

The Language of Genocide and Human Rights: Naming, Judging, Acting

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“The Language of Genocide and Human Rights”

Matthew Cole

INTRODUCTION

Raphael Lemkin introduced the word genocide in 1944 to describe coordinated attempts to annihilate a national group and its way of life. Sixty years later, Lemkin's definition is still contested, but the significance of his concept is not. Genocide remains a favored shorthand for the worst crimes of the twentieth century and the worst fears of the twenty-first. As the "century of genocide" (Levene 2000, Weitz 2003, Alvarez 2009) fades into history, we face a dual task of processing its calamities and preventing their repetition. Words alone cannot guarantee success in either undertaking, and yet we can hardly begin without the language to grasp our predicament. By naming a pattern of violence which had long hung over the heads of the world's persecuted peoples, Lemkin's word offered a foothold for a century that was about to make a dizzying descent into cruelty – and more than that, a set of tools to keep the violence at bay, however infrequently they have been put to use. Thanks in no small part to the international legal order which Lemkin helped to erect, the word genocide functions not only as an empirical description for the nearly indescribable, but legally, as an accusation, morally, as a condemnation, and politically, as a call to action. In the context of humanitarian law, genocide is "the crime of crimes" (Schabas 2000). The Genocide Convention, in many ways the culmination of Lemkin's life work, demands that states not only refrain from committing genocide, but actively prevent and punish it as well.

In spite of this historic accomplishment, the resolve of the international community has been found wanting at almost every significant juncture. Though the exact obligations imposed by the Genocide Convention are unclear, the half-century since it took effect has seen policymakers engage in embarrassing contortions of logic and language in order to shirk whatever duties it might in fact entail. Genocides have been greeted with uncertainty and indifference, with euphemism and moralization, but rarely with determinate action. While much of this story can only be told on a case by case basis, an analysis of the term genocide itself can illuminate our predicament. Few words are so burdened with normative, descriptive, and conceptual valences as genocide, and as a result, the definition of genocide, as well as its

application to particular cases, has continuously been contested. Far from being semantic in nature, debates about the meaning of genocide are implicated in our capacity to respond to it. Taking genocide seriously requires that we recognize genocide when we see it, name it once we have recognized it, and act once we have named it.

Historically speaking, this movement from naming to politics has been fraught with difficulty, and to those difficulties we can now add a “politics of naming” (Mamdani 2007). Where scholars and activists have typically lamented the reticence with which policymakers deploy the term, the moral gravity of genocide has made it a conspicuous instrument in our rhetorically charged, media-saturated geo-politics, a context in which state and non-state actors alike have become canny manipulators of public opinion. The language of genocide has played an important, though not always salutary, role in the struggles for recognition and reparation on behalf of long-suffering indigenous peoples; has become a favorite cudgel on both sides of the Israel-Palestine conflict; has even been rehabilitated amongst US policymakers as a way of lending moral authority and humanitarian pathos to the War on Terror. In each of the contexts, the decision to apply the term genocide, no less than the decision to withhold it, is shot through with political considerations.

Here, I offer little more than a road-map of the contested terrain, and a selective one at that. Research on genocide today is a vast interdisciplinary enterprise, touching on every corner of the social sciences and humanities in addition to law, public policy, and specialized fields such as Holocaust studies and genocide studies. In addition, specific genocides have produced voluminous commentary in their own right – even the crisis in Darfur, which seems only yesterday to have moved out of the headlines, already commands a sizeable academic literature. Despite the sheer magnitude of publication, some major concerns and controversies stand out not only for their importance to our understanding of genocide today, but also for their apparent intractability. Many of the questions now confronting scholars, activists, and policymakers can be traced directly to the inception of the term genocide and the subsequent adoption of the Genocide Convention, though the knot has only gotten more tangled as

sovereign nations, ad hoc alliances, and international tribunals have sought to interpret and apply them. I therefore begin with an analysis of Lemkin's original notion of genocide, emphasizing the centrality of Lemkin's understanding of culture to the conceptual and normative meanings of genocide. I then turn to the Genocide Convention to discuss the extent to which ambiguities in both areas have followed the term genocide into international law. In the third part of the paper I highlight some related debates over the scope of the term genocide which have played out in recent scholarship, before concluding with three brief case studies which illustrate how the conceptual, normative, legal, and political meanings of genocide have shaped practical efforts at identification, prevention, and punishment.

I. NAMING GENOCIDE: LEMKIN ON THE DESTRUCTION OF GROUPS

Genocide did not have a name until Lemkin gave it one in 1944, but it seems likely that the practice of genocide is as old as warfare itself. Archeological evidence even supