. Legally, this had two implications. First, physical killing became the *sine qua non* of genocide. Secondly, this meant that a killing motivated by hate or prejudice is not an act of genocide. Rather, the courts found, killing or physical attacks because of identity or group belonging fell under the category of persecution or discriminatory acts, which could even include mass murder.¹¹⁵⁰

The ICTY’s ruling brought the definition of genocide in line with the position advocated by scholars such as Jack Nusan Porter,¹¹⁵¹ Yehuda Bauer,¹¹⁵² and Helen

¹¹⁴⁸ Horowitz, *Taking Lives*; Drost, *The Crime of State, Vol. 2, Genocide*.

¹¹⁴⁹ Irving Louis Horowitz, *Genocide: State Power and Mass Murder* (New Brunswick: Transaction Publishers, 1976), 18.

¹¹⁵⁰ Akhavan, *Reducing Genocide to Law*, 85.

¹¹⁵¹ Jack Nusan Porter, *Genocide and Human Rights: A Global Anthology* (Lanham: University Press of America, 1982), 12: “Genocide is the deliberate destruction, in whole or in part, by a government or its agents, of a racial, sexual, religious, tribal or political minority. It can involve not only mass murder, but also starvation, forced deportation, and political and economic and biological subjugation.”

¹¹⁵² Yehuda Bauer, *Rethinking the Holocaust* (New Haven: Yale University Press, 2001), 10-12: Genocide is the planned destruction “of a group through selective mass murder.”

Fein,¹¹⁵³ who all defined genocide as an attack upon a sociological group, which could be achieved by attacking individual members of the groups. Like these scholars, the jurists of the ICTY were not satisfied with completely dismissing the element of cultural destruction in the act of genocide. A ruling in the Appeals Chamber echoed Lemkin's reasoning on protecting national-cultural diversity almost verbatim:

Among the grievous crimes this Tribunal has the duty to punish, the crime of genocide is singled out for special consideration and opprobrium. The crime is horrific in its scope; its perpetrators identify entire human groups for extinction. Those who devise and implement genocide seek to deprive humanity of the manifold richness its nationalities, races, ethnicities and religious provide. This is a crime against all of humankind, its harm being felt not only by the group targeted for destruction, but by all of humanity.¹¹⁵⁴

This decision, however, raised a significant problem: attacking the cultural and sociological characteristics of a group could not legally be considered genocide even though the Genocide Convention sought to criminalize the destruction of human groups as sociological entities.

Clearly the physical and symbolic attacks against groups were often intertwined. The courts found, for instance, that the Serbian destruction of Mosques was intended to not only intimidate Bosnian Muslims, but to symbolically erase their claim to a distinct cultural and national existence. Likewise, the Serbian destruction of the UNESCO Heritage site of Dubrovnik in Croatia, a beautifully preserved medieval city, was an obvious attempt to destroy a symbolic representation of Croatian national heritage in the

¹¹⁵³ Helen Fein, *Genocide in Sociological Perspective*, 24: "Genocide is a sustained purposeful action by a perpetrator to physically destroy a collectivity directly or indirectly, through interdiction of the biological and social reproduction of group members, sustained regardless of the surrender or lack of threat offered by the victim."

¹¹⁵⁴ Prosecutor v. Radislav Krsitic, Case No. IT-98-33-A, Judgment, Appeals Chamber, April 19, 2004.

region.¹¹⁵⁵ So why outlaw only the physical attacks upon individuals intended to destroy the group? Instead of expanding their interpretation of genocide, the court ruled that acts of cultural destruction were relevant when they proved that the physical attacks upon people were intended to destroy the group to which the victims belonged.¹¹⁵⁶ Secondly, the case law of the ICTY expanded the scope of crimes against humanity to include many of the crimes that the UN drafting committee had labeled cultural genocide, such as persecution, the destruction of cultural symbols, and prohibitions on religious practice or language. This widening of crimes against humanity to cover the atrocities that Lemkin had considered genocide but were written out of the Genocide Convention was later concretized in the Rome Statue of the ICC.¹¹⁵⁷

This left the ICTY with two more important questions in interpreting the Genocide Convention. What were human groups? And, what constituted proof of genocidal intent? The issue defining “genocidal intent” was of the utmost importance, because it was the intent to destroy a group that made a physical attack genocide. For instance, if crimes against humanity covered the crime of persecution, and murder could be considered a type of persecution, then what was the difference between a genocidal killing and a persecution killing? What made genocide unique, in the ICTY’s rulings, was the “element of *dolus specialis*,” special intent.¹¹⁵⁸ To find someone guilty of genocide, not persecution, it had to be shown that the accused held, in their mind, the goal of

¹¹⁵⁵ Norman M. Naimark, *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe* (Cambridge: Harvard University Press, 2002), 158.

¹¹⁵⁶ Schabas, *Genocide in International Law*, 218. See Prosecutor v. Krstic, Case No. IT-98-33-T, Judgment, August 2, 2001, paragraph 500.

¹¹⁵⁷ Schabas, *Genocide in International Law*, 119.

¹¹⁵⁸ Prosecutor v. Jelusic, Case No. IT-95-10-T, Judgment, December, 14, 1999.

destroying the group before perpetrating the act.¹¹⁵⁹ This made genocide an “intent-oriented” crime, not a “result-oriented” crime, meaning that the killing of a single individual is genocide if the killing was intended to destroy the group, whereas the massacre of thousands, or millions, is not genocide if the perpetrators killed without prior intent to destroy the group.¹¹⁶⁰ This narrow interpretation of genocidal intent prevented the court from convicting anyone of genocide until 2001.¹¹⁶¹

As discussed above, Lemkin had sought a broader definition of intent as *dolus eventualis*, where intent is constituted by the act.¹¹⁶² The consequence of this restriction of intent to special intent is that a whole series of historical cases that Lemkin considered genocide might not have fallen within the legal definition of genocide, such as the atrocities committed by the US against American Indians, many of Stalin’s genocides, or the French genocide in Algeria.¹¹⁶³ In these three cases, the argument goes, there is no definitive proof that the destruction of these victim groups was committed with conscious premeditation to exterminate the victim’s social group, and are therefore not genocide.

Although Lemkin’s concept of intent has been severely restricted, international tribunals have maintained that as long as the accused acted with the requisite intent, his or

¹¹⁵⁹ Kai Ambos, “What Does ‘Intent to Destroy’ in Genocide Mean?,” *International Review of the Red Cross* Vol. 91 No. 876 (2009).

¹¹⁶⁰ Payam Akhavan, *Reducing Genocide to Law: Definition, Meaning, and the Ultimate Crime* (Cambridge; Cambridge University Press, 2012), 45.

¹¹⁶¹ Prosecutor v. Krstic, Case No. IT-98-33-T, Judgment, August 2, 2001; Prosecutor v. Krstic, Case No. IT-98-33-A, Appeals Chamber Judgment, April 19, 2004.

¹¹⁶² Goldsmith, “The Issue of Intent in the Genocide Convention.”

¹¹⁶³ Cherif M. Bassiouni, “International Law and the Holocaust,” *California Western International Law Journal* Vol. 9, No. 2 (1979). For a contrasting view, see Samuel Totten, *Genocide of Indigenous Peoples* (New Brunswick: Transaction Publishers, 2011), 19.

her motives are irrelevant.¹¹⁶⁴ This development would have pleased Lemkin, who felt that the only reason to investigate a perpetrator's motives was to help ascertain what incentives a perpetrator might have for committing genocide in order to seek a peaceful resolution to genocide. Other than that, Lemkin felt that the motives of genocide did not matter legally or politically.

This perspective has troubled scholars who argue that the words “as such” in the Genocide Convention should be interpreted as expressing the concept of motives.¹¹⁶⁵ Proving motives in genocide is necessary, they argue, because the purpose of the 1948 Genocide Convention was to criminalize the destruction of national, racial, ethnic, or religious groups that was motivated by hatred of the group. In holding up the Nazi Holocaust against Gypsies and Jews and the Rwandan genocide as “the classic cases” of genocide because they were motivated by ethnic hatred, the argument concludes that the destruction of an entire group should not be defined as genocide if it was motivated by anything other than hatred of the group, such as greed or territorial aggrandizement.¹¹⁶⁶ Thus the Holocaust is genocide because it was motivated by hatred towards the Roma as an ethnic group and the Jews as a religious group, but atrocities such as those committed by the Khmer Rouge regime in Cambodia cannot be labeled genocide because they are motivated by intra-ethnic hatred, not inter-ethnic hatred of an “other.”¹¹⁶⁷

¹¹⁶⁴ Akhavan, *Reducing Genocide to Law*, 44.

¹¹⁶⁵ Schabas, *Genocide in International Law*, 294.

¹¹⁶⁶ Schabas, *Genocide in International Law*, 294.

¹¹⁶⁷ William A. Schabas, “Problems in International Codification: Were the Atrocities in Cambodia and Kosovo Genocide?,” *New England Law Review* 35 (2001).

The belief that genocide is only genocide when it is committed out of ethnic hatred is, arguably, the most widely held, colloquial understanding of the concept. Yet scholars from across the social sciences have resoundingly demonstrated that identity-based hatreds are impelled by material and political interests, not by existential incompatibilities between identities.¹¹⁶⁸ Because the basic aspects of personal identity and religious experience are often intertwined with the structuring parameters of material interests, the material basis of conflict is often expressed in idioms of religious belief or cultural identity.¹¹⁶⁹ This is a sociological principle that Lemkin understood, which he would have derived from his intellectual milieu and the theorists of national-cultural autonomy. Otto Bauer, after all, took a Marxist approach to argue that Europeans exterminated entire nations under colonial rule because of economic and political interests, not primordial national, ethnic, or racial hatreds—even though conflicts were often spoken about in those terms by the protagonists.¹¹⁷⁰

Moreover, the belief that genocide is a premeditated attack upon a group motivated by ethnic or racial hatreds borders on a tautology, Martin Shaw has argued, since it is hard to imagine an organization planning genocide without discriminating against the victims or dehumanizing them beforehand. Yet, the near circular thinking is purposeful, pushing back “towards a more absolute concept of organizing intentions as necessarily informed by *consistent values or beliefs* that drove specific decisions—

¹¹⁶⁸ Norman M. Naimark, *Fires of Hatred*.

¹¹⁶⁹ R. Brian Ferguson, “Introduction: Violent Conflict and Control of the State: Political Disintegration in the Post-Cold War World,” in *The State, Identity and Violence*, ed. R. Brian Ferguson, (London: Routledge, 2003).

¹¹⁷⁰ See the section on “Imperialism and the Principle of Nationality,” in Bauer, *The Question of Nationalities and Social Democracy*, 355-417.

implicitly, the kind of racist values typified by Nazism.”¹¹⁷¹ Lemkin, however, had discovered that every genocide develops its own rationale, including the Axis genocide, and one simply could never know what motivated any individual to commit genocide, or see genocide as a legitimate act. As Samantha Power put it, with a small bit of humor, Lemkin even “singled out the German Hausfrau for feeding her family with ‘Polish geese, Yugoslav pigs, French wine, Danish butter, Greek olives’.”¹¹⁷² Lemkin’s point was that often it was the benefits gained through a genocidal regime—not primordial hatred alone—that led people to support a genocide.

If genocide is a social process or a political program that is given subjective meaning by individual actors who take into account the constantly shifting behavior of others, then the decision to murderously exterminate an entire group cannot be assumed to have been implicit in every incremental stage of a genocide.¹¹⁷³ Likewise, that genocidists hold consistent motives, or that their values and ideologies maintain a racist coherence across society and through time, cannot be assumed either.¹¹⁷⁴ To do so ascribes the end to the beginning, and renders genocide outside of the boundaries of social and political study. Philosophically, these claims are troubling, too. To believe the decision to commit mass murder is inherent in the initial, incremental acts of discrimination denies the role of free will and choice. If mass murder and genocide are

¹¹⁷¹ Shaw, *What is Genocide?*, 83. Emphasis in the original.

¹¹⁷² Power, “Introduction to the First Edition by the Lawbook Exchange, LTD,” xx.

¹¹⁷³ See Max Weber, *The Theory of Social and Economic Organization* (New York: Simon and Schuster, 2009), 101. See Shaw, *What is Genocide?* 86; And see, more generally, Fein, *Genocide in Sociological Perspective*.

¹¹⁷⁴ Shaw, *What is Genocide?*, 84.

beyond human choice, then they cannot be prevented, which removes any incentive for working towards the end of genocide.¹¹⁷⁵

Schabas has argued that this close-knit link between special intent and motives based on racial, national, ethnic, and religious hatreds is what elevated genocide “to the apex of human rights atrocities, and with good reason.” Diluting the definition by allowing for a broader nexus of interests and motives, according to Schabas, “risks trivializing the horror of the real crime when it is committed.”¹¹⁷⁶ What is more, for Schabas, it risks moving the convention away from the intentions of the original drafting committee members wanted to outlaw a specific type of Nazi persecution. There is a valid point here. The Nazi attempt to exterminate the Jews made Lemkin’s life work politically relevant and provided the impetus for the humanitarian and human rights movements at the UN.¹¹⁷⁷ However, the UN debates over the Genocide Convention and the Declaration of Human Rights in the late 1940s cannot be deduced from Holocaust consciousness because no such consciousness existed at the time.¹¹⁷⁸ The debates during the UN drafting committee were not just centered on Nazi atrocities against the Jews, but the overarching structure of Nazi atrocities, and involved debates on genocides being committed in colonial Africa and Asia, in the partition of India, in the Palestine conflict, in the USSR, and against indigenous peoples. What is more, Lemkin himself tried to

¹¹⁷⁵ Kant, *Perpetual Peace*.

¹¹⁷⁶ Schabas, *Genocide in International Law*, 133.

¹¹⁷⁷ Hinton, “Critical Genocide Studies,” *Genocide Studies and Prevention* 7 (2012).

¹¹⁷⁸ A. Dirk Moses, “Does the Holocaust Reveal or Conceal Other Genocides? The Canadian Museum for Human Rights and Grievable Suffering,” in *Hidden Genocides: Power, Knowledge, Memory*, eds. Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson (New Brunswick: Rutgers University Press, 2013).

ensure that the genocide convention was not simply a prohibition against the Holocaust, but was framed in universal terms to enshrine basic principles of national-cultural autonomy into international humanitarian law.

The issue of group hatred raised a problem in the way protected groups are defined in the law. As Alexander Hinton has argued, the UN Genocide Convention's rigid definition of protected groups reifies categories such as race, ethnicity, religion, and nationality as immutable categories when these categories are social constructions and highly mutable. Schabas has argued that the UN delegates on the drafting committee purposefully wanted to prevent the Genocide Convention of being applicable to any groups defined by arbitrary criteria—such as political groups or the disabled—and restrict the law to protecting groups that were defined as national minorities in the minority rights regime prior to the Second World War.¹¹⁷⁹ The nexus of the words “racial, national, religious, and ethnic,” Schabas writes, was intended to signify what contemporary usage prefers to call ethnicity, as it is defined by Weber, as a group whose members “entertain a subjective belief in their common descent because of similarities of physical type or customs or both, or because of memories of colonization.”¹¹⁸⁰ For Hinton, who advocates for a definition of genocide that includes the destruction of any sort of group as defined by the protagonists of genocide, the strict formulation has proven misleading in social contexts where the people do not necessarily understand group identity in Western-centric terms, yet set out to murderously destroy imagined groups.

¹¹⁷⁹ Schabas, *Genocide in International Law*, 133.

¹¹⁸⁰ Schabas, *Genocide in International Law*, 133, 145.

The ICTR struggled to apply the concepts of race, nationality, religion, and ethnicity to the Rwandan context. The Hutus and Tutsis, the two “protagonists” in the genocide, spoke the same language, held the same customs and beliefs, shared common ancestries, and were absolutely the same in every empirical way invoked by the Genocide Convention, except for the fact that the Belgium colonial regime, in an effort to politically divide the colonized population, had issued identity cards that distinguished between “Hutu” and “Tutsi” based on an arbitrary number of cattle a family owned.¹¹⁸¹ In the immediate build up to the 1994 genocide, both groups had been living together without longstanding hatreds or prejudices. The logic of extermination was built around a belief amongst Hutu hardliners that Tutsis were dangerous enemies in the context of civil war because they were *too* similar to Hutus.¹¹⁸² This idea that Tutsis were enemies could never have been possible without pre-existing categories that resonated within the Rwandan context. However, the Hutu genocide against Tutsis cannot be reduced to an ideological commitment to Hutu nationalism or a ethnic utopian vision of society.¹¹⁸³

To handle this problem of whether or not Tutsi victims were protected by the Genocide Convention, the Trial Chamber of the ICTR adopted an approach that group membership would not be determined by objective criteria, but whether or not the perpetrators of the crime held the subjective belief that the victims were a distinct ethnic,

¹¹⁸¹ Scott Straus, *The Order of Genocide: Race, Power, and War in Rwanda* (Ithica: Cornell University Press, 2008). Also see Jean-Pierre Chrétien, *Le Défi de l’Ethnisme; Rwanda et Burundi: 1900-1996* (Paris: Karthala, 1997).

¹¹⁸² Straus, *The Order of Genocide: Race, Power, and War in Rwanda*, 9.

¹¹⁸³ Straus, *The Order of Genocide: Race, Power, and War in Rwanda*, 9. Also see René Lemarchand, “Rwanda: The Rationality of Genocide,” *Issue: A Journal of Opinion* 21 (1995): 8-11.

national, racial, or religious group.¹¹⁸⁴ This approach does not satisfy scholars who argue that the ICTR findings still uphold a set of privileged groups while leaving other kinds of groups unprotected and analytically invisible.¹¹⁸⁵ There is something unsatisfactory in the trial chambers decision that the simple fact of printing “Hutu” or “Tutsi” on an identity card made Hutu and Tutsi ethnic categories, and therefore the atrocities were subject to the jurisdiction of the Genocide Convention. Would genocide cease to be genocide if “Hutu” and “Tutsi” were ruled to be administrative categories, or political groups? Legally, the ICTY and ICTR have ruled, the answer is yes. The reasoning would not have satisfied Lemkin, who did not structure identity like a zero-sum game, viewed race and ethnicity as “approaching myth,” defined nations as “families of mind,” believed that an individual could belong to many nations at once, and argued that genocide could legally be committed against any undesired “family of mind” in society, from union breakers to those who play at cards.

In other ways, however, the ICTR provided a legal basis for reclaiming much of what was lost during the drafting process of the Genocide Convention.¹¹⁸⁶ Whereas the ICTY ruled that rape was a form of torture and constituted a crime against humanity, the ICTR ruled that rape and sexual violence was a tactic of genocide (if not directly genocide) because it was a form of serious bodily and mental harm intended to destroy the targeted victim group.¹¹⁸⁷ The ruling reflected a growing sensitivity to the role of rape

¹¹⁸⁴ Schabas, *Genocide in International Law*, p. 126. And see *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T, Judgment 97-98, May 21, 1999.

¹¹⁸⁵ Alexander Laban Hinton, “Critical Genocide Studies,” in *Genocide Matters: Ongoing Issues and Emerging Perspectives*, Joyce Apsel and Ernesto Verdeja, eds., (London: Routledge, 2013), 42-48.

¹¹⁸⁶ Bartoli, Ogata, and Stanton, “Emerging Paradigms in Genocide Prevention.”

¹¹⁸⁷ See *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, September 2, 1998.

as a weapon of war and genocide, intended to inflict pain and trauma on the victim, and to shatter collective bonds of solidarity and trust.¹¹⁸⁸ The ruling could also be said to represent a revival of Lemkin's forgotten belief that rape and gendered atrocities were devastating tactics of genocide used by the Axis occupiers and genocidists throughout history.

The ICTR furthermore broke ground by applying "specific intent" but adopting a standard that is closer to the "knowledge" based intent that Lemkin advocated for, where intent is proven simply by showing that the perpetrators knew the consequences of their actions before acting.¹¹⁸⁹ And, lastly, the Nahimana trial court determined that hate speech could be defined as genocide under Article III(c) of the Convention when the speech act was intended to incite people to destroy, in whole or in part, a national, ethnical, racial or religious group.¹¹⁹⁰ This, again, is a development in keeping with Lemkin's writings on genocide.¹¹⁹¹

But what gave "genocide" its symbolic resonance as the darkest of humanity's inhumanity at the end of the 1990s? For the reasons outlined above, the ICTY case law drew no hierarchical distinctions between genocide and crimes against humanity. The ICTR, however, listed genocide as "the crime of crimes," followed by crimes against humanity as "crimes of extreme seriousness," and war crimes as "crimes of a lesser

¹¹⁸⁸ Jones, *Genocide: A Comprehensive Introduction*, 367.

¹¹⁸⁹ Bartoli, Ogata, and Stanton, "Emerging Paradigms in Genocide Prevention."

¹¹⁹⁰ Bartoli, Ogata, and Stanton, "Emerging Paradigms in Genocide Prevention." And see Prosecutor v. Nahimana, Barayagwiza and Ngeze, Case No. ICTR-99-52-T, Judgment, December 3, 2003; Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, September 2, 1998.

¹¹⁹¹ The crime of incitement to commit genocide is now firmly established in international law, especially since the role of hate speech and radio broadcasts in inciting the Rwandan genocide have been brought to light. Incitement is included in Article 25(3)(e) of the Rome Statue of the International Criminal Court and Article 6 on Genocide.

seriousness.”¹¹⁹² In ruling that genocide constituted “the crime of crimes,” the ICTR injected the word genocide into global human rights discourse. A global philanthropic, humanitarian movement had formed around a narrative of human suffering in Rwanda, complete with stylized, de-historicized images of refugees and the bodies of the tragically dead.¹¹⁹³ As the Rwandan humanitarian movement gained prominence, it carried the word “genocide” into global discourse. This growing publicity of the concept of genocide was accompanied by the institutionalization of Holocaust memory at the center of cosmopolitan ethics in many countries,¹¹⁹⁴ as well as the introduction of Holocaust, genocide, and Human Rights instruction into the curricula of universities and secondary schools around the world.¹¹⁹⁵ By the end of the 1990s, the word “genocide” had taken on its current symbolic quality as the crime of crimes, the darkest of humanity’s inhumanity, with the Holocaust and the Rwandan genocides serving as the two canonical cases of genocide in the twentieth century.¹¹⁹⁶

8.4 THE GLOBAL TO THE LOCAL: REDEFINING THE CRIME OF CRIMES

¹¹⁹² Prosecutor v. Blaskic, Case No. IT-95-14-T, Judgment, March, 3, 2000, paragraph 800.

¹¹⁹³ Liisa H. Malkki, “Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization,” *Cultural Anthropology* Vol. 11, No. 3 (1996), 398.

¹¹⁹⁴ Daniel Levy and Natan Sznaider, *The Holocaust and Memory in the Global Age* (Philadelphia: Temple University Press, 2006); Daniel Levy and Natan Sznaider, *Human Rights and History* (Philadelphia: Temple University Press, 2010), 80–82; Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999), 37. For a critical view, see, A. Dirk Moses, “The Holocaust and Genocide,” in *The Historiography of the Holocaust*, ed. Dan Stone (Houndmills: Palgrave Macmillan, 2004), 533–555.

¹¹⁹⁵ Joyce Apsel, “Educating a New Generation: The Model of the ‘Genocide and Human Rights University Program’,” *Human Rights Review* 12 (2011).

¹¹⁹⁶ Hinton, “Critical Genocide Studies,” *Genocide Studies and Prevention* 7 (2012).

Since the mid 1990s, the concept of genocide has continued to play a special, symbolic role in world affairs and remains a centerpiece of international law. The advent of hybrid tribunals, such as the Extraordinary Chambers in the Courts of Cambodia, are often justified by the claim that ending impunity of genocidists brings a greater respect for the rule of law which, in turn, promotes universal concepts such as justice, accountability, and helps promote democratic values.¹¹⁹⁷ Against this position, some have argued that transitional justice legitimizes the expansion of neo-liberal principles and undermines local cultures and local autonomy.¹¹⁹⁸ However, hybrid tribunals have proven to be sites of an interplay between local and global ideas.¹¹⁹⁹ In Cambodia, two decades of international intervention—from UN peacekeeping missions and UN oversight over democratic elections to the current Khmer Rouge Tribunal that combines international judges and staff with Cambodian judges and lawyers—has led the concepts of justice, human rights, and genocide to become infused into the political and social landscape of Cambodia. In the process, these concepts have been shaped in a local vernacular and framed within Buddhist moral precepts and conceptions, so much so that Cambodians consider the genocide tribunal to be a “Buddhist” institution.¹²⁰⁰

Some of the strongest interplay between local and global understandings of genocide, justice, and Human Rights has come from the experience of horror during the

¹¹⁹⁷ Craig Etcheson, *After the Killing Fields: Lessons from the Cambodian Genocide*, (Westport: Praeger, 2005), 188-189.

¹¹⁹⁸ Slavoj Zizek, “Against Human Rights,” *New Left Review* 34 (2005): 115-131.

¹¹⁹⁹ Levy and Sznajder, *Human Rights and Memory*, 98. Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers* (Cambridge: Cambridge University Press, 2010).

¹²⁰⁰ Hinton, “Critical Genocide Studies,” in *Genocide Matters: Ongoing Issues and Emerging Perspectives*, Joyce Apsel and Ernesto Verdeja, eds., (London: Routledge, 2013), 49.

dictatorships in Latin America in the late 1960s through the 1970s. In 1984, the National Commission on the Disappearance of Persons was established in Argentina to investigate the forced disappearances and human rights violations committed by the military dictatorships between 1976 and 1983. The Argentine commission, like the Chilean National Truth and Reconciliation Commission in 1990, traded amnesty for testimony, conceptualizing historical truth as a basic right and a form of retroactive justice.¹²⁰¹ The Argentine commission, while promising to find the truth about the fate of each of the disappeared persons, offered very little “truth” about the actions of the victimizers and did little to dispel the widely held belief in Argentine society that the victims of state repression were communist, anti-Christian, subversive youths killed by a state engaged in a civil war against communist guerillas.¹²⁰²

Much has been written on the transformation of the human rights civil society movement in Argentina into a global movement, led by figures such as Emilio Mignone and the Madres de Plaza de Mayo.¹²⁰³ Inside Argentine society, the social movement helped reshape a historical narrative that presented the victims of state violence as delinquent “outsiders” into a narrative that presented the victims as innocent Argentine young people.¹²⁰⁴ With the rise of the ICTY and ICTR, political sentiments in Argentina

¹²⁰¹ Marcelo Raffin, *La Experiencia del Horror: Subjectividad y Derechos Humanos en las Dictaduras y Postdictaduras del Cono Sur* (Buenos Aires: Editores del Puerto, 2006), 244.

¹²⁰² Juan Carlos Marín, *Los Hechos Armados, Argentina, 1973-1976: La Acumulación Primitiva del Genocidio* (Buenos Aires: PICASO/La Rosa Blindada, 1996). Labeling political violence in Argentina as “war” is a discourse that legitimizes state violence: see, Feierstein, *El Genocidio Como Práctica Social*.

¹²⁰³ Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia: University of Pennsylvania Press, 2011), 256.

¹²⁰⁴ Emilio Crenzel, *La Historia Política del Nunca Más: la Memoria de las Desapariciones en la Argentina* (Buenos Aires: Siglo XXI, 2008), 156-160; Daniel Feierstein and Marcelo Raffin, *Seis Estudios Sobre Genocidio: Análisis de Las Relaciones Sociales: Otredad, Exclusión, Exterminio* (Buenos Aires: Del Puerto 2008).

began to present the victims as rights-bearing individuals who deserved more than truth, but a form of retrospective justice.¹²⁰⁵ When the Fifth Central Court of Instruction in Madrid, Spain indicted ninety-eight members of the Argentine military in 1999 for crimes of genocide and terrorism, the promises of amnesty in exchange for truth in Argentine politics collapsed.

In a historic case, the Federal Criminal Oral Court No. 1 of La Plata sentenced the former Director of Investigations for the Buenos Aires Police for crimes against humanity committed within the framework of the genocide in Argentina between 1976 and 1983.¹²⁰⁶ During this time, tens of thousands of victims were targeted because they belonged to sectors of the Argentinean nation that the military dictatorship considered incompatible with the National Reorganization Process. Leftists were imprisoned in a network of 500 concentration camps. The children of trade unionists, student organizers, or neighborhood association members were kidnapped, tortured, and executed on the grounds that they were dissidents. Pregnant women who were interred were kept alive long enough to give birth so that their children could be adopted by proper families.¹²⁰⁷ In the court's ruling, the military regime in power was guilty of committing genocide, even though the victims were labeled by the regime as leftist political opponents and did not constitute a separate ethnic, national, racial, or religious group.

The court's decision marked the first legal rebuke of the principle that genocide is intrinsically an "interethnic" or "intergroup" act. The court reviewed the UN drafting

¹²⁰⁵ See Raffin, *La Experiencia del Horror*.

¹²⁰⁶ Feierstein, *El Genocidio Como Práctica Social*, 57.

¹²⁰⁷ Santiago Garano and Werner Pertot, *Detenidos-aparecidos: Presas y Presos Políticos desde Trelew a la Dictadura* (Buenos Aires: Biblos, 2007); Hugo Vezzetti, *Pasado y Presente: Guerra, Dictadura y Sociedad en la Argentina* (Buenos Aires: Siglo XXI, 2003).

process and determined that the exclusion of political groups from the final draft of the convention was not determined by the philosophy of the law, but by political circumstances between 1946 and 1948, and could legitimately be read back into the law.¹²⁰⁸ Furthermore, the domestic courts in Argentina have since upheld the views of jurists and sociologists who have studied Lemkin's work to argue that the Argentine experience constitutes genocide because it was an attempt to reshape the social relationships of society through terror and death. In this view, the military perpetrators committed genocide because they intended to reorder the social fabric of the Argentine nation in accordance to a "Western economic and Christian" vision.¹²⁰⁹

As Feierstein has argued, Lemkin's definition of genocide as a process of reorganizing society to remove undesired families of mind, often through violence and terror, has proven particularly relevant to the Argentine, Chilean, and Guatemalan genocides. It also offers a way of rethinking the political and social meaning of genocide. Lemkin was aware that racism and bigotry accompanied genocide, and he understood that Nazi propaganda dehumanized the victims of genocide. Nevertheless, he saw genocide as a process of removing undesired nations from the fabric of human society, often by killing in mass the individuals whose very presence generated the undesirable nation. In this conception of genocide, it was not the inhumanity of the victims that caused the perpetrators to commit genocide; it was their humanity. This meant that the perpetrator, as a precondition of genocide, must already view the victim "family of mind"

¹²⁰⁸ Daniel Feierstein, "Political Violence in Argentina and its Genocidal Characteristics," in *State Violence and Genocide in Latin America: The Cold War Years*, Marcia Esparza, Henry R. Huttenbach, and Daniel Feierstein, eds., (London: Routledge, 2010), 54.

¹²⁰⁹ Feierstein, "Political Violence in Argentina and its Genocidal Characteristics," 46; Feierstein, *El Genocidio Como Práctica Social*, 14.

as a part their own, shared society before they come to the decision to annihilate the group. Here again is the core of Lemkin's ecumenical cosmopolitanism: genocide was not an inter-group conflict. It was intra-human.

The notion that genocide is an act between competing national, ethnic, religious, or racial groups is so entrenched that scholars have coined the term "auto-genocide" to signify genocides where the perpetrators attempt to destroy members of their own groups.¹²¹⁰ The silent premise behind the term is that "auto-genocide" is a derivative form of atrocity, and only the killing of "others" constitutes genocide, "the crime of crimes." This interpretation has led the Extra Ordinary Chambers in the Courts of Cambodia, for instance, to charge the former Khmer Rouge defendants with genocide only in connection to the killing of ethnic and religious minorities in some provinces.¹²¹¹ The Khmer Rouge attempt to purify Cambodian society of its imperialist, bourgeois, Buddhist, foreign, and Western elements through terror, torture, forced labor, starvation, and mass executions, does not qualify as genocide in this line of reasoning because it was not a form of intergroup violence and conflict.¹²¹²

Such arguments have little to do with the historical trajectory of the Khmer Rouge regime, which combined racial and political extermination into one system of genocide intended to benefit an invented, ideal peasant class that actually excluded many people who really were peasants and included party leaders who came from elite

¹²¹⁰ See Martin Shaw, *What is Genocide?*, 76.

¹²¹¹ Caitlin Reiger, "Hybrid and Internationalized Tribunals," in *The Rules, Practice, and Jurisprudence of International Courts and Tribunals*, ed. Chiara Giorgetti (Leiden: Martinus Nijhoff, 2012), 296.

¹²¹² See Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (Oxford: Oxford University Press, 2001), 285.

backgrounds.¹²¹³ While the regime targeted ethnic minorities disproportionately, most of the 1.7 million people who were killed were members of targeted social and political sectors of Khmer society, and half of those who died were Khmer peasants. Most of these victims, moreover, were described as having “Khmer bodies with Vietnamese minds,” a discourse that mixed biological and social metaphors of race into a purity fetish of removing “diseased elements” from the social fabric of Cambodia.¹²¹⁴

To argue that the killings in Cambodia—as well as Argentina—do not constitute genocide because there are intra-group killings misses the point that all social categories are imagined into existence. As Weber discovered, ethnicity as “a belief [that is] important for the propagation of group formation” exists sociologically, but ethnic groups “as objective blood relationships” do not.¹²¹⁵ A theoretically sound interpretation of the meaning of genocide, therefore, cannot take certain groups *a priori* and argue that the Genocide Convention privileges these categories of belonging in order to protect against a particularly horrendous form of atrocity. This is especially so, given that these groups were privileged by the UN Genocide Convention as a result of the political circumstances surrounding the drafting committee debates between 1946 and 1948.

If genocide is to be understood as the intentional destruction of a social group, then all genocides involve a process of manufacturing difference, where genocidal regimes divide the social universe arbitrarily into essentialized categories of identity. The victim group is then stigmatized, while the genocidal regime initiates a series of

¹²¹³ Ben Kiernan, “The Cambodian Genocide: Issues and Responses,” in *Genocide, Conceptual and Historical Dimensions*, ed. George J. Andreopoulos (Philadelphia: University of Pennsylvania Press, 1994), 202.

¹²¹⁴ Kiernan, *Blood and Soil*, 549.

¹²¹⁵ Weber, *Economy and Society*, p. 389.

institutional, legal, social, and political steps intended to undermine the material and social conditions necessary for the social or physical reproduction of the imagined group.¹²¹⁶ To take ethnic, racial, religious, or national groups as the *a priori* categories through which genocide is mediated violates the ecumenical, cosmopolitan ethic that Lemkin believed underscored the Genocide Convention because it naturalizes differences and social hierarchies, denying the potential for a human universal. Lemkin saw all humanity as constituting “one world civilization,” and argued in his later writings that genocide was not about a perpetrator attacking an “other” that was exterior to the group.¹²¹⁷

8.5 GENOCIDE AND NATIONAL-CULTURAL AUTONOMY IN THE TWENTY-FIRST CENTURY HUMAN RIGHTS REGIME

Is national-cultural autonomy a principle at the core of the contemporary human rights regime? In a way, yes.

Nineteenth-century industrialization added economic rights, universal suffrage, child welfare, and public education to the pantheon of universal rights. These rights were articulated by people who were unable to address their economic concerns because they were disenfranchised from the political process. While the defense of liberty was hallowed ground for liberals, a new economic class of working people raised the possibility that economic inequality made liberty meaningless. In appealing to the Enlightenment promise of applying the universal values of liberty and equality to the

¹²¹⁶ Hinton, *Why Did They Kill?*, 211-251.

¹²¹⁷ Lemkin, “Introduction: The New Word and the New Idea.”

economic and social spheres, the socialist platform infused itself into the mainstream tenets of liberal human rights.¹²¹⁸ For Otto Bauer and the Austro-Marxist school, however, the democratic ideals of socialism could not be made real within the prevailing structure of a global political system that was dominated by imperialist exploitation of national minorities and colonial subjects, whom the national communities in the liberal and imperialist nation-states barely regarded as human.

One can argue that the Genocide Convention, which followed from Bauer and Renner's sensibilities, sought to protect groups only because of the failure to translate the discourse of universal rights into practice, as specific groups turned to cultural rights because they were deprived of universal political, social, or economic rights by other groups.¹²¹⁹ Renner and Bauer, alas, had sought the legal recognition of nations as "communities of character" as corporate entities distinct from the state because nineteenth-century nationalism divided the world into organic and mutually exclusive national categories, made national identity a prerequisite for belonging in the state, exploited those who did not conform, and violently suppressed those who posed political problems. The standard of inclusion was arbitrary, based on imagined standards of group belonging that were taken as absolute. Redirecting sovereign responsibilities of the state through national associations, Renner believed, would strengthen a form of pluralist, associative democracy.¹²²⁰ Against those who argued that national cultural autonomy only reified national divisions, Renner's response was that the reification had already

¹²¹⁸ Ishay, *The History of Human Rights*.

¹²¹⁹ Ishay, *The History of Human Rights*, p. 11.

¹²²⁰ John Schwarzmantel, "Karl Renner and the Problem of Multiculturalism," in *National Cultural Autonomy and its Contemporary Critics*, ed. Ephraim Nimni (London: Routledge, 2005), 70.

occurred. The point was to mitigate the suffering it caused.

Ultimately, Renner and Bauer's position of national cultural autonomy proved untenable for the modern state.¹²²¹ The myth of the nation-state elevates a national identity as a legally mediated form of solidarity that brings the social boundaries of the state in line with the territorial boundaries of the state. This can be achieved through an atavistic, communitarian identity or through a constitutional patriotism where citizens rely on a shared sense of values rather than an imagined shared history.¹²²² Thus, the modern nation-state is always poised to be a great exploiter or destroyer of minorities while simultaneously upholding individual rights for those who belong.¹²²³ For state sovereignty to be effective, the state must regulate economic life of citizens and impose legal norms, while demanding that citizens relegate their particular identities to the private sphere.¹²²⁴ For this reason, after the Second World War, the world's states at the UN chose to reframe the issue of minority rights within the larger framework of human rights, making issues of identity and ethnic and cultural practices a private matter.¹²²⁵ The UN Sixth Committee overwhelmingly decided that Lemkin's "cultural genocide" was a "human rights issue," while minority and cultural rights were written out of the Universal

¹²²¹ Will Kymlicka, "Renner and the Accommodation of Sub-state Nationalisms," p. 137.

¹²²² Jürgen Habermas, "The European Nation State, its Achievements and its Limitations: On the Past and Future of Sovereignty and Citizenship," *Ratio Juris*, 9 (1996).

¹²²³ Will Kymlicka and Christine Straehle, "Cosmopolitanism, Nation-States, and Minority Nationalisms: A Critical Review of Recent Literature," *European Journal of Philosophy* 7 (1999).

¹²²⁴ Habermas, "The European Nation State."

¹²²⁵ Geneviève Nootens, "Nations, States, and the Sovereign Territorial Ideal," in *National Cultural Autonomy and its Contemporary Critics*, ed. Ephraim Nimni (London: Routledge, 2005).

Declaration of Human Rights in favor of protecting the rights of individuals.¹²²⁶

Because national cultural autonomy was never a viable option in the nation-state, the position failed to convince liberalism or socialism to integrate the scheme into their programs.¹²²⁷ Lemkin, who had given up on the minority rights treaties as early as 1933, saw international humanitarian law as a means of infusing the content of national cultural autonomy into world affairs. In 1950, Lemkin told Renner “your books on the importance of national groups as being apart from States has inspired my work for many years, and finally led me to initiate the action to outlaw genocide.” Where Renner had sought to give national cultural autonomy a juridical form in the nation-state, Lemkin wrote, “in my efforts to convince the members of the United Nations to adopt the Genocide Treaty, I used your arguments about the universal cultural value of national groups, and about their significance as contributing factors to world civilization.”¹²²⁸ With his reference to world civilization, Lemkin sought to eclipse the state and give national cultural autonomy a new international form.

When the Genocide Convention is interpreted as form of groups’ rights and a relativistic defense of vulnerable peoples, it becomes easy to consider the law against genocide as a dangerous anachronism and fundamentally illiberal. For this reason, it is important to emphasize that the Austro-Marxist position was made from the vantage

¹²²⁶ William A. Schabas, “Les Droits de Minorités: Une Déclaration Inachevée,” in *La Déclaration Universelle des Droits de l’Homme 1948-1998: Avenir d’un Idéal Commun* (Paris: La Documentation Française, 1999).

¹²²⁷ Geneviève Nootens, “Nations, States, and the Sovereign Territorial Ideal,” 59.

¹²²⁸ “Raphael Lemkin to Karl Renner,” AJA, Box 1, Folder 15, March 29, 1950.

point of groups' rights without being a groups' rights position.¹²²⁹ Renner made the argument on liberal, individualist grounds. While he considered nations to be "communities of character" and defined nationality as a "spiritual and cultural community," his definition of a nation was individualistic and voluntaristic, with the individual holding the right to individual self-determination.¹²³⁰ It was this freedom to choose one's national belonging, as an entity separate from state citizenship, that formed the core of Renner's position on the nationalities question and animated Lemkin's theory on the Genocide Convention. Framed this way, national cultural autonomy and the Genocide Convention are not relativistic defenses of vulnerable peoples, but meet the requirements of liberal autonomy. Like Renner's conception, Lemkin's law was intended to preserve the ability of individuals to freely decide which national aspirations they wished to be a part of, and then to preserve the ability for autonomous individuals to freely change plans and pursue new ideas of the good.¹²³¹

Neither Lemkin, nor his colleagues, thought of a law against genocide as a form of groups rights. Still, many argue that rights protecting the existence of groups and prohibitions against the destruction of groups are but two sides of the same coin. The argument is valid. However, to a jurist like Lemkin, rights and criminal laws were two different things, with different legal and political consequences.

Rights are legal instruments that provide the basic structure of the law and form the relationship between the citizen and the government, spelling out duties and

¹²²⁹ Will Kymlicka, "Renner and the Accommodation of Sub-state Nationalisms," in *National Cultural Autonomy and its Contemporary Critics*, ed. Ephraim Nimni (London: Routledge, 2005), 137.

¹²³⁰ Renner, "State and Nation," in *National Cultural Autonomy and its Contemporary Critics*, ed. Ephraim Nimni (London: Routledge, 2005), 20.

¹²³¹ John Rawls, "Kantian Constructivism in Moral Theory," *Journal of Philosophy* 77 (1980).

obligations. Rights could be invoked by individuals or groups to make public and political claims against a state or, to protect the subject's liberty or, to protect against the maladministration of justice. In *Axis Rule* Lemkin spelled out the problems with the groups' rights regime of the interwar years and the need for criminal laws:

The system of legal protections of minorities adopted in the past, which was based mainly on international treaties and the constitutions of the respective countries, proved to be inadequate because not every European country had a sufficient judicial machinery for the enforcement of its constitution. It may be said, in fact, that the European countries had a more efficient machinery for enforcing civil and criminal law than for enforcing constitutional law. Genocide being such a great importance, its repression must be based not only on international and constitutional law but also on the criminal law of the various countries.¹²³²

For minority protections and groups rights to be meaningful they required a judiciary capable of enforcing rights. They also required that the party invoking the rights must be the subject whom the right is intended to protect. In the case of vulnerable populations, it was laughable to expect that a ruling elite would allow an entire suppressed minority group to invoke their collective rights against the state. If the rights were invoked by the state or a third party on behalf of a protected group, this might actually constitute a violation of the rights of individuals in the group by preventing "those who so desire from leaving such groups in order to join majority groups." In such cases, the minority protection regime would constitute a "barrier to the graduate process of assimilation and integration" that every individual had a right to peruse.¹²³³

Nevertheless, clearly there was a practical and humanitarian need to protect national groups from being targeted for annihilation. As "a composite of different acts of

¹²³² Lemkin, *Axis Rule*, 93.

¹²³³ Lemkin, *Axis Rule*, 93 n. 54.

persecution or destruction,” genocide usually involved violations of any number of individual rights. However, Lemkin wrote, “the entire problem of genocide needs to be dealt with as a whole; it is too important to be left for piecemeal discussion” because many aspects of genocide fall outside of the bounds of individual human rights and existing humanitarian protections. These included, Lemkin wrote, the deliberate undernourishment of victim groups, deliberately undermining the economy of victim groups, subsidizing the costs of caring for children begotten as a consequence of forced sexual relations between soldiers and women of the victim group, as well as any number of “ingenious measures for weakening or destroying political, social, and cultural elements in national group.”¹²³⁴ The genocide convention would not seek to protect groups directly, therefore. Instead, it would make the intentional destruction of groups a criminal act. Since this was not a matter of rights, which are a contract between the state and the citizen, neither the state nor the collective group perpetrating genocide would be held liable. Instead, the individual people who ordered genocide and executed the orders would be the ones liable.¹²³⁵

The argument that the concept of genocide and the Genocide Convention is a form of groups’ rights that reifies atavistic nationalism and cultural relativism is, therefore, a false argument. One, it misunderstands Lemkin’s understanding of a nation. Secondly, in a world where people really do commit genocide, why should the law against genocide be seen as a source of xenophobic nationalism? After all, the law does not defend the inviolate nature of human groups, but criminalizes the act of forcefully

¹²³⁴ Lemkin, *Axis Rule*, 92.

¹²³⁵ Lemkin, *Axis Rule*, 93.

and violently restructuring the fabric of society in order to eliminate undesired imagined groups of people. Lemkin insisted that genocide protects people's rights to belong to whichever imagined nations they wished to belong to. It was the genocidists who betrayed the human universal. The Genocide Convention, Lemkin believed, was a mechanism for preserving the foundation of a ecumenical cosmopolitan existence.

It is possible that the cosmopolitan aspect of Lemkin's law would have been lost if it were not for the jurists working in the commission of international and national courts, or scholars working in connections the tribunals. By returning to the *travaux préparatoires* and Lemkin's writings, the ICTY sustained the conceptual core of Lemkin's thinking on genocide as the destruction of social groups, while expanding crimes against humanity to cover the full scope of crimes that Lemkin considered genocide. The Trial Chambers of the ICTR subsequently expanded the scope of genocidal intent, reinterpreted what it meant to belong to a human group, and included sexual violence and rape as acts of genocide intended to inflict terror and trauma, but not necessarily to kill. And the Argentine courts provided an opportunity to infuse Lemkin's theories on what nations were back into the law, genocide studies, and the discourse of the human rights movement. Because of the Argentine courts, and Argentine scholars, genocide is now very much recognized as an attempt reconstruct the national community without the victim group—whether that national community was the citizenry of a state, or the world. In Feierstein's work, the key component is that both the victims and perpetrators are necessarily part of the same social world, for the perpetrators are attempting to purify their own social universe through genocide.

Yet, for as much as the Argentine courts have revived much of Lemkin's ideas on

nations as the victims of genocide, the courts have also insisted that acts of genocide must be restricted to acts of severe physical and mental harm, such as the forced transfer of children, acts intended to prevent births, abductions, killings, terror, and torture. This implicitly takes the principles of national-cultural autonomy and recognizes that nations are forms of shared consciousness, but criminalizes only the attempt to destroy national consciousness in a given society through terror, trauma, and violence.

The restriction of the legal definition of genocide to acts of physical violence undertaken with the intent of destroying an imagined group was a positive development in contemporary human rights and humanitarian law. Just as the globalization of economics, communication, and environmental degradation made it possible to speak about environmental rights, the right to sustainable development, and the right to political asylum, the mass atrocities that occurred in connection with the Cold War and wars of decolonization raised new questions over whether or not sovereignty should protect regimes that do not protect a basic standard of human rights.¹²³⁶ The concept of genocide, with a clear focus on physical violence and an implicit condemnation of sovereignty, structured this debate and the discourse of the global human rights movement.

Scholars and activists have productively expanded the concept of genocide to embrace non-violent forms of national destruction when thinking about genocide scientifically, philosophically, and historically. However, Lemkin himself believed that the practical discussion of preserving the foundation of a cosmopolitan world order trumped philosophy. An international law dedicated to outlawing the most brutal and violent form of genocide was better than a law that covered the full spectrum of his

¹²³⁶ Ishay, *The History of Human Rights*.

theory of genocide but was not viable. Furthermore, Lemkin always maintained that genocide, no matter how it was committed, represented a loss to world civilization beyond the suffering of the individual victims. However, he recognized that genocides that inflicted mass killings, terror, and severe mental harm were especially cruel. He knew, for example, that there was a difference between the destruction of the Jewish nation as a family of mind and the death of his parents.

In his note cards on the cultural genocide against the Plains Indians, for insistence, Lemkin reserved a special vitriol for condemning the US for massacring bison to starve the Indians, and for crowding captives into disease-riddled “concentration camps.”¹²³⁷ That mass deportations of the Choctaw were timed for the winter months angered him. Forced marches across the continent are always cruel, but winter marches showed the perpetrators either had no concern for suffering, or sought to maximize it.¹²³⁸ In the genocide of the Creek people, Lemkin singles out for condemnation the Alabama government for allowing mobs to burn down Creek towns, drive the survivors into the swamps, and shoot them.¹²³⁹ All of these brutalities were genocide along with the forced conversion of American Indians to Christianity and the forced imposition of the English language. However, the techniques of genocide that inflicted physical and mental suffering were a more severe form of cruelty. Limiting the definition of genocide to physical and mental harm still upheld a basic respect for human life and peace—which Lemkin believed were the two most human important rights—while preserving enough of

¹²³⁷ Raphael Lemkin, Notecard 38, AJHS, P-154, Box 9, Folder 13, verso.

¹²³⁸ Raphael Lemkin, Notecard 5, AJHS, P-154, Box 9, Folder 14; Raphael Lemkin, Notecard 7, AJHS, P-154, Box 9, Folder 14.

¹²³⁹ Raphael Lemkin, Notecard 19, AJHS, P-154, Box 9, Folder 14; see also Raphael Lemkin, Notecard 31, AJHS, P-154, Box 9, Folder 13.

the concept of genocide necessary for criminalizing the destruction of national cultural autonomy. Thus Lemkin, in the winter of 1948, agreed to a law in practice that he would have rejected in theory.

Clearly, limiting the concept genocide to physical acts of brutality intended to destroy an imagined group has allowed the Genocide Convention to play a special role in the development of human rights in the twenty-first century. In fact, it is the UN Convention's focus on genocides that turn to extreme violence and trauma to eliminate social groups that has given the law a special symbolic status as the darkest of humanity's inhumanity. The ICTY and ICTR provided the impetus for reassessing the role of global politics in shaping the destruction of entire nations. In the words of Guénaél Mettraux, the tribunals have "liberated genocide from the historical and sociological" and elevated the concept into "a genuine legal norm of general application rather than as a symbol of a unique historical phenomenon."¹²⁴⁰ In the process, Mettraux writes, scholars and activists raised the possibility that the violent genocides after the Second World War were not the result of the internal dysfunctions of particular societies, but part of a global process. One argument in this line of thought is that the international system of states, formed through European imperialism, forces states to homogenize their populations to ward off competing sources of internal power while, externally, and makes mass murder and exploitation necessary for securing access to the material resources necessary for sustaining a global capitalism and the international system of states.¹²⁴¹

This global-systems argument has generated two different responses. The first is

¹²⁴⁰ Guénaél Mettraux, *International Crimes and Ad Hoc Tribunals* (Oxford: Oxford University Press, 2005), p. 199.

¹²⁴¹ Mark Levene, *Genocide in the Age of the Nation State* (London: IB Tauris, 2008).

that the causes of genocide lie in the actions of states, the jealous monopolizers of violence, and therefore the intervention of states to prevent genocide will not change the conditions that give rise to genocide.¹²⁴² This view differs tremendously from Lemkin's. For Lemkin, genocide was not committed by "states," but by conscious agents who—often acting through the state, but not always—set out to kill human beings because they saw them as members of a social group they wanted to eliminate, for whatever reason.¹²⁴³ The second response has much more in common with Lemkin's perspective, for it seeks to redefine state sovereignty in a way that holds leaders of states accountable to humanitarian norms, thereby keeping alive the possibility that the way the system of states behaves depends upon the way human beings think it should behave. This second movement was given intellectual form by Francis Deng, who argued that the UN Charter protected the right of sovereignty, but never meant for sovereignty to be a license for state elites to commit genocide or violate human rights. Rather, sovereignty entails the Westphalian rights of territory, authority, and population and a duty: the responsibility to protect the rights of a population.¹²⁴⁴

In other words, peace and a cosmopolitan internationalism had to be produced in the world through human actions and institutions, Lemkin believed. In this project, sovereignty "cannot be conceived as the right to kill millions of innocent people," Lemkin wrote. It must be shaped so as to mean "conducting an independent foreign and internal policy, building schools, construction of roads, in brief, all types of activated

¹²⁴² Christopher Powell, *Barbaric Civilization: A Critical Sociology of Genocide* (Montreal: McGill-Queen's University Press, 2011).

¹²⁴³ Spencer, *Genocide Since 1945*, p. 129.

¹²⁴⁴ Francis M. Deng, et al., *Sovereignty as Responsibility* (Washington, D.C.: Brookings Institution, 1995); Francis M. Deng, "Frontiers of Sovereignty," *Leiden Journal of International Law*, Vol. 8, No. 2 (1995).

directed towards the welfare of people.”¹²⁴⁵ But piercing the inviolate shield of the state was only a first step. The Genocide Convention, Lemkin believed, provided a reference point that could be used to introduce new values against genocide into the world while allowing for the enforcement of obligations between the leaders of states and the people of the world. The latter turned out to be the juridical mechanism that elevated genocide to the status of “Crime of Crimes” at the end of the twentieth century, as the global human rights movement turned to Lemkin’s law in the hope that it could govern.

For Lemkin, however, the Genocide Convention represented something much larger than a promise of court rooms and good governance. His law was a cosmopolitan international law, enshrining a basic respect for existential differences into the law by criminalizing the attempt to destroy entire imagined communities of people and remove them from the social fabric of the world. For Lemkin, the Genocide Convention was a matter of basic human rights, but could not be reduced to human rights which inevitably called for dealing with identity-based political problems by individualizing the human subject and forgetting about differences in search of some sort of overlapping consensus in human values. The Genocide Convention could legitimize the suppression of genocide as the destruction of families of mind, safeguarding the possibility of a cosmopolitan order for the good of all humanity. These ideals entailed a sense of responsibility and empathy towards all individuals, while celebrating the interaction of national differences as the source of all human creativity and beauty. The struggle against genocide, Lemkin believed, was necessary for defending the right of all people to enjoy the interaction between the individual’s particular experience and the “subtle concerto” of a universal

¹²⁴⁵ Lemkin, *Autobiography*, “Introduction.”

world civilization.

BIBLIOGRAPHY

- Adorno, Theodor, Else Frenkel-Brunswick, Daniel Levinson, and Nevitt Sanford, *The Authoritarian Personality*. New York: Harper & Row, 1950.
- Akhavan, Payam. "Pushing War Crimes in the Former Yugoslavia: A Critical Juncture for the New World Order." *Human Rights Quarterly* 15, No. 2 (1993): 262-289.
- Akhavan, Payam. *Reducing Genocide to Law: Definition, Meaning, and the Ultimate Crime*. Cambridge: Cambridge University Press, 2012.
- Akhmatova, Anna. "Requiem 1935-1940." In *Poems of Akhmatova*, edited and translated by Stanley Kunitz and Max Hayward, 103 (New York: Mariner Books, 1973).
- Alsheh, Yehonatan. "¿Puede un Ethnoscape Heterogéneo Constituir un Genos y Su Exterminio Genocidio?," *Revista de Estudio Sobre Genocidio* 5 (2011): 11-27.
- Ambos, Kai. "What Does 'Intent to Destroy' in Genocide Mean?" *International Review of the Red Cross* 91 No. 876 (2009): 833-858.
- Anderson, Benedict. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. New York: Verso, 2006.
- Apsel, Joyce. "Educating a New Generation: The Model of the 'Genocide and Human Rights University Program'." *Human Rights Review* 12 No. 4 (2011): 465-486.
- Apsel, Joyce. "The Complexity of Destruction in Darfur: Historical Processes and Regional Dynamics." *Human Rights Review* 10, No. 2 (2009): 239-259.
- Arendt, Hannah. *Crisis of the Republic*. New York: Harcourt Brace, 1972.
- Arendt, Hannah. *Eichmann in Jerusalem: A Report on the Banality of Evil*. New York: The Viking Press, 1963.
- Arendt, Hannah. *The Origins of Totalitarianism*. New York: Harcourt, Brace and Jovanovich, 1979.
- Askin, Kelly Dawn. *War Crimes Against Women: Prosecution in International War Crimes Tribunals*. Leiden: Martin Nijhoff, 1997.
- Baines, Erin K. "The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda." *The International Journal of Transitional Justice* 1, No. 1 (2007): 91-141.
- Barnett, Michael. *Eyewitness to a Genocide: The United Nations and Rwanda*. Ithaca: Cornell University Press, 2002.
- Barrett, John Q. "Raphael Lemkin and 'Genocide' at Nuremberg, 1945-1946." In *The Genocide Convention Sixty Years After Its Adoption*, edited by Christoph Safferling & Eckart Conze, 35-54. The Hague: T.M.C. Asser Press, 2010.
- Bartlett, Robert Merrill. "Pioneer vs. an Ancient Crime," *The Christian Century*, July 16 1956.
- Bartoli, Andrea, Tetsushi Ogata, and Gregory Stanton. "Emerging Paradigms in Genocide Prevention," *Politorbis* 47, No. 2 (2009): 16-24.
- Bartov, Omer and Eric D. Weitz, "Introduction: Coexistence and Violence in the German, Habsburg, Russian, and Ottoman Borderlands." In *Shatterzone of Empires: Coexistence and Violence in the German, Habsburg, Russian, and Ottoman Borderlands*, edited by Omer Bartov and Eric D. Weitz, 1-20. Bloomington: Indiana University Press, 2013.

- Bartov, Omer and Eric D. Weitz, eds. *Shatterzone of Empires: Coexistence and Violence in the German, Habsburg, Russian, and Ottoman Borderlands*. Bloomington: Indiana University Press, 2013.
- Barzun, Jacques. *Race: A Study in Modern Superstition*. New York: Taylor and Francis, 1937.
- Bass, Gary J. *Freedom's Battle: The Origins of Humanitarian Intervention*. New York: Knopf Doubleday Publishing Group, 2009.
- Bass, Gary Jonathan. *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*. Princeton: Princeton University Press, 2000.
- Bassiouni, Cherif. *Crimes Against Humanity in International Law*. Leiden: Martin Nijhoff, 1999.
- Bassiouni, Cherif. "International Law and the Holocaust." *California Western International Law Journal* 9, No. 2 (1979): 202-305.
- Bassiouni, Cherif. "Searching for Peace and Achieving Justice: The Need for Accountability." *Law and Contemporary Problems* 59, No. 4 (1996): 9-28.
- Bassiouni, Cherif. "The History of Universal Jurisdiction and Its Place in International Law." In *Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes Under International Law*, edited by Stephen Macedo, 39-63. Philadelphia: University of Pennsylvania Press, 2006.
- Bauer, Otto. *The Question of Nationalities and Social Democracy*, edited by Ephraim J. Nimni. Translated by Joseph O'Donnell. Minneapolis: University of Minnesota Press, 2000.
- Bauer, Yehuda. *Rethinking the Holocaust*. New Haven: Yale University Press, 2001.
- Bauer, Yehuda. "Review of The Holocaust in Historical Context, Vol.1." *Journal of the American Academy of Religion* 65, No. 3 (1997): 678-681.
- Bauer, Yehuda. "The Significance of the Final Solution." In *The Final Solution: Origins and Implementation*, edited by David Cesarani, 300-309. London: Routledge, 1996.
- Bauman, Zygmunt. *Modernity and the Holocaust*. Cambridge: Polity, 2013.
- Beata Michlic, Joanna. *Poland's Threatening Other: The Image of the Jew from 1880 to the Present*. Lincoln: University of Nebraska Press, 2006.
- Bellamy, Alex J. *Responsibility to Protect*. Cambridge: Polity, 2009.
- Bender, Sara. *The Jews of Bialystok During World War II and the Holocaust*. Translated by Yaffa Murciano. Waltham: Brandeis University Press, 2008.
- Benedict, Ruth. *Race: Science and Politics*. New York: Viking Press 1945.
- Benhabib, Seyla. *Dignity in Adversity: Human Rights in Trouble*. Cambridge: Polity Press, 2011.
- Benhabib, Seyla. "International Law and Human Plurality in the Shadow of Totalitarianism: Hannah Arendt and Raphael Lemkin." In *Politics in Dark Times: Encounters with Hannah Arendt*, edited by Seyla Benhabib, 219-246. Cambridge: Cambridge University Press, 2010.
- Benvenisti, Eyal. *The International Law of Occupation*. Oxford: Oxford University Press, 2012.
- Beres, Louis Rene. "Genocide." *Policy Studies Review* 4, No. 3 (1985): 397-406.
- Berlin, Isaiah. *The Proper Study of Mankind*. New York: Farr, Straus and Giroux, 1998.

- Berman, Nathaniel. "‘But the Alternative is Despair’: European Nationalism and the Modernist Renewal of International Law." *Harvard Law Review* 106, No. 8 (1993): 1793-1801.
- Bialik, Hayim Nahman. "On the Slaughter." In *Bialik: Selected Poems of Hayim Nahman Bialik*, edited and translated by Atar Hadari, 11. Syracuse: Syracuse University Press, 2000.
- Blackmon, Douglas A. *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*. New York: Anchor Books, 2008.
- Blanke, Richard. *Orphans of Versailles: The Germans in Western Poland, 1918-1939*. Lexington: University Press of Kentucky, 1993.
- Bloch, Ernst. *Natural Law and Human Dignity*. Translated by Dennis J. Schmidt. Cambridge, MA: Massachusetts Institute of Technology, 1986.
- Bloxham, Donald and Devin O. Pendas. "Punishment as Prevention?: The Politics of Punishing Génocidaires." In *Oxford Handbook of Genocide Studies*, edited by Donald Bloxham and A. Dirk Moses, 617-637. Oxford: Oxford University Press, 2010.
- Bloxham, Donald. *Genocide on Trial: The War Crimes Trials and the Formation of Holocaust History and Memory*. Oxford: Oxford University Press, 2001.
- Bloxham, Donald. "Jewish Slave Labour and its Relationship to the ‘Final Solution’." In *Remembering for the Future: The Holocaust in an Age of Genocide*, edited by John K. Roth and Elisabeth Maxwell, 163-186. New York: Palgrave, 2001.
- Bourdieu, Pierre. "L’illusion Biographique." *Actes de la Recherche en Sciences Sociales* 62-63 (1986): 69-72.
- Braeckman, Colette. *Rwanda, Histoire d’un Génocide*. Paris: Fayard, 1994.
- Brandenberger, David. *Propaganda State in Crisis: Soviet Ideology, Indoctrination, and Terror under Stalin, 1927-1941*. New Haven: Yale University Press, 2011.
- Breitman, Richard. *What the Nazis Planned, What the British and Americans Knew*. (New York: Hill and Yang, 1998.
- Brock, Peter. "Polish Nationalism." In *Nationalism in Eastern Europe*, edited by Peter. F. Sugar and Ivo J. Lederer, 310-372. Seattle: University of Washington Press, 1994.
- Bronner, Stephen Eric. *A Rumor About the Jews: Antisemitism, Conspiracy, and the Protocols of Zion*. Oxford: Oxford University Press, 2000.
- Bronner, Stephen Eric. *Peace out of Reach: Middle Eastern Travels and the Search for Reconciliation*. Lexington: The University Press of Kentucky, 2007.
- Bronner, Stephen Eric. *Rosa Luxemburg: A Revolutionary for Our Times*. University Park: Pennsylvania State University Press, 1997.
- Broszat, Martin. *The Hitler State: The Foundation and Development of the Internal Structure of the Third Reich*. New York: Longman Group, 1981.
- Browning, Christopher R. *Nazi Policy, Jewish Workers, German Killers*. New York: Cambridge University Press, 2000.
- Browning, Christopher R. *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland*. New York: Harper Collins, 1992.
- Brubaker, Rogers. *Nationalism Reframed: Nationhood and the National Question in the New Europe*. Cambridge: Cambridge University Press, 1996.
- Buck, Pearl S. "Is there a Case for Foreign Missions?" *Harper's* 166 (January 1933): 143-155.

- Bull, Hedley. "Hans Kelsen and International Law." In *Essays on Kelsen*, edited by William Twining and Richard Tur, 321-336. Oxford: Clarendon Press, 1986.
- Butcher, Thomas M. "A 'Synchronized Attack': On Raphael Lemkin's Holistic Conception of Genocide." *Journal of Genocide Research* 15, No. 3 (2013): 253-271.
- Caro, Leopold. "Idee Przewodnie Ustawodawstwa Sowieckiego." *Ruch Prawniczy, Ekonomiczny I Socjologiczny* 9 (1929): 205-223.
- Cassin, René. *La Pensée et l'Action*. Boulogne-sur-Seine: F. Lalou, 1972.
- Cecil, Robert. *The Myth of the Master Race: Alfred Rosenberg and Nazi Ideology*. New York: Dodd Mead, 1972.
- Chabod, Federico. "The Idea of Nation." In *Nationalism in Europe: 1815 to the Present*, edited by Stuart Woolf, 124-136. London: Routledge, 1996.
- Chalk, Frank and Kurt Jonassohn. *The History and Sociology of Genocide: Analyses and Case Studies*. New Haven: Yale University Press, 1990.
- Charlesworth, Hilary and Jean-Marc Coicaud, eds. *Fault Lines of International Legitimacy*. Cambridge: Cambridge University Press, 2010.
- Charny, Israel W. *How Can We Commit the Unthinkable? Genocide, The Human Cancer*. Boulder, CO: Westview, 1982.
- Charny, Israel W. "Toward a Generic Definition of Genocide." In *Genocide, Conceptual and Historical Dimensions*, edited by George J. Andreopoulos, 64-94. Philadelphia: University of Pennsylvania Press, 1994.
- Chomsky, Noam. *The New Military Humanism*. London: Pluto Press, 1999.
- Chrétien, Jean-Pierre. *Le Défi de l'Ethnisme; Rwanda et Burundi: 1900-1996*. Paris: Karthala, 1997.
- Clark, Phil. *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers*. Cambridge: Cambridge University Press, 2010.
- Clarke, Kamari Mazine. *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*. Cambridge: Cambridge University Press, 2009.
- Clavero, Bartolomé. *Genocide or Ethnocide, 1933-2007: How to Mark, Unmake and Remake Law with Words*. Milan: Giuffrè Editore, 2008.
- Clymer, Kenton. "Jimmy Carter, Human Rights, and Cambodia." *Diplomatic History* 27, No. 2 (2003): 245-278.
- Cohn, Elie. *Human Behavior in the Concentration Camp*. New York: Grossett & Dunlap, 1953.
- Coicaud, Jean-Marc. *Légitimité et Politique: Contribution à L'étude du Droit et de la Responsabilité Politiques*. Paris: Presses Universitaires de France, 1997.
- Conot, Robert E. *Justice at Nuremberg*. New York: Basic Books, 1984.
- Conquest, Robert. *The Harvest of Sorrow: Soviet Collectivization and the Terror-famine*. Oxford: Oxford University Press, 1986.
- Cooper, John. *Raphael Lemkin and the Struggle for the Genocide Convention*. New York: Palgrave Macmillan, 2008.
- Corni, Gustavo. *Hitler's Ghettos: Voices from a Beleaguered Society 1939-1944*. London: Arnold, 2002.
- Cossit, Henry La. "The Man Who Outlawed Genocide." *New York Herald Tribune* magazine *This Week* (7 January 1951): 14 and 26.

- Crenzel, Emilio. *La Historia Política del Nunca Más: la Memoria de las Desapariciones en la Argentina*. Buenos Aires: Siglo XXI, 2008.
- Curthoys, Ann and John Docker. "Defining Genocide." In *The Historiography of Genocide*, edited by Dan Stone, 9–41. New York: Palgrave 2008.
- Curthoys, Ann. "Raphael Lemkin's 'Tasmania': An Introduction." *Patterns of Prejudice* 39, No. 2 (2005): 162-169.
- Dadrian, Vahakn. "A Typology of Genocide." *International Review of Modern Sociology* 5, No. 2 (1975): 201-212.
- Davies, Norman. *Rising '44: The Battle for Warsaw*. New York: Viking, 2004.
- Davies, Richard O. *Defender of the Old Guard: John Bricker and American Politics*. Columbus, Ohio: The Ohio State University Press, 1993.
- de Asua, Jimenez, Vespasien Pella, and Manuel López-Rey, eds. *Actes de la Vème Conférence Internationale pour l' Unification du Droit Pénal (Madrid 14–20 Octobre 1933)*. Paris: A. Pedone, 1935.
- De Nike, Howard J., John Quigley, and Kenneth J. Robinson, eds. *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary*. Philadelphia: University of Pennsylvania Press, 2011.
- Deng, Francis M. "Frontiers of Sovereignty." *Leiden Journal of International Law*, 8, No. 2 (1995): pp. 249-286.
- Deng, Francis M., et al., *Sovereignty as Responsibility*. Washington, D.C.: Brookings Institution, 1995.
- Docker, John. "Are Settler-Colonies Inherently Genocidal? Re-reading Lemkin." In *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, edited by A. Dirk Moses, 81-101. New York: Berghahn Books, 2008.
- Docker, John. "Raphaël Lemkin, Creator of the Concept of Genocide: A World History Perspective." In *Key Thinkers and Their Contemporary Legacy: Humanities Research Vol. XVI. No 2.*, edited by Ned Curthoys. Canberra: The Australian National University E Press, 2010.
- Douglass, Lawrence. *The Memory of Judgment: Making Law and History in the Trials of the Holocaust*. New Haven: Yale University Press, 2001.
- Drost, Pieter N. *Genocide, United Nations Legislation on International Criminal Law*. Leyden: A. W. Sythoff, 1959.
- Drost, Pieter N. *The Crime of State, Vol. 2, Genocide*. Leyden: A. W. Sijthoff, 1959.
- Dubnow, Simon Markovich. *History of the Jews in Russia and Poland, Vol. II (1825-1894)*. Translated by I. Friedlaender. Philadelphia: Jewish Publication Society of America, 1916.
- Dubnow, Simon Markovich. *History of the Jews in Russia and Poland, Vol. III (1895 until the Present Day)*. Translated by I. Friedlaender. Philadelphia: Jewish Publication Society of America, 1920.
- Dubnow, Simon Markovich. *Nationalism and History: Essays on Old and New Judaism*, edited by Koppel S. Pinson. Philadelphia: Jewish Publication Society, 1958.
- Duus, Peter. "Introduction: Japan's Wartime Empire: Problems and Issues." In *The Japanese Wartime Empire, 1931-1945*, edited by Peter Duus, Ramon Myers and Mark Peattie, xi-xxvii. Princeton: Princeton University Press, 1996.

- Earl, Hilary. "Prosecuting Genocide Before the Genocide Convention: Raphael Lemkin and the Nuremberg Trials, 1945-1949." *Journal of Genocide Research* 15, No. 3 (2013): 317-337.
- Elder, Tanya. "What You See before Your Eyes: Documenting Raphael Lemkin's Life by Exploring His Archival Papers, 1900-1959." *Journal of Genocide Research* 7, No. 4 (2005): 469-499.
- Elis, Howard S. "German Exchange Control, 1931-1939: From an Emergency Measure to a Totalitarian Institution." *The Quarterly Journal of Economics* 54 No. 4, Part 2 (1940): 1-158.
- Esposito, Barbara and Lee Wood. *Prison Slavery*. Washington, D.C: Committee to Abolish Prison Slavery, 1982.
- Etcheson, Craig. *After the Killing Fields: Lessons from the Cambodian Genocide*. Westport: Praeger, 2005.
- Falk, Richard. *Achieving Human Rights*. New York: Routledge, 2009.
- Fanon, Franz. *The Wretched of the Earth*. Translated by Richard Philcox. New York: Grove Press, 2004.
- Feierstein, Daniel and Marcelo Raffin. *Seis Estudios Sobre Genocidio: Análisis de Las Relaciones Sociales: Otrredad, Exclusión, Exterminio*. Buenos Aires: Del Puerto, 2008.
- Feierstein, Daniel. *El Genocidio Como Práctica Social: Entre el Nazismo y la Experiencia Argentina*. Buenos Aires: Fondo de Cultura Económica, 2008.
- Feierstein, Daniel. "Political Violence in Argentina and its Genocidal Characteristics." In *State Violence and Genocide in Latin America: The Cold War Years*, edited by Marcia Esparza, Henry R. Huttenbach, and Daniel Feierstein, 44-63. London: Routledge, 2010.
- Fein, Helen. "Accounting for Genocide after 1945: Theories and Some Findings." *International Journal of Group Rights* 1 (1993): 79-106.
- Fein, Helen. "Definition and Discontent: Labeling, Detection, and Explaining Genocide in the Twentieth Century." In *Genozid in der Modernen Geschichte*, edited by Stig Förster and Gerhard Hirschfeld, 11-21 (Münster: Lit, 1999).
- Fein, Helen. "Genocide and Gender: The Uses of Women and Group Destiny." *Journal of Genocide Research* 1, No. 1 (1999): 43-63.
- Ferguson, R. Brian. "Introduction: Violent Conflict and Control of the State: Political Disintegration in the Post-Cold War World." In *The State, Identity and Violence*, editor R. Brian Ferguson (London: Routledge, 2003), 1-58.
- Finch, George A. "Superior Orders and War Crimes." *American Journal of International Law*, 15, No. 3 (1921): 440-445.
- Finch, George A. "The Genocide Convention." *The American Journal of International Law* 43, No. 4 (1949): 732-738.
- Finer, Herman. *Modern Government* Vol. 2. New York: Taylor and Francis, 1932.
- Fink, Carole. *Defender of Minorities: Germany in the League of Nations, 1926-1933*. Cambridge: Cambridge University Press, 1972.
- Fink, Carole. *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878-1938*. Cambridge: Cambridge University Press, 2006.

- Fitzmaurice, Andrew. "Anticolonilism in Western Political Thought: The Colonial Origins of the Concept of Genocide." In *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, edited by A. Dirk Moses, 55-80. New York: Berghahn Books, 2008.
- Focillon, Henri. *Vie Des Formes*. Paris, Librairie Ernest Leroux, 1934.
- Fraenkel, Ernst. *The Dual State: A Contribution to the Theory of Dictatorship*. New York: Oxford University Press, 1941.
- Frankel, Jonathan and Steven J. Zipperstein, ed. *Assimilation and Community: The Jews in Nineteenth-Century Europe*. Cambridge: Cambridge University Press, 1992.
- Friedman, Philip. "Review of *The Final Solution: The Attempt to Exterminate the Jews of Europe, 1939-1945* by Gerald Reitlinger." *Jewish Social Studies* 16. No. 2 (1954): 186-189.
- Friedman, Philip. *This was Oswiecim: The Story of a Murder Camp*. London: United Jewish Relief Appeal, 1946.
- Friedrich, Joachim and Zbigniew K. Brzezinski, *Totalitarian Dictatorship and Autocracy*. Cambridge: Harvard University Press, 1956.
- Frieze, Donna-Lee, ed. "Introduction: The 'Insistent Prophet'." *Totally Unofficial* by Raphael Lemkin. New Haven: Yale University Press, 2013.
- Frieze, Donna-Lee. "New Approaches to Raphael Lemkin," *Journal of Genocide Research* 15, No. 3 (2013): 247-252.
- Frieze, Donna-Lee. "'Simply Bread Out,' Genocide and the Ethical in the Stolen Generations." In *Hidden Genocides: Power, Knowledge, Memory*, edited by Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson, 83-96. New Brunswick: Rutgers University Press, 2013.
- Fromm, Erich. *The Fear of Freedom*. London: Routledge, 1942.
- Furber, David and Wendy Lower. "Colonialism and Genocide in Nazi-occupied Poland and Ukraine." In *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, edited by A. Dirk Moses, 372-400. London: Berghahn Books, 2008.
- Garanño, Santiago and Werner Pertot. *Detenidos-aparecidos: Presas y Presos Políticos desde Trelew a la Dictadura*. Buenos Aires: Biblos, 2007.
- Gardam, Judith. "Women and the Law of Armed Conflict: Why the Silence?" *International and Comparative Law Quarterly*, 46 (1997): 55-80.
- Goemans, H. E. *War and Punishment: The Causes of War Termination and the First World War*. Princeton: Princeton University Press, 2000.
- Goldberg, Amos. "The History of Jews in the Ghettos: A Cultural Perspective." In *The Holocaust and Historical Methodology*, edited by Dan Stone, 79-100. London: Berghahn Books, 2012.
- Goldberger, Leo, ed. *The Rescue of the Danish Jews: Moral Courage Under Stress*. New York: New York University Press, 1987.
- Goldhagen, Daniel Jonah. *Hitler's Willing Executioners: Ordinary Germans and the Holocaust*. London: Little, Brown, 1996.
- Goldsmith, Katherine. "The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach." *Genocide Studies and Prevention* 5, No. 3 (2010): 238-257.

- Gourevitch, Philip. *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families*. New York: Farrar, Picador 1998.
- Graziosi, Andrea. *The Great Soviet Peasant War: Bolsheviks and Peasants, 1917-1933*. Cambridge: Harvard University Ukrainian Research Institute, 1996.
- Gregor, A. James. *Giovanni Gentile: Philosopher of Fascism*. New Brunswick: Transaction Publishers, 2004.
- Gringuaz, Samuel. "The Ghetto as an Experiment of Jewish Social Organization." *Jewish Social Studies* 11, No. 1 (1949): 9-20.
- Gruner, Wolf. *Jewish Forced Labor Under the Nazis: Economic Needs and Racial Aims, 1938-1944*. New York: Cambridge University Press, 2006.
- Gümplová, Petra. *Sovereignty and Constitutional Democracy*. Berlin: Nomos Publishers, 2010.
- Gurland, Arkadius R. L., Otto Kirchheimer, and Franz L. Neumann. *The Fate of Small Business in Nazi Germany: Printed for the United States Congress and Senate Special Committee to Study and Survey Problems of Small Business Enterprise*. Washington, D.C.: United States Government Printing Office, 1943.
- Gutman, Israel. *The Jews of Warsaw, 1939-1943: Ghetto, Underground, Revolt*. Bloomington: Indiana University Press, 1982.
- Habermas, Jürgen. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Translated by William Rehg. Cambridge, MA: Massachusetts Institute of Technology Press, 1996.
- Habermas, Jürgen. "The European Nation State, its Achievements and its Limitations: On the Past and Future of Sovereignty and Citizenship." *Ratio Juris*, 9 No. 2 (1996): 125-137.
- Habermas, Jürgen. "The Task of a Critical Theory of Society." In *Critical Theory and Society: A Reader*, edited by Stephen Eric Bronner and Douglas MacKay Kellner. Translated by Thomas McCarthy, 292-312 (New York: Routledge, 1989).
- Hagan, John. *Justice in the Balkans: Prosecuting War Crimes in the Hague Tribunal*. Chicago: University of Chicago Press, 2003.
- Hałas, Elżbieta. *Towards the World Culture Society: Florian Znaniecki's Culturalism*. Frankfurt: Peter Lang, 2010.
- Hayes, Carlton J. H. *The Historical Evolution of Modern Nationalism*. New York: R.R. Smith, 1931.
- Hazan, Pierre. *Justice in a Time of War: The True Story Behind the International Criminal Tribunal for the Former Yugoslavia*. College Station: Texas A&M Press, 2004.
- Hedgepeth, Sonja Maria and Rochelle G. Saidel, eds. *Sexual Violence Against Jewish Women During the Holocaust*. Lebanon, NH: Brandeis University Press and the University Press of New England, 2010.
- Hegel, Georg Wilhelm Friedrich. *Hegel Elements of the Philosophy of Right*, edited by Allen Wood. Translated by H. B. Nisbet. Cambridge: Cambridge University Press, 1991.
- Heidenrich, John G. *How to Prevent Genocide: A Guide for Policy Makers, Scholar, and the Concerned Citizen*. Westport: Greenwood, 2001.

- Herder, Johann Gottfried, "Letters for the Advancement of Humanity (1783-7)—Tenth Collection, Letter 114." In *Herder: Philosophical Reader*, edited and translated by Michael N. Forster, 380-384. Cambridge: Cambridge University Press, 2002.
- Herder, Johann Gottfried. "On the Change of Taste (1766)." In *Herder: Philosophical Reader*, edited and translated by Michael N. Forster, 247-257. Cambridge: Cambridge University Press, 2002.
- Hexner, Ervin. "The Timeless Concept of Law: Observations on Hans Kelsen's Law and Peace in International Relations." *The Journal of Politics*, 5, No. 1 (1943): 48-64.
- Hicks, Frederick C. *The New World Order: International Organization, International Law, International Cooperation*. New York: Doubleday, 1920.
- Hilberg, Raul. *Destruction of the European Jews*, 3rd edition. New Haven, Connecticut: Yale University Press, 2003.
- Hilberg, Raul. *Sources of Holocaust Research: An Analysis*. Chicago: Ivan R. Dee, 2001.
- Hinton, Alexander Laban. "Critical Genocide Studies." *Genocide Studies and Prevention* 7, No. 1 (2012): 4-15.
- Hinton, Alexander Laban. "Critical Genocide Studies." In *Genocide Matters: Ongoing Issues and Emerging Perspectives*, edited by Joyce Apsel and Ernesto Verdeja, 42-48. London: Routledge, 2013.
- Hinton, Alexander Laban. "Introduction: Toward an Anthropology of Transitional Justice." In *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, edited by Alexander Laban Hinton, 1-24. New Brunswick: Rutgers University Press, 2010.
- Hinton, Alexander Laban. "The Dark Side of Modernity: Towards and Anthropology of Genocide." In *Annihilating Difference: The Anthropology of Genocide*, edited by Alexander Laban Hinton, 1-40. Berkeley: University of California Press, 2002.
- Hinton, Alexander Laban. *Why Did They Kill?: Cambodia in the Shadow of Genocide*. Berkeley: University of California Press, 2005.
- Hirschfeld, Magnus. *Racism*. London: Kennikat Press, 1938.
- Hitler, Adolf. "Statement to Rausching." In *The Voice of Destruction* by Hermann Rausching. New York: G. P. Putnum's Sons, 1940.
- Hobsbawm, Eric. *Nations and Nationalism Since 1780: Programme, Myth, Reality*, 2nd edition. Cambridge: Cambridge University Press, 2012.
- Hobsbawm, Eric. *The Age of Empire: 1875-1914*. New York: Vintage Books, 1989.
- Hohenberg, John. "The Crusade That Changed the U.N." *Saturday Review*, (November 9, 1968): 86.
- Hohenberg, John. *The Pursuit of Excellence*. Gainesville: University Press of Florida, 1995.
- Holmes, Stephen. "Looking Away." *London Review of Books*. November 14, 2002.
- Horkheimer, Max and Theodor Adorno. *Dialectic of Enlightenment: Philosophical Fragments*, edited by Gunzelin Schmid Noerr. Translated by Edmund Jephcott. Stanford: Stanford University Press, 2002.
- Horkheimer, Max. "The Jews and Europe." In *Critical Theory and Society: A Reader*, edited by Stephen Eric Bronner and Douglas MacKay Kellner. Translated by Mark Ritter, 77-94. New York: Routledge, 1989.
- Horne, Gerald. *Black and Red: W. E. B. Du Bois and the Afro-American response to the Cold War 1944-1963*. Albany: State University of New York Press, 1986.

- Horowitz, Irving Louis. *Genocide: State Power and Mass Murder*. New Brunswick: Transaction Publishers, 1976.
- Horowitz, Irving Louis. *Taking Lives: Genocide and State Power*, 5th edition. New Brunswick: Transaction Publishers, 2002.
- Hrynevych, Liudmyla. "Stalins'ka 'Revoliutsiia Zhory' ta Holod 1933 r. iak Factory Polityzatsiï Ukraïns'koï Spil'noty." In *The Holodomor Reader: A Sourcebook on the Famine of 1932-1933 in Ukraine*, edited by Bohdan Klid and Alexander J. Motyl, 13-16. Edmonton: Canadian Institute of Ukrainian Studies Press, 2012.
- Huttenbach, Henry R. "From the Editor: Lemkin Redux: In quest of a Word." *Journal of Genocide Research* 7, No. 4 (2005): 443-445.
- Irvin-Erickson, Douglas. "Genocide, the 'family of mind' and the Romantic Signature of Raphael Lemkin," *Journal of Genocide Research*, 15 No. 3 (2013): 273-296.
- Isaac, Jeffery C. *Arendt, Camus, and Modern Rebellion*. New Haven: Yale University Press, 1994.
- Ishay, Micheline. "Human Rights in the Age of Empire." *Planetary Politics: Human Rights, Terror, and Global Society*, edited by Stephen A. Bronner, 204-218. Lanham: Rowman & Littlefield, 2005.
- Ishay, Micheline. *Internationalism and Its Betrayal*. Minneapolis: University of Minnesota Press, 1995.
- Ishay, Micheline. *The History of Human Rights: From Ancient Times to the Globalization Era*. Berkeley: The University of California Press, 2008.
- Jackson, Robert H. "Atrocities and War Crimes: Report from Justice Robert H. Jackson to the President." *United States Department of State Bulletin* 12, No. 311 (1945): 1071-1076.
- Jackson, Robert H. "Minutes of Conference Session 23 July 1945." In *Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials*, 328-347. Washington: US Government Printing Office, 1949.
- Jacobs, Steven L. "Genesis of the Concept of Genocide According to Its Author from the Original Sources." *Human Rights Review* 3, No. 2 (2002): 98-103.
- Jacobs, Steven L., ed. *Lemkin on Genocide*. Lanham: Lexington Books, 2012.
- Jacobs, Steven L. "Raphael Lemkin and the Armenian Genocide." In *Looking Backward, Moving Forward: Confronting the Armenian Genocide*, edited by Richard G. Hovannisian. New Brunswick: Transaction, 2003.
- Jacobs, Steven L. "The Human, The Humane, and the Humanitarian: Their Implications and Consequences in Raphael Lemkin's Work on Genocide," in *Rafał Lemkin: A Hero of Humankind*. Edited by Agnieszka Bińczyk-Missala and Sławomir Debski, 165-178. Warsaw: The Polish Institute of International Affairs, 2010.
- Jacobs, Steven L. "The Papers of Raphael Lemkin: A First Look." *Journal of Genocide Research* 1, No. 1 (1999): 105-114.
- Jaworski, Władysław Leopold. *W Sprawie Nowej Konstytucji*. Cracow: Frommer, 1928.
- Jeffery, Renee. "Hersch Lauterpacht, The Realist Challenge and the 'Grotian Tradition' in 20th Century International Relations." *European Journal of International Relations* 12 (2006): 223-250.
- Jensen, Richard Jay. *Reagan at Bergen-Belsen and Bitburg*. College Station: Texas A&M University Press, 2007.

- Jonassohn, Kurt and Karin Solveig Björnson. *Genocide and Gross Human Rights Violations in Comparative Perspective*. New Brunswick: Transaction Publishers, 1998.
- Jones, Adam. *Genocide: A Comprehensive Introduction*, 2nd edition. New York: Routledge, 2010.
- Jones, Adam. "The Great Lakes Genocide: Hidden Histories Hidden Precedents." In *Hidden Genocides: Power, Knowledge, Memory*, edited by Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson, 129-148. New Brunswick: Rutgers University Press, 2013.
- Jones, Gareth. "Famine in Russia. Englishman's Story. What he Saw on a Walking Tour." In *The Holodomor Reader: A Sourcebook on the Famine of 1932-1933 in Ukraine*, edited by Bohdan Klid and Alexander J. Motyl, 101-102. Edmonton: Canadian Institute of Ukrainian Studies Press, 2012.
- Jones, Gareth. "Reds Let Peasants Starve. Famine Found Even in Large City in Ukraine." In *The Holodomor Reader: A Sourcebook on the Famine of 1932-1933 in Ukraine*, edited by Bohdan Klid and Alexander J. Motyl, 104-107. Edmonton: Canadian Institute of Ukrainian Studies Press, 2012.
- Kant, Immanuel. "Perpetual Peace: A Philosophical Sketch." In *Kant: Political Writings*, 2nd edition, edited by Hans Reiss. Translated by H. B. Nisbet, 93-130. Cambridge: Cambridge University Press, 2009.
- Kant, Immanuel. *The Metaphysics of Morals*. Translated by Mary J. Gregor. Cambridge: University of Cambridge Press, 1996.
- Kater, Michael H. *The Nazi Party: A Social Profile of Members and Leaders, 1919-1945*. Cambridge, Mass.: Harvard University Press, 1983.
- Katz, Steven T. *The Holocaust in Historical Context*, Vol. 1. Oxford: Oxford University Press, 1994.
- Kearney, Michael. *The Prohibition of Propaganda for War in International Law*. Oxford: Oxford University Press, 2007.
- Kelsen, Hans. *Das Problem der Souveränität und die Theorie des Völkerrechts: Beiträge zu Einer Reinen Rechtslehre*. Tübingen: Verlag von J.C.B. Mohr, 1922.
- Kelsen, Hans. *General Theory of Law and State*. Translated by Anders Wedberg. New York: Russell & Russell, 1945.
- Kelsen, Hans. *Peace Through Law*. Chapel Hill: The University of North Carolina Press, 1944.
- Kelsen, Hans. *Pure Theory of Law*, 2nd edition. Translated by Max Knight. Clark, NJ: The Lawbook Exchange, Ltd., 2005.
- Kelsen, Hans. "Review of Axis Rule." *California Law Review* 34, No. 1 (1946): 271-272.
- Kelsen, Hans. "The Pure Theory of Law and Analytical Jurisprudence." *Harvard Law Review* 55, No. 1 (1941): 44-70.
- Kershaw, Ian. *Popular Opinion and Political Dissent in the Third Reich: Bavaria, 1933-1945*. Oxford: Clarion Press, 1983.
- Kettler, David and Volker Meja. *Karl Mannheim and the Crisis of Liberalism*. New Brunswick: Transaction Publishers, 1995.
- Keynes, John Maynard. *The Economic Consequences of the Peace*. New York: Harcourt, Brace & Howe, 1920.

- Kiernan, Ben. *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur*. New Haven: Yale University Press, 2007.
- Kiernan, Ben. "The Cambodian Genocide: Issues and Responses." In *Genocide, Conceptual and Historical Dimensions*, edited by George J. Andreopoulos, 191-228. Philadelphia: University of Pennsylvania Press, 1994.
- Kim, Hunjoon and Kathryn Sikkink. "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Justice." *International Studies Quarterly* 54, No. 4 (2010): 939-963.
- King, Jr., Henry T., Benjamin B. Ferencz, and Whitney R. Harris. "Origins of the Genocide Convention." *Case Western Reserve Journal of International Law* 40 (2007): 13-24.
- Kirchheimer, Otto. "Changes in the Structure of Political Compromise." *Studies in Philosophy and Social Science* 9 (1941): 264-289.
- Kirchheimer, Otto. "The Legal Order of National Socialism." *Studies in Philosophy and Social Science*, 11 (1941): 456-475.
- Klautke, Egbert. "The Mind of the Nation: The Debate About *Völkerpsychologie*, 1851-1900." *Central Europe* 8, No. 1 (2010): 1-19.
- Komarnicki, Waclaw. "Nowy Ustrój Związku Sowieńców," *Racznik Prawniczy Wileński* 10 (1938): 169-208.
- Korey, William. "America's Shame: The Ungratified Genocide Treaty." In *Genocide and Human Rights: A Global Anthology*, edited by Jack Nusan Porter, 280-296. New York: University of America Press, 1982.
- Korey, William. *An Epitaph for Raphael Lemkin*. New York: Jacob Blaustein Institute for the Advancement Human Rights, 2001.
- Korey, William. "Raphael Lemkin: 'The Unofficial Man'." *Midstream* (June-July 1989): 45-48.
- Kornat, Marek. "Polish Interpretations of Bolshevism and Totalitarian Systems (1918-1939)." In *Totalitarian and Authoritarian Regimes in Europe: Legacies And Lessons from the Twentieth Century*, edited by Jerzy Wojciech Borejsza and Klaus Ziemer, 80-105. New York: Berghahn Books, 2006.
- Koskenniemi, Martti. *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960*. Cambridge: Cambridge University Press, 2001.
- Koskenniemi, Martti. *The Politics of International Law*. Oxford: Hart Publishing, 2011.
- Kraft, Claudia. "Völkermord Als Delictum Iuris Gentium: Raphael Lemkins Vorarbeiten Für eine Genozidkonvention." *Simon Dubnow Institute Yearbook* 4 (2005): 79-98.
- Kristof, Nicholas D. "Day 113 of the President's Silence." *New York Times* (May 3, 2005), p. A25.
- Kriz, Neil J. "Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights." *Law and Contemporary Problems* 59, No. 4 (1996): 181-197.
- Kruszewski, Z. Anthony. "Nationalism and Politics: Poland." In *The Politics of Ethnicity in Eastern Europe*, edited by George Klein and Milan J. Reban, 147-184. New York: East European Monographs, 1981.
- Kubler, George. "Henri Focillon, 1881-1943." *College Art Journal* 4 No. 2 (1945): 71-74.

- Kulka, Otto Dov. "Public Opinion in Nazi Germany: The Final Solution." *The Jerusalem Quarterly* 26 (1983): 34-45.
- Kuper, Leo. *Genocide: Its Political Use in the Twentieth Century*. New Haven: Yale University Press, 1982.
- Kymlicka, Will and Christine Straehle. "Cosmopolitanism, Nation-States, and Minority Nationalisms: A Critical Review of Recent Literature." *European Journal of Philosophy* 7, No. 1 (1999): 65-88.
- Kymlicka, Will. "Renner and the Accommodation of Sub-state Nationalisms." In *National Cultural Autonomy and its Contemporary Critics*, edited by Ephraim Nimni, 137-149. London: Routledge, 2005.
- Lang, Harry. "A Trip to the Jewish Kolkhozy of Ukraine and White Russia." In *The Holodomor Reader: A Sourcebook on the Famine of 1932-1933 in Ukraine*, edited by Bohdan Klid and Alexander J. Motyl, 121-125. Edmonton: Canadian Institute of Ukrainian Studies Press, 2012.
- Langerbacher, Eric. "Ethical Cleansing? The Expulsion of Germans from Central and Eastern Europe." In *Genocides by the Oppressed: Subaltern Genocide in Theory and Practice*, edited by Nicholas A. Robins and Adam Jones, 58-83. Bloomington: University of Indiana Press, 2009.
- Langhorne, Richard. "Reflections on the Significance of the Congress of Vienna." *Review of International Studies* 12, No. 3 (1986): 313-324.
- Lauren, Paul Gordon. *The Evolution of International Human Rights: Visions Seen*. Philadelphia: University of Pennsylvania Press, 2011.
- Lauterpacht, Hersch. *International Law. A Treatise by Lassa Oppenheim*. Vol. 1: *Peace*. London: D. McKay, 1955.
- Lauterpacht, Hersch. "Review of Raphael Lemkin: Axis Rule in Occupied Europe." In: *Cambridge Law Journal* 9 (1945): 140.
- Lauterpacht, Hersch. *An International Bill of the Rights of Man*. New York: Columbia University Press, 1945.
- Lauterpacht, Hersch. *International Law and Human Rights*. New York: Praeger, 1950.
- Lauterpacht, Hersch. *International Law: A Treatise* Vol. 2. London: Longmans, Green and Company, 1940.
- Lauterpacht, Hersch. "Kelsen's Pure Science of Law." In *International Law, The Collected Papers: The Law of Peace, Vol. 2*, edited by Elihu Lauterpacht, 404-430. Cambridge: Cambridge University Press, 1975.
- Lauterpacht, Hersch. "Revolutionary Propaganda by Governments." In *International Law, The Collected Papers: The Law of Peace, Vol. 3*, edited by Elihu Lauterpacht, 279-296. Cambridge: Cambridge University Press, 1977.
- Lauterpacht, Hersch. "Westlake and Present Day International Law," *Economica* 15 (1925): 307-326.
- LeBlanc, Lawrence. J. *The United States and the Genocide Convention*. Durham, NC: Duke University Press, 1991.
- Legters, Lyman H. "The Soviet Gulag: Is it Genocidal?" In *Toward the Understanding and Prevention of Genocide*, edited by Israel Charny, 60-66. Boulder, CO: Westview Press, 1984.
- Lemarchand, René. "Rwanda: The Rationality of Genocide." *Issue: A Journal of Opinion* 21, No. 2. (1995): 8-11.

- Lemkin, Rafał and Jan Karyory. *Ustawa Karna Skarbowa z Dnia z Siepina 1926 r.* Warszawa: Nakladem Ksiegarni F. Hoesicka, 1931.
- Lemkin, Rafał and Tadeusz Kochanowicz, *Kodeks Karny Republik Sowieckich.* Warszawa: Wyd. Sem. Prawa kar., 1926.
- Lemkin, Rafał and Włodz Sokalski. *Opinie O Projekcie Kodeksu Karnego.* Warszawa: Wydawnictwo Biblioteka Icza, 1931.
- Lemkin, Rafał. *Amnestja 1932 r. Komentarz.* Warsaw: Gebethner Wolff, 1932.
- Lemkin, Rafał. *Amnestja 1936 r. Komentarz.* Warszawa: Ksiegarnia Powszechna, 1936.
- Lemkin, Rafał. "Dzieje I Charkter Reform Karnego we Włoszech." In *Kodeks Karny Faszystowski Włochy.* Warszawa: Nakladem Ksiegarni F. Hoesicka, 1929.
- Lemkin, Rafał. *Kodeks Karny Faszystowski Włochy.* Warszawa: Nakladem Ksiegarni F. Hoesicka, 1929.
- Lemkin, Rafał. *Kodeks Karny Rosji Sowieckiej 1927.* Warszawa: Skład Główny w Ksiegarni F. Hoesicka, 1928.
- Lemkin, Rafał. *Orgaanisrung Yiddisch Osób: Organizacja Gmin Żydowskich.* Warszawa: E. Gitlina, 1928.
- Lemkin, Rafał. *Prawo Karne Skarbowe: Komentarz: Przepisy Związkowe z Objasnieniami, Orzecznictwo, Okólniki.* Kraków: Księgarnia Powszechna, 1938.
- Lemkin, Rafał. *Sedzia w Obliczu Nowoczesnego Prawa Karnego i Kryminologii.* Warsaw: Wydawnictwo Instytutu Kryminologicznego Wolnej Wszechnicy Polskiej, 1933.
- Lemkin, Rafał. "Ustawodawstwo Karne Rosji Sowieckiej, Kodeks Karny, Procedura Karna." *Encyklopedji Podrecznej Prawa Karnego*, Vol. 25, edited by Wacław Makowski. Warszawa: Warszawiej, 1938.
- Lemkin, Raphaël and Malcolm McDermott, translators. *The Polish Penal Code of Minor Offenses* (Durham, NC: Duke University Press, 1939).
- Lemkin, Raphaël. "Akte der Barbarei und des Vandalismus als *Delicta Juris Gentium*." *Anwaltsblatt Internationales* 19 (November 1933).
- Lemkin, Raphaël. *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress.* New York: Carnegie Endowment for International Peace, 1944.
- Lemkin, Raphaël. *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, Second edition. Clark, NJ: The Lawbook Exchange, LTD, 2005.
- Lemkin, Raphael. "Genocide," *The New York Times*, August 26, 1946, 17.
- Lemkin, Raphael. "Genocide," *The American Scholar* 15 (1947): 227-230.
- Lemkin, Raphaël. "La Protection de la Paix par le Droit Penal Interne," *Revue Internationale de Droit Penal* 1 (1938): 95-126.
- Lemkin, Raphaël. *La Règlementation des Paiements Internationaux.* Paris: A. Pedone, 1939.
- Lemkin, Raphael. *Lemkin on Genocide*, edited by Steven Leonard Jacobs. Lanham: Lexington Books, 2012.
- Lemkin, Raphaël. "Les Actes Constituant un Danger General (*interétatique*) Considerés Comme Delits du Droit des Gens." In *Actes de la Vème Conférence Internationale Pour l' Unification du Droit Pénal (Madrid 14–20 Octobre 1933)*,

- edited by Jimenez de Asua, Vespasien Pella, and Manuel López-Rey, 48–56. Paris: A. Pedone, 1935.
- Lemkin, Raphael. “Nature of Genocide; Confusion with Discrimination Against Individuals Seen,” *New York Times*, June 14, 1953, E10.
- Lemkin, Raphael. *Thoughts on the Nazi Genocide*, edited by Steven Leonard Jacobs. Lewiston: Edwin Mellen Press, 1992.
- Lemkin, Raphael. *Totally Unofficial: The Autobiography of Raphael Lemkin*, edited by Donna-Lee Frieze. New Haven: Yale University Press, 2013.
- Lemkin, Raphaël. *Valutareglering och Clearing*. Stockholm: P. A. Norstedt and Söner, 1941.
- Lenin, Vladimir I. “A Strong Revolutionary Government, 19 May 1917.” In *Lenin: Collected Works Vol. 24*, edited and translated by Isaacs Bernard, 360-361. Moscow, Progress Publishers, 1964.
- Lenin, Vladimir I. “The Right of Nations to Self-Determination.” In *The Lenin Anthology*, edited by Robert Tucker, 153-180. New York: Norton, 1975.
- Leotta, Carmelo Domenico. *Il Genocidio Nel Diritto Penale Internazionale: Dagli Scritti di Raphael Lemkin allo Statuto di Roma*. Torino: G. Giappichelli Editore, 2013.
- Levene, Mark. “From Past to Future: Prospects for Genocide and its Avoidance in the Twenty-First Century.” In *Oxford Handbook of Genocide Studies*, edited by Donald Bloxham and A. Dirk Moses, 638-259. Oxford: Oxford University Press, 2010.
- Levene, Mark. *Genocide in the Age of the Nation State*. London: IB Tauris, 2008.
- Levey, Geoffrey Brahm. “National Cultural Autonomy and Liberal Nationalism.” In *National Cultural Autonomy and its Contemporary Critics*, edited by Ephraim Nimni, 150-177. London: Routledge, 2005.
- Levine, Paul. “Sweden’s Complicated Neutrality and the Rescue of the Danish Jews.” In *The Routledge History of the Holocaust*, edited by Jonathan C. Friedman, 305-314. London: Routledge, 2011.
- Levy, Daniel and Natan Sznaider. *Human Rights and History*. Philadelphia: Temple University Press, 2010.
- Levy, Daniel and Natan Sznaider. *Human Rights and Memory*. Philadelphia: Penn State, 2011.
- Levy, Daniel and Natan Sznaider. *The Holocaust and Memory in the Global Age*. Philadelphia: Temple University Press, 2006.
- Lewis, Mark. *The Birth of the New Justice: The Internationalization of Crime and Punishment, 1919-1950*. Oxford: Oxford University Press, 2014.
- Lih, Lars. *Lenin Rediscovered: “What is to be Done?” in Context*. New York: Haymarket, 2008.
- Linenthal, Edward T. *Preserving Memory: The Struggle to Create America’s Holocaust Museum*. New York: Columbia University Press, 2001.
- Lippman, Matthew. “The Drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.” *Boston University International Law Journal* 3 (1984): 1-65.
- Lowy, Michael. “Marxism and the National Question.” In *Revolution and Class Struggle*, edited by Robin Blackburn, 136-160. Hassocks: Harvester Press, 1978.

- Luban, David. "Calling Genocide by its Rightful Name: Lemkin's Word, Darfur, and the UN Report." *Chicago Journal of International Law* 7, No. 1 (2006): 303-320.
- Luck, David. "Use and Abuse of Holocaust Documents: Reitlinger and 'How Many?'" *Jewish Social Studies* 41, No. 2 (1979): 95-122.
- Luczak, Czeslaw and Zbigniew Landau. "Forced Labor." In *Encyclopedia of the Holocaust*, edited by Israel Gutman, 497-502. New York: Macmillan, 1990.
- Macartney, C. A. *National States and National Minorities*. New York: Russel and Russel, 1968.
- Madley, Benjamin. "From Africa to Auschwitz: How German Southwest Africa Incubated Ideas and Methods Adopted and Developed by the Nazis in Eastern Europe." *European History Quarterly* 35, No. 3 (2005): 429-464.
- Mahbubani, Kishore. "Multilateral Diplomacy." In *The Oxford Handbook of Modern Diplomacy*, edited by Andrew F. Cooper, Jorge Heine, and Ramesh Thakur, 248-262. Oxford: Oxford University Press, 2013.
- Malkki, Liisa H. "Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization." *Cultural Anthropology* 11, No. 3 (1996): 377-404.
- Mamdani, Mahmood. *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*. Princeton: Princeton University Press, 2001.
- Mannheim, Karl. *Man and Society in an Age of Reconstruction*. New York: Routledge, 1960.
- Marín, Juan Carlos. *Los Hechos Armados, Argentina, 1973-1976: La Acumulación Primitiva del Genocidio*. Buenos Aires: PICASO/La Rosa Blindada, 1996.
- Marples, David R. *The Great Ukrainian Famine of 1932-23*. Saskatoon: Heritage Press, 2011.
- Marrus, Michael R. "A Jewish Lobby at Nuremberg: Jacob Robinson, and the Institute of Jewish Affairs, 1945-1946," *Cardozo Law Review* 27 (2006): 1651-1665.
- Martin, James J. *The Man Who Invented "Genocide": The Public Career and Consequences of Raphael Lemkin*. Torrance, California: Institute for Historical Review, 1984.
- Martin, Terry Dean. *The Affirmative Action Empire: Nations and Nationalism in the Soviet Union, 1923-1939*. Ithica, New York: Cornell University Press, 2001.
- Masaryk, Tomas Garrigue. *The Making of a State: Memoires and Observations, 1914-1918*. Translated by Henry Wickham Steed. New York: Frederick A. Stockes, 1927.
- Mazower, Mark. "After Lemkin: Genocide, the Holocaust and History," *The Jewish Quarterly* 41 No. 4 (1994): 5-8.
- Mazower, Mark. *Dark Continent: Europe's Twentieth Century*. New York: Alfred Knopf, 1999.
- Mazower, Mark. *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*. Princeton: Princeton University Press, 2009.
- McDonnell, Michael A. and A. Dirk Moses, "Raphael Lemkin as Historian of Genocide in the Americas," in *The Origins of Genocide: Raphael Lemkin as a Historian of Mass Violence*, edited by Dominik J. Schaller and Jürgen Zimmerer. London: Routledge, 2009.
- Mead, Margaret. *Ruth Benedict*. New York: Columbia University Press, 1974.

- Melvorn, Linda. *The Rwandan Genocide and the International Community*. London: Verso, 2004.
- Mendelsohn, Ezra. "A Note on Jewish Assimilation in Polish Lands." in *Jewish Assimilation in Modern Times*, edited by Bela Vago, 141-150. Boulder: Westview, 1981.
- Mendelsohn, Ezra. *The Jews of East Central Europe Between the World Wars*. Bloomington, IN: Indiana University Press, 1983.
- Mettraux, Guénaél. *International Crimes and Ad Hoc Tribunals*. Oxford: Oxford University Press, 2005.
- Midlarsky, Manus. *The Killing Trap: Genocide in the Twentieth Century*. Cambridge: Cambridge University Press, 2005.
- Mill, John Stuart. *Vindication of the French Revolution of February, 1848; in Reply to Lord Brougham and Others*. New York: Holt, 1873.
- Minow, Martha. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press, 1998.
- Mistral, Gabriela and Victoria Ocampo. *This America of Ours: The Letters of Gabriela Mistral and Victoria Ocampo*, edited by Elizabeth Horan and Doris Meyer. Austin, Texas: University of Texas Press, 2003.
- Mistral, Gabriela. *An Appeal to World Conscience: The Genocide Convention*. New York: United Nations Department of Public Information, 1956.
- Mistral, Gabriela. "El Suplicio." *Selected Poems of Gabriela Mistral*. Translated by Ursula K. Le Guin, 10. Albuquerque: University of New Mexico Press, 2003.
- Młynarski, Feliks. *Totalizm czy Demokracja w Polsce*. Warszawa: Wydawn Klubu Społeczno-Politycznego, 1938.
- Mommsen, Hans. "The Reaction of the German Population to the Anti-Jewish Persecution of the Holocaust." In *Lessons and Legacies: The Meaning of the Holocaust in a Changing World*, edited by Peter Hayes, 141-154. Evanston, Illinois: Northwestern University Press, 1991.
- Morgenthau, Henry. *Ambassador Morgenthau's Story*. Detroit: Wayne State University Press, 2003.
- Morsink, Johannes. "Cultural Genocide, the Universal Declaration, and Minority Rights." *Human Rights Quarterly* 21, No. 4 (1999): 1009-1060.
- Morsink, Johannes. *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*. Philadelphia: University of Pennsylvania Press, 1999.
- Moses, A. Dirk and Dan Stone, editors. *Colonialism and Genocide*. London: Routledge, 2007.
- Moses, A. Dirk. "Does the Holocaust Reveal or Conceal Other Genocides? The Canadian Museum for Human Rights and Grievable Suffering." In *Hidden Genocides: Power, Knowledge, Memory*, edited by Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson, 21-51. New Brunswick: Rutgers University Press, 2013.
- Moses, A. Dirk, ed. *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*. London: Berghahn Books, 2008.
- Moses, A. Dirk. "Empire, Colony, Genocide: Keywords and the Philosophy of History." In *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in*

- World History*, edited by A. Dirk Moses, 3-54. New York: Berghahn Books, 2008.
- Moses, A. Dirk, ed. *Genocide and Settler Society: Frontier Violence and Stolen Indigenous Children and Australian History*. London: Berghahn Books, 2004.
- Moses, A. Dirk. "Holocaust and Genocide." *The Historiography of the Holocaust*, edited by Dan Stone, 533-555. Houndmills: Palgrave MacMillan, 2004.
- Moses, A. Dirk. "Moving the Genocide Debate Beyond the History Wars." *Australian Journal of Politics and History* 54, No. 2 (2008): 248-270.
- Moses, A. Dirk. "Raphael Lemkin, Culture, and the Concept of Genocide." In *The Oxford Handbook of Genocide Studies*, edited by Donald Bloxham and A. Dirk Moses, 19-40. New York: Oxford University Press, 2010.
- Motyl, Alexander J. *Sovietology Rationality, Nationality*. New York: Columbia University Press, 1990.
- Moyn, Samuel. *The Last Utopia: Human Rights in History*. Cambridge: Harvard University Press, 2012.
- Muggeridge, Malcolm. "The Soviet's War on the Peasants." In *The Holodomor Reader: A Sourcebook on the Famine of 1932-1933 in Ukraine*, edited by Bohdan Klid and Alexander J. Motyl, 107-109. Edmonton: Canadian Institute of Ukrainian Studies Press, 2012.
- Muthu, Sankar. *Enlightenment Against Empire*. Princeton: Princeton University Press, 2003.
- Myers, Ramon and Yamada Saburo. "Agricultural Development in the Empire." *The Japanese Colonial Empire, 1895-1945*, edited by Ramon Myers and Mark Peattie, 420-454. Princeton: Princeton University Press, 1984.
- Nadson, Semen Yakovlevich. "Dreams." In *Songs of Russia: Rendered into English Verse*. Translated by Alice Stone Blackwell. Cambridge: Harvard University Press, 1905.
- Naimark, Norman M. *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe*. Cambridge: Harvard University Press, 2002.
- Naimark, Norman M. *Stalin's Genocides*. Princeton: Princeton University Press, 2010.
- Neumann, Franz L. *Behemoth: The Structure and Practice of National Socialism, 1933-1944*, 2nd edition. New York: Oxford University Press, 1944.
- Neumann, Sigmund. *Permanent Revolution: The Total State in a World at War*. New York: Harper and Brothers, 1942.
- Nimni, Ephraim J. "Introduction for the English-Reading Audience." In *The Question of Nationalities and Social Democracy* by Otto Bauer, edited by Ephraim J. Nimni. Translated by Joseph O'Donnell, xv-xlvi. Minneapolis: University of Minnesota Press, 2000.
- Nimni, Ephraim J. "Introduction: The National Cultural Autonomy Model Revisited." In *National Cultural Autonomy and its Contemporary Critics* edited by Ephraim Nimni, 1-14. London: Routledge, 2005.
- Nimni, Ephraim. J. *Marxism and Nationalism: Theoretical Origins of a Political Crisis*. London: Pluto Press, 1994.
- Nootens, Geneviève. "Nations, States, and the Sovereign Territorial Ideal." In *National Cultural Autonomy and its Contemporary Critics*, edited by Ephraim Nimni, 52-62. London: Routledge, 2005.

- Normand, Roger and Sarah Zaidi. *Human Rights at the UN: The Political History of Universal Justice*. Bloomington: Indiana University Press, 2008.
- Oppenheim, Lassa. *International Law Volume II: War and Neutrality*. Bombay: Longmans, Green, and Company, 1906.
- Osiel, Mark. *Mass Atrocity, Collective Memory, and the Law*. New Brunswick: Transaction Publishers, 1997.
- Pak, Chi Young. *Korea and the United Nations*. Leiden: Martinus Nijhoff, 2000.
- Palyi, Melchior. "Review Essay on Axis Rule in Occupied Europe." *American Journal of Sociology* 51, No. 1 (1946): 496-497.
- Panné, Jean-Louise. "Raphael Lemkin and Raul Hilberg: About a Concept." In *Rafal Lemkin: A Hero of Humankind*, edited by Agnieszka Bienczyk-Missala and Slawomir Debski, 101-116. Warsaw: The Polish Institute of International Affairs, 2010.
- Patterson, William L. *The Man Who Cried Genocide: An Autobiography*. New York: International Publishers, 1971.
- Patterson, William L., et. al. *We Charge Genocide: The Historic Petition to the United Nations for Relief from a Crime of the United States Government Against the Negro People*. New York: Civil Rights Congress, 1951.
- Pauley, Bruce F. *The Hapsburg Legacy*. New York: Holt, Rinehart, and Winston, 1972.
- Paulson, Stanley L. "Introduction." In *Introduction to the Problems of Legal Theory: A Translation of the First Edition of the Reine Rechtslehre or Pure Theory of Law* by Hans Kelsen, edited and translated by Bonnie Litschewski Paulson and Stanley L. Paulson, i-xxvii. Oxford: Clarendon Press, 2002.
- Paulson, Stanley L. "The Neo-Kantian Dimension of Kelsen's Pure Theory of Law." *Oxford Journal of Legal Studies*, 12, No. 3 (1992): 311-332.
- Pella, Vespasian V. "Towards an International Criminal Court." *American Journal of International Law* 44, No. 1 (1950): 37-68.
- Petersen, Jens. "The History of the Concept of Totalitarianism in Italy." In *Totalitarianism and Political Religions Volume 1: Concepts for the Comparison of Dictatorships*, edited by Hans Maier. Translated by Jodi Bruhn, 3-21. New York: Routledge, 1996.
- Pianciola, Niccolo. "Famine in the Steppe: The Collectivization of Agriculture and the Kazakh Herdsmen, 1928-1934." *Cahiers du Monde Russe* 45, No. 1-2 (2004): 137-191.
- Pinkus, Benjamin. *The Jews of the Soviet Union: The History of a National Minority*. Cambridge: Cambridge University Press, 1989.
- Pipes, Richard. *The Formation of the Soviet Union*. New York: Atheneum, 1974.
- Poliakov, Léon. *Harvest of Hate: The Nazi Program of the Destruction of Jews in Europe*. London: Elek Books, 1956.
- Pollock, Frederick. "State Capitalism: Its Possibilities and Limitations." In *Critical Theory and Society: A Reader*, edited by Stephen Eric Bronner and Douglas MacKay Kellner, 95-118. New York: Routledge, 1989.
- Polonsky, Anthony. *Politics in Independent Poland*. Oxford: Oxford University Press, 1972.
- Porter, Brian. "Marking the Boundaries of the Faith: Catholic Modernism and the Radical Right in the Early Twentieth Century." In *Studies in Language, Literature*

- and Cultural Mythology in Poland: Investigating 'The Other,'* edited by Elwira Grossman. Queensland: Edwin Mellen Press, 2002.
- Porter, Jack Nusan, ed. *Genocide and Human Rights: A Global Anthology*. Lanham: University Press of America, 1982.
- Powell, Christopher. *Barbaric Civilization: A Critical Sociology of Genocide*. Montreal: McGill-Queen's University Press, 2011.
- Powell, Colin L. "The Crisis in Darfur, Written Remarks to the Senate Foreign Relations Committee September 9, 2004." In *Congressional Record, V. 150, PT. 13, July 22, 2004 to September 14, 2004*, 17866-17867. Washington, D.C.: Government Printing Office, 2009.
- Power, Samantha. *'A Problem from Hell': America and the Age of Genocide*. New York: Basic Books, 2002.
- Power, Samantha. "Dying in Darfur." *The New Yorker*, August 30, 2004.
- Power, Samantha. "Introduction to the First Edition by the Lawbook Exchange, LTD." *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* by Raphael Lemkin, 2nd edition, xvii-xxiii. Clark, NJ: Lawbook Exchange, LTD, 2008.
- Provost, René and Payam Akhavan. *Confronting Genocide*. New York: Springer, 2010.
- Quigley, John. *The Genocide Convention: An International Law Analysis*. Farnham: Ashgate, 2013.
- Rabinbach, Anson. "The Challenge of the Unprecedented—Raphael Lemkin and the Concept of Genocide." *Simon Dubnow Institute Yearbook* 4 (2005): 397-420.
- Raffin, Marcelo. *La Experiencia del Horror: Subjectividad y Derechos Humanos en las Dictaduras y Postdictaduras del Cono Sur*. Buenos Aires: Editores del Puerto, 2006.
- Raitz von Frentz, Christian. *A Lesson Forgotten: Minority Protection Under the League of Nations*. New York: St. Martin Press, 1999.
- Ramet, Sabrina P. *Religion and Nationalism in Soviet and East European Politics*. Chapel Hill: Duke University Press, 1989.
- Rapoport, Louis. *Stalin's War Against the Jews*. New York: The Free Press, 1990.
- Ratner, Steven R. and Jason S. Abrams. *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*. Oxford: Oxford University Press, 2001.
- Rawls, John. "Kantian Constructivism in Moral Theory." *Journal of Philosophy* 77, No. 9 (1980): 515-572.
- Rawls, John. *The Laws of Peoples*. Cambridge: Harvard University Press, 1999.
- Redslob, Robert. "The Problem of Nationalities." *Transactions of the Grotius Society*, 17 (1931): 21-34.
- Reiger, Caitlin. "Hybrid and Internationalized Tribunals." In *The Rules, Practice, and Jurisprudence of International Courts and Tribunals*, edited by Chiara Giorgetti, 283-221. Leiden: Martinus Nijhoff, 2012.
- Reitlinger, Gerald. *The Final Solution: The Attempt to Exterminate the Jews of Europe, 1939-1945*. New York: Beechurst Press, 1953.
- Renner, Karl. *The Institutions of Private Law and Their Social Functions*. Translated by Agnes Schwarzschild. London: Routledge, 1949.

- Renner, Karl. "State and Nation." In *National Cultural Autonomy and its Contemporary Critics*, edited by Ephraim Nimni, 15-47. London: Routledge, 2005.
- Richmond, Walter. "Circassia: A Small Nation Lost to the Great Game." In *Hidden Genocides: Power, Knowledge, Memory*, edited by Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson, 109-125. New Brunswick: Rutgers University Press, 2014.
- Ricoeur, Paul. *Oneself As Another*. Translated by Kathleen Blamey. Chicago: The University of Chicago Press, 1992.
- Robins, Nicholas and Adam Jones, eds. *Genocides by the Oppressed: Subaltern Genocide in Theory and Practice*. Bloomington: Indiana University Press, 2009.
- Robinson, Nehemiah. *The Genocide Convention: A Commentary*. New York: Institute of Jewish Affairs, 1960.
- Rodogno, Davide. *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815-1914*. Princeton: Princeton University Press, 2012.
- Roht-Arriaza, Naomi. "Combating Impunity: Some Thoughts on the Way Forward." *Law and Contemporary Problems* 59, No. 4 (1996): 93-102.
- Rosenberg, Alfred. *Der Mythos des 20. Jahrhunderts*. München: Hoheneichenverlag, 1935.
- Rousseau, Jean-Jacques. "Of The Social Contract or Principles of Political Right." In *The Social Contract and Other Later Political Writings*, edited by Victor Gourevitch, 39-152. Cambridge: Cambridge University Press, 2010.
- Rummel, Rudolph Joseph. *Lethal Politics: Soviet Genocide and Mass Murder since 1917*. New Brunswick: Transaction, 1990.
- Rumney, Philip N. S. "Getting Away with Murder: Genocide and Western State Power." *The Modern Law Review* 60, No. 4 (1997): 534-608.
- Said, Edward. *Orientalism*. New York: Vintage, 1978.
- Sands, Philippe. "The Memory of Justice: The Unexpected Place of Lviv in International Law—A Personal History." *Case Western Journal of International Law* 43 (2011): 739-758.
- Sands, Philippe. "Twin Peaks: The Hersch Lauterpacht Draft Nuremburg Speeches," *Cambridge Journal of Comparative and International Law* 1 (2012): 37-44.
- Sartre, Jean-Paul. "Preface." In *The Wretched of the Earth* by Franz Fanon. New York: Grove Press, 2004.
- Sartre, Jean-Paul. *On Genocide: A Summary of the Evidence and the Judgments of the International War Crimes Tribunal*, edited by A. El Kaim-Sartre. Boston: Beacon Press, 1968.
- Sayapin, Sergey. "Raphael Lemkin: A Tribute." *European Journal of International Law* 20, No. 4 (2010): 1157-1162.
- Schabas, William A. *An Introduction to the International Criminal Court*. Cambridge: Cambridge University Press, 2011.
- Schabas, William A. *Genocide in International Law: The Crime of Crimes*, 2nd edition. Cambridge: Cambridge University Press, 2009.
- Schabas, William A. "Introduction to the Second Edition by the Lawbook Exchange, LTD." *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* by Raphael Lemkin, 2nd edition, vii-xvi (Clark, NJ: Lawbook Exchange, LTD, 2008).

- Schabas, William A. "Les Droits de Minorités: Une Déclaration Inachevée." In *La Déclaration Universelle des Droits de l'Homme 1948-1998: Avenir d'un Idéal Commun*, 223-242. Paris: La Documentation Française, 1999.
- Schabas, William A. "Problems in International Codification: Were the Atrocities in Cambodia and Kosovo Genocide?" *New England Law Review* 35, No. 2 (2001): 287-302.
- Schabas, William A. "Raphael Lemkin, Genocide and Crimes against Humanity." In *Rafal Lemkin: A Hero of Humankind* edited by Agnieszka Bienczyk-Missala and Slawomir Debski, 233-256. Warsaw: The Polish Institute of International Affairs, 2010.
- Schabas, William A. "The Law and Genocide." In *Oxford Handbook of Genocide Studies*, edited by Donald Bloxham and A. Dirk Moses, 123-141. Oxford: Oxford University Press, 2010.
- Schabas, William A. "The United States Hostility to the International Criminal Court: It's All About the Security Council." *European Journal of International Law* 15, No. 4 (2004): 701-720.
- Schaller, Dominik J. "Raphael Lemkin's View of European Colonial Rule in Africa: Between Condemnation and Admiration." *Journal of Genocide Research* 7, No. 4 (2005): 531-538.
- Schaller, Dominik J. and Jürgen Zimmerer. "From the Guest Editors: Raphael Lemkin: The 'Founder of the United Nation's Genocide Convention' as a Historian of Mass Violence." *Journal of Genocide Research* 7, No. 4 (2005): 447-452.
- Schechtman, Joseph B. *European Population Transfers: 1939-1945*. New York: Oxford University Press, 1946.
- Scheuerman, William E. *Between the Norm and Expectation: The Frankfurt School and the Rule of Law*. Cambridge, Massachusetts: Massachusetts Institute of Technology Press, 1997.
- Schmitt, Carl. *Political Theology: Four Chapters on the Concept of Sovereignty*. Chicago: University of Chicago Press, 2010.
- Schnur, Steven. "Unofficial Man: The Rise and Fall of Raphael Lemkin." *Reform Judaism* (Fall 1982): 9-11 and 45.
- Schuman, Frederick Lewis. *The Nazi Dictatorship: A Study in Social Pathology and the Politics of Fascism*. New York: Knopf, 1936.
- Schwarzenberger, Georg. *International Law as Applied by International Courts and Tribunals: The Law of Armed Conflict, Vol. II*. London: Stevens & Sons, 1968.
- Schwarzmantel, John. "Karl Renner and the Problem of Multiculturalism." In *National Cultural Autonomy and its Contemporary Critics*, edited by Ephraim Nimni, 63-73. London: Routledge, 2005.
- Segesser, Marc Daniel and Myriam Gessler. "Raphael Lemkin and the International Debate on the Punishment of War Crimes (1919-1948)." *Journal of Genocide Research* 7, No. 4 (2005): 453-468.
- Semelin, Jacques. *Purify and Destroy: The Political Uses of Massacre and Genocide*. New York: Columbia University Press, 2013.
- Serbyn, Roman. "Lemkin on Genocide of Nations." *Journal of International Criminal Justice* 7, No. 1 (2009): 123-130.

- Serbyn, Roman. "The Ukrainian Famine of 1932-1933 as Genocide in the Light of the UN Convention of 1948." *The Ukrainian Quarterly* 62, No. 2 (2006): 181-194.
- Shaw, Martin. "Genocide in the Global Age." In *Handbook of Globalization Studies*, edited by Bryan S. Turner, 312-327. London: Routledge, 2010.
- Shaw, Martin. *What is Genocide?* Cambridge: Polity, 2007.
- Shrayer, Maxim. *An Anthology of Jewish-Russian Literature, Volume 1: 1801-1953*. Armonk, New York: M.E. Sharp, 2006.
- Siegelberg, Mira L. "Unofficial Men, Efficient Civil Servants: Raphael Lemkin in the History of International Law." *Journal of Genocide Research* 15, No. 3 (2013): 297-316.
- Simpson, A. W. Brian. *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*. Oxford: Oxford University Press, 2001.
- Skhandrij, Myroslav. "Ukrainianization, Terror and Famine: Coverage in Lviv's *Dilo* and the Nationalist Press of the 1930s." *Nationalities Papers* 40, No. 3 (2012): 431-451.
- Skinner, Quentin. "Meaning and Understanding in the History of Ideas." *History and Theory* 8, No. 1 (1969): 3-53.
- Sliwa, Michal. "The Jewish Problem in Polish Socialist Thought." *Polin: Studies in Polish Jewry* 9 (1996): 14-31.
- Smith, Bradley F. *The American Road to Nuremberg*. Stanford: Hoover Institution Press, 1981.
- Snyder, Timothy. "A Polish Socialist for Jewish Nationality: Kazimierz Kelles-Krauz, 1872-1905." *Polin: Studies in Polish Jewry* 12 (1999): 257-270.
- Snyder, Timothy. *Bloodlands: Europe Between Hitler and Stalin*. New York: Basic Books, 2010.
- Söllner, Alfons. "Hannah Arendt's The Origins of Totalitarianism in its Original Context." *European Journal of Political Theory* 3 No. 2 (2004): 219-238.
- Spencer, Philip. *Genocide Since 1945*. London: Routledge, 2012.
- Spiro, Herbert and Benjamin Barber. "Counter-Ideological Uses of 'Totalitarianism'." *Politics and Society* 1, No. 1 (1970), 3-21.
- Stalin, Joseph. "Deviations on the National Question: A Report Delivered at the Sixteenth Congress of the C.P.S.U., June 1930." In *Marxism and the National and Colonial Question*. Translated by I. Tovstukha, 256-266. Moscow: Co-operative Publishing Society of Foreign Workers in the U.S.S.R., 1939.
- Stalin, Joseph. "Deviations Towards Nationalism: Report on the Work of the Central Committee of the C.P.S.U. Delivered at the Seventeenth Party Congress, January 26. 1934." In *Marxism and the National and Colonial Question*. Translated by I. Tovstukha, 267-268. Moscow: Co-operative Publishing Society of Foreign Workers in the U.S.S.R., 1939.
- Stalin, Joseph. "Marxism and the Nationalities Question." In *Marxism and the National and Colonial Question*. Translated by I. Tovstukha, 3-61. Moscow: Co-operative Publishing Society of Foreign Workers in the U.S.S.R., 1939.
- Stalin, Joseph. "The National Question in Yugoslavia." In *Marxism and the National and Colonial Question*. Translated by I. Tovstukha, 200-205. Moscow: Co-operative Publishing Society of Foreign Workers in the U.S.S.R., 1939.

- Stalin, Joseph. "Theses on the Immediate Tasks of the Party in Connection with the National Problem: Presented to the Tenth Congress of the Russian Communist Party, Endorsed by the Central Committee (1921)." In *Marxism and the National and Colonial Question*. Translated by I. Tovstukha, 88-98. Moscow: Co-operative Publishing Society of Foreign Workers in the U.S.S.R., 1939).
- Stanton, Gregory. "The Cambodian Genocide and International Law." In *Genocide and Democracy in Cambodia: The Khmer Rouge, The United Nations and the International Community*, edited by Ben Kiernan, 141-161. New Haven: Yale University Southeast Asia Studies, 1993.
- Stanton, Gregory. "The Eight Stages of Genocide." In *The Genocide Studies Reader*, edited by Samuel Totten and Paul R. Bartrop. New York: Routledge, 1996.
- Steger, Manfred B. *The Quest for Evolutionary Socialism: Eduard Bernstein and Social Democracy*. Cambridge: Cambridge University Press, 2006.
- Stiller, Alexa. "Semantics of Extermination: The Use of the New Term of Genocide in the Nuremberg Trials and the Genesis of a Master Narrative." In *Reassessing the Nuremberg Military Tribunals: Transitional Justice, Trial Narratives, and Historiography*, edited by Kim C. Priemel and Alexa Stiller, 104-133. New York and Oxford: Berghahn Books, 2012.
- Stone, Dan. "Raphael Lemkin on the Holocaust." *Journal of Genocide Research* 7, No. 4 (2005): 539-550.
- Stover, Eric and Harvey W. Weinstein, eds. *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*. Cambridge: Cambridge University Press, 2004.
- Straus, Scott. *The Order of Genocide: Race, Power, and War in Rwanda*. Ithica: Cornell University Press, 2008.
- Szawłowski, Ryszard. "Diplomatic File: Raphael Lemkin (1900–1959) – The Polish Lawyer Who Created the Concept of 'Genocide'." *Polish Quarterly of International Affairs* 2 (2005): 98-133.
- Szawłowski, Ryszard. "Raphael Lemkin's Life Journey: From Creative Legal Scholar and Well-to-do Lawyer in Warsaw until 1939 to Pinnacle of International Achievements during the 1940s in the States, Ending Penniless Crusader in New York in the 1950s." In *Rafal Lemkin: A Hero of Humankind*, edited by Agnieszka Bienczyk-Missala and Slawomir Debski, 31-58. Warsaw: The Polish Institute of International Affairs, 2010.
- Sznaider, Natan. *Jewish Memory and the Cosmopolitan Order*. New York: Wiley, 2013.
- Tananbaum, Duane. *The Bricker Amendment Controversy: A Test of Eisenhower's Political Leadership*. Ithica, NY: Cornell University Press, 1988.
- The New York Times*. "Raphael Lemkin, Genocide Foe, Dies; International Law Professor Instrumental in Pushing Convention Through U.N." August, 30, 1959. Available from:
<http://query.nytimes.com/mem/archive/pdf?res=F70D16FD3E5F1A7B93C2AA1783D85F4D8585F9>
- The New York Times*. "Raphael Lemkin: Crusader." August 31, 1959. Available from:
<http://query.nytimes.com/mem/archive/pdf?res=F70615FA3C551B7B93C3AA1783D85F4D8585F9>

- The New York Times*. "U.S. Accused in U.N. of Negro Genocide." December 18, 1951, 13.
- Thio, Li-ann. *Managing Babel: The International Legal Protection of Minorities in the Twentieth Century*. Leiden: Martinus Nijhoff, 2005.
- Tilly, Charles and Sidney Tarrow. *Contentious Politics*. Oxford: Oxford University Press, 2007.
- Tolischus, Otto D. "Twentieth-Century Molach: The Nazi-Inspired Totalitarian State, Devourer of Progress – and of Itself." *New York Times Book Review* (January 21, 1945): 1, 24.
- Totten, Samuel and Paul R. Bartrop. "The United Nations and Genocide: Prevention, Intervention, and Prosecution." *Human Rights Review* 5 No. 4 (2004): 8-31.
- Totten, Samuel. *Genocide of Indigenous Peoples*. New Brunswick: Transaction Publishers, 2011.
- Trotsky, Leon. *The Balkan Wars: The War Correspondence of Leon Trotsky*, edited by George Weissman and Duncan Williams. Translated by Brian Pearce. New York: Pathfinder, 2010.
- Trunk, Isaiah. *Judenrat: The Jewish Councils in Eastern Europe under Nazi Occupation*. New York: Stein and Day, 1977.
- Üngör, Ugur Ümit. *The Making of Modern Turkey: Nation and State in Eastern Anatolia 1913-1950*. Oxford: Oxford University Press, 2011.
- United Kingdom Delegation of Paris to Foreign Office, November 25, 1948, Public Records Office, FO371/72693.
- United Nations, "An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peacekeeping: Report of the Secretary-General." (GA Doc. A/47/277-S/2411).
- United Nations, "Legal Committee, Summary Records, and Annexes, Session 3, Part 1," October 14, 1948.
- United Nations, "Preliminary Report Submitted by the Special Rapporteur on Violence Against Women, its Causes and Consequences, 1994." (UN Doc. E/CN.4/1995/42).
- United Nations, "Report of the International Law Commission on the Work of Its Forty-fourth Session, 4 May-24 July 1992." (UN Doc. A/47/10).
- United Nations, "Study of the Question of the Prevention and Punishment of the Crime of Genocide," July 4, 1978. (UN Doc. E/CN. 4/Sub 2/416).
- United Nations. "Report of the International Law Commission to the General Assembly on the Work of Its Forty-sixth Session, 1994." (UN Doc. A/CN.4/SER.A/1994/Add.1).
- United States Department of State, *Foreign Relations of the United States, 1964-1968: Organization and Management of U.S. foreign policy United Nations, Volume 33*. Washington, DC: Government Printing Office, 2004.
- United States Department of State, *Foreign Relations of the United States, 1952-1954. General Economic and Political Matters (In Two Parts): Volume 1, Part 2*. Washington, D.C.: Government Printing Office, 1983.
- Valentino, Benjamin A. *Final Solutions: Mass Killing and Genocide in the Twentieth Century*. Ithaca, N.Y: Cornell University Press, 2004.
- Van Schaack, Beth. "The Crime of Political Genocide: Repairing the Genocide Convention's Blind Spot," *Yale Law Journal* 106 (1997): 2259-2291.

- Verdeja, Ernesto. "Transitional Justice." In *Genocide Matters: Ongoing Issues and Emerging Perspectives*, edited by Joyce Apsel and Ernesto Verdeja, 172-195. London: Routledge, 2013.
- Vezzetti, Hugo. *Pasado y Presente: Guerra, Dictadura y Sociedad en la Argentina*. Buenos Aires: Siglo XXI, 2003.
- Vinx, Lars. *Hans Kelsen's Pure Theory of Law: Legality and Legitimacy*. Oxford: Oxford University Press, 2008.
- von Joeden-Forgy, Elisa. "Hidden in Plain Sight: Atrocity Concealment in German Political Culture Before the First World War." In *Hidden Genocides: Power, Knowledge, Memory*, edited by Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson, 52-67. New Brunswick: Rutgers University Press, 2013.
- Vrdoljak, Ana Filipa. "Human Rights and Genocide: The Work of Lauterpacht and Lemkin in Modern International Law," *The European Journal of International Law* 20, No. 4 (2010): 1163-1194.
- Vrdoljak, Ana Filipa. "Human Rights and Genocide: The Work of Lauterpacht and Lemkin in Modern International Law." *European Journal of International Law* 20, No. 4 (2010): 1163-1194.
- Walzer, Michael and David Miller. *Thinking Politically: Essays in Political Theory*. New Haven: Yale University Press, 2007.
- Weber, Max. *The Theory of Social and Economic Organization*. New York: Simon and Schuster, 2009.
- Weinberg, Robert. *Stalin's Forgotten Zion: Birobidzhan and the Making of a Soviet Jewish Homeland*. Berkeley: University of California Press, 1998.
- Weiss-Wendt, Anton. "Hostage of Politics: Raphael Lemkin on 'Soviet Genocide'." *Journal of Genocide Research* 7, No. 4 (2005): 551-559.
- Weissman, Stephen R. *Preventing Genocide in Burundi: Lessons from International Diplomacy*. Washington, D.C.: United States Institute of Peace, 1998.
- Weitzman, Lenore J. "Women." In *The Oxford Handbook of Holocaust Studies*, edited by Peter Hayes and John K. Roth, 203-217. Oxford: Oxford University Press, 2010.
- Wereszczyński, Antoni. *Państwo Antyczne I Jego Renesansy: Przyczynki do Reformy Ustroju Polski*. Lwów: Wydaw Zakł, 1928.
- Werth, Nicolas. *La Terreur et le Désarroi. Staline et son Système*. Paris: Librairie Académique Perrin, 2007.
- Werth, Nicolas. "The Great Ukrainian Famine of 1932-23." In *The Holodomor Reader: A Sourcebook on the Famine of 1932-1933 in Ukraine*, edited by Bohdan Klid and Alexander J. Motyl, 39-50. Edmonton: Canadian Institute of Ukrainian Studies Press, 2012.
- Widyono, Benny. *Dancing in Shadows: Sihanouk, the Khmer Rouge, and the United Nations in Cambodia*. New York: Rowman & Littlefield, 2008.
- Willis, James F. *Prologue to Nuremberg: The Politics and Diplomacy of Punishing War Criminals of the First World War*. Westport: Greenwood Press, 1982.
- Wilson, Richard J. "Prosecuting Pinochet: International Crimes in Spanish Domestic Law." *Human Rights Quarterly* 21 No. 4 (1999): 927-979.
- Winter, Jay and Antonie Prost. *René Cassin and Human Rights: From the Great War to the Universal Declaration*. Cambridge: Cambridge University Press, 2013.

- Wittfogel, Karl August. *Oriental Despotism: A Comparative Study of Total Power*. New Haven: Yale University Press, 1957.
- Wood, Allen. *Hegel's Ethical Thought*. Cambridge: Cambridge University Press, 1990.
- Wright, Quincy. *A Study of War*, 2nd Edition, abridged, edited by Louise Leonard Wright. Chicago: Chicago University Press, 1983.
- Wright, Quincy. "The Outlawry of War." *American Journal of International Law*, 19 (1925): 76–103.
- Yahil, Leni. *The Rescue of Danish Jewry: Test of Democracy*. Newish Publication Society of America, 1969.
- Yahraes, Herbert. "He Gave a Name to the World's Most Horrible Crime." *Collier's*. March 3, 1951.
- Yeats, William Butler. "The Second Coming." In *The Collected Works of W.B. Yeats Volume 1*, 187. New York: Simon and Schuster, 2010.
- Young, Virginia Heyer. *Ruth Benedict: Beyond Relativity, Beyond Pattern*. Lincoln: University of Nebraska Press, 2005.
- Zelkowicz, Yosef. *In Those Terrible Days: Notes from the Lodz Ghetto*, edited by Michal Unger. Jerusalem, 2002.
- Zimmerer, Jürgen and Dominik Schaller, eds. *The Origins of Genocide: Raphael Lemkin as a Historian of Mass Violence*. London: Routledge, 2009.
- Zimmerer, Jürgen. "The Birth of the Ostland Out of the Sprit of Colonialism: A Postcolonial Perspective on the Nazi Policy of Conquest and Extermination." *Patterns of Prejudice* 39, No. 2 (2005): 197-219.
- Zimmerman, Joshua D. "Jozef Pilsudski and the Jewish Question, 1892-1905." *East European Jewish Affairs* 28 No. 1 (1998): 87-107.
- Zizek, Slavoj. "Against Human Rights." *New Left Review* 34 (2005): 115-131.
- Znaniecki, Florian. *Upadek Cywilizacji Zachodniej: Szkic z Pogranicza Filozofii, Kultury I Socjologii*. Warszawa: Nakł. Komitetu Obrony Narodowej; skł. gł.: Gebethner i Wolff, 1921.
- Zolo, Danilo. "Hans Kelsen: International Peace through International Law." *European Journal of International Law*, 9 No. 2 (1998) Available from: <http://www.ejil.org/article.php?article=1492&issue=48>.

American Jewish Archives

- Correspondence from Raphael Lemkin to Karl Renner, March 29, 1950. Raphael Lemkin Papers, MS-60, American Jewish Archives, Cincinnati, Ohio, United States of America. Box 1. Folder 15.
- Lemkin, Raphael. "Germans in Africa." Raphael Lemkin Papers, MS-60, American Jewish Archives, Cincinnati, Ohio, United States of America. Box 6. Folder 9.
- Lemkin, Raphael. "Hereros." Raphael Lemkin Papers, MS-60, American Jewish Archives, Cincinnati, Ohio, United States of America. Box 6. Folder 12.
- Lemkin, Raphael. "The Hitler Case." Raphael Lemkin Papers, MS-60, American Jewish Archives, Cincinnati, Ohio, United States of America. Box 7. Folder 13.

American Jewish Historical Archives

- Broadcast on the Genocide Convention by Professor Raphael Lemkin recorded in New York on July, 1947 for release by the B.B.C in London the following days, July 9,

1947. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 6. Folder 1.
- Correspondence from B. Sanin Cano to Pearl S. Buck, November 15, 1947. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 2. Folder 7.
- Correspondence from Eugene R. Rostow to Raphael Lemkin, June 31, 1948. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1. Folder 6.
- Correspondence from Gabriela Mistral to Pearl S. Buck, March 11, 1948. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1. Folder 19.
- Correspondence from Liu Chieh to Pearl S. Buck, November 1, 1947. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 2. Folder 7.
- Correspondence from Maurice L. Perlzeweig, August, 29, 1947. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1. Folder 18. AJHS.
- Correspondence from Mohamed Zafrulla Khan to Charles Malik, February 4, 1948. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 2. Folder 8.
- Correspondence from Oakley Johnson to Raphael Lemkin, June 24, 1953. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1. Folder 9. AJHS.
- Correspondence from Pearl Buck to Raphael Lemkin, Correspondence and Proposed Manifesto [Dated Sunday circa 1947]. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1. Folder 17.
- Correspondence from Quincy Wright to Raphael Lemkin, November 24, 1947. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1. Folder 18.
- Correspondence from Raphael Lemkin to Dr. Henry Noble MacCracken, August 30, 1948. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1. Folder 19.
- Correspondence from Raphael Lemkin to Edward A. Conway, December 19, 1949. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY., Box 2, Folder 2.
- Correspondence from Raphael Lemkin to James N. Rosenberg, September 13, 1948. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1. Folder 19.
- Correspondence from Raphael Lemkin to Jane Evans, October 28, 1948. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1. Folder 19.
- Correspondence from Raphael Lemkin to Judge Ingles, December 17, 1949. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 2. Folder 2.

- Correspondence from Raphael Lemkin to Quintin Paredes, December 17, 1949. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 2. Folder 2.
- Correspondence from Raphael Lemkin to T. Thackerey, November, 28, 1948. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1. Folder 19.
- Correspondence from Raphael Lemkin to the Right Honorable David Maxwell Fyfe, August 26, 1946. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1, Folder 18.
- Correspondence from Raphael Lemkin to Thomas Mahoney, December 19, 1949. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY., Box 2, Folder 2.
- Correspondence from Raphael Lemkin to Thomas Mahoney, December 28, 1948. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 2. Folder 2.
- Correspondence from Wesley A. Sturges to Russell H. Grele, December 22, 1949. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1. Folder 13.
- Drafts of Cable Communication, September 3, 1947. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 2. Folder 7.
- Lemkin, Raphael. "Research Essay on Turkish Massacre of Bulgarians." Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 8. Folder 16.
- Lemkin, Raphael. "Slavery as Cult. and Phys. Genocide," Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 9, Folder 11.
- Lemkin, Raphael. "The Nature of Genocide." Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 2, Folder 2.
- Lemkin, Raphael. Notecard 19. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 9, Folder 14.
- Lemkin, Raphael. Notecard 31. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 9, Folder 13.
- Lemkin, Raphael. Notecard 38. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 9, Folder 13, verso.
- Lemkin, Raphael. Notecard 5. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 9, Folder 14.
- Lemkin, Raphael. Notecard 7. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 9, Folder 14.
- MaKay Radio Announcement Correspondence to Refling Hagen, September 3, 1947. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 1. Folder 18.
- Statement by the Rt. Hon. H. V. Evatt, K.C. M.P. Deputy Prime Minister and Minister of External Affairs of Australia to the Economic and Social Council, United Nations

on 25 August 1948. Raphael Lemkin Collection. P-154. American Jewish Historical Society. Boston, MA, and New York, NY. Box 2. Folder 13.

New York Public Library

Alphand, Hervé. "Ambassador Alphand's Speech to the Security Council on June 26th 1956." Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 4. Box 3. Folders 5.

Correspondence from Simon and Schuster to Raphael Lemkin. Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 1. Box 1. Folder 2.

El-Farra, Muhammad, *Algeria and the United Nations*. New York: The Arab Information Center, September 15, 1956. NYPL Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 5, Box 5, Folder 2.

Lemkin, Raphael. "Autobiography," Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 2. Box 1. Folder 36.

Lemkin, Raphael. "Belgium Congo." Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 3. Box 2. Folder 7.

Lemkin, Raphael. "Draft Supplemental Remarks by Dr. Lemkin," Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 2. Box 1. Folder 34.

Lemkin, Raphael. "Draft Supplemental Remarks by Dr. Lemkin." Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 2. Box 1. Folder 34.

Lemkin, Raphael. "Genocide." Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 4. Box 3. Folder 1-2.

Lemkin, Raphael. "Soviet Genocide in the Ukraine." Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 3. Box 2. Folder 16.

Lemkin, Raphael. "Summary of Activities of Raphael Lemkin." Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 2. Box 1. Folder. 33/34.

Lemkin, Raphael. "Text of Statement by Dr. Raphael Lemkin at Testimonial Luncheon in his Honor by New York Region of the American Jewish Congress at the Hotel Pierre, Thursday, January 18th." Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 2. Box 1. Folder 34.

Lemkin, Raphael. "The Truth About the Genocide Convention." Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 4. Box 3. Folder 3-4.

Lemkin, Raphael. *Introduction to the Study of Genocide*. Raphael Lemkin Papers. Manuscript Collection 1730. Manuscript and Archives Division. New York Public Library. New York. Reel 3. Box 2. Folders 1-4.

Columbia University Library

Lemkin, Raphael. "Protection of Human Rights in the Forthcoming Peace Treaty with Axis Satellite Countries." Raphael Lemkin Papers, Rare Book and Manuscript Library, Columbia University Library, New York, Box 4, Folder X.

Lemkin, Raphael. "Sixth Committee Debates and Revisions, UN Doc. A/C/6/Sub.3/w.1, December 5, 1946." Raphael Lemkin Papers, Rare Book and Manuscript Library, Columbia University Library, New York, Box 5, Folder 18.

Lemkin, Raphael. Untitled Document. Raphael Lemkin Papers, Rare Book and Manuscript Library, Columbia University Library, New York, Box 4, Folder X.

Wilson Library, University of North Carolina, Chapel Hill

Lemkin, Raphael. "The Significance of the Concept of Genocide in the Trial of War Criminals," undated, Southern Historical Collection, John Johnston Parker Papers, Records of the Nuremberg Trial of Major German War Criminals, Manuscripts Department, Wilson Library, The University of North Carolina at Chapel Hill, reference number 3566.

University of Wyoming American Heritage Center

Correspondence from Bernays to his Wife, June 10, 1945. *The Bernays Papers*. Box 1. University of Wyoming American Heritage Center, Laramie, WY.

Library of Congress

Correspondence from Dr. Raphael Lemkin to Honorable Robert Jackson, May 4, 1945. Robert H. Jackson Papers. Library of Congress. Manuscript Division. Washington D.C. Box 98. Folder 9.

United Nations Documents

GA Res. 217 A(III).

GA Res. 260 A(III).

GA Res. 260 B(III).

GA Res. 260 C(III).

GA Resolution 44/89.

UN Doc. A/231.

UN Doc. A/34/500.

UN Doc. A/401.

UN Doc. A/401/Add.1.

UN Doc. A/401/Add.3.

UN Doc. A/47/10.

UN Doc. A/770.

UN Doc. A/810.

UN Doc. A/AC.10/41. Secretariat Draft Genocide Convention.

UN Doc. A/AC.20/29.

UN Doc. A/C.2/218.
UN Doc. A/C.6.127.
UN Doc. A/C.6/120.
UN Doc. A/C.6/208.
UN Doc. A/C.6/212.
UN Doc. A/C.6/217.
UN Doc. A/C.6/222.
UN Doc. A/C.6/272.
UN Doc. A/C.6/91.
UN Doc. A/C.6/SR.100.
UN Doc. A/C.6/SR.101.
UN Doc. A/C.6/SR.128.
UN Doc. A/C.6/SR.129.
UN Doc. A/C.6/SR.63.
UN Doc. A/C.6/SR.64.
UN Doc. A/C.6/SR.65.
UN Doc. A/C.6/SR.66.
UN Doc. A/C.6/SR.68.
UN Doc. A/C.6/SR.69.
UN Doc. A/C.6/SR.74.
UN Doc. A/C.6/SR.81.
UN Doc. A/C.6/SR.83.
UN Doc. A/C.6/SR.87.
UN Doc. A/C.6/SR.95.
UN Doc. A/C.6/SR.97.
UN Doc. A/C.6/SR.98.
UN Doc. A/CN.4/SER.A/1994/Add.1
UN Doc. A/PV.179.
UN Doc. E/330.
UN Doc. E/447.
UN Doc. E/623.
UN Doc. E/623/Add.3.
UN Doc. E/794.
UN Doc. E/799.
UN Doc. E/AC.25/12. Ad Hoc Committee Draft.
UN Doc. E/AC.25/7.
UN Doc. E/AC.25/9.
UN Doc. E/AC.25/SR.1.
UN Doc. E/AC.25/SR.20.
UN Doc. E/AC.25/SR.3.
UN Doc. E/AC.25/SR.8.
UN Doc. E/AC.7/15.
UN Doc. E/AC.7/15/Add. 2.
UN Doc. E/CN.4/1995/42.
UN Doc. E/CN. 4/Sub 2/416.

District Court of Jerusalem, Israel

Attorney-General of the Government of Israel v. Eichmann, District Court of Jerusalem, December 12, 1961.

International Criminal Courts for the Former Yugoslavia

Prosecutor v. Blaskic, Case No. IT-95-14-T, Judgment, March, 3, 2000.

Prosecutor v. Jelasic, Case No. IT-95-10-T, Judgment, December, 14, 1999.

Prosecutor v. Krstic, Case No. IT-98-33-A, Appeals Chamber Judgment, April 19, 2004.

Prosecutor v. Krstic, Case No. IT-98-33-T, Judgment, August 2, 2001.

International Criminal Courts for Rwanda

Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, September 2, 1998.

Prosecutor v. Kayishema and Ruzindana, Case No. ICTR-95-1-T, Judgment 97-98, May 21, 1999.

Prosecutor v. Nahimana, Barayagwiza and Ngeze, Case No. ICTR-99-52-T, Judgment, December 3, 2003.

International Criminal Court

Prosecutor v. Francis Kirimimuthaura, Uhuru Muigai Kenyatta & Mohammed Hussein Ali, Case No. ICC-01/09-02/11.

Prosecutor v. William Samoeiruto, Henry Kiprono Kosgey & Joshua Arap Sang, Case No. ICC-01/09-01/11.

International Court of Justice

International Court of Justice, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* Judgment, I. C. J. Reports 2007, February 26, 2007.

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- Teaching Assistant (2009-2011), Rutgers-Newark Graduate School
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Journal Articles and Chapters (peer-reviewed):

1. "Introduction: Hidden Genocides, Power, Knowledge, Memory," by Douglas Irvin-Erickson, Alexander Hinton, and Thomas La Pointe, in *Hidden Genocides: Power, Knowledge, and Memory*, Alexander Laban Hinton, Thomas La Pointe, and Douglas Irvin-Erickson, eds. (New Brunswick: Rutgers University Press, 2014).
2. "Genocide, the 'Family of Mind,' and the Romantic Signature of Raphael Lemkin," *Journal of Genocide Research*, Vol. 15, No. 3 (2013): 273-296.

Invited Chapters:

1. "Foreword: 'The Four-Pronged Attack' — Raphael Lemkin's Theory of Genocide and the Destruction of the Ukrainian Nation," in Raphael Lemkin, *Soviet Genocide in the Ukraine*, Lubomyr Y. Luciuk, ed. (Kingston: Kashtan Press, 2014).

Book Reviews:

1. "Totally Unofficial: The Autobiography of Raphael Lemkin," *Genocide Studies and Prevention* Vol. 8, No. 1 (2013): 67-69.
2. "Brother No. 2 and the Order of the Madness: Behind the Khmer Rouge Killing Fields," *H-Net* (June, 2011) <http://www.h-net.org/reviews/showrev.php?id=31980>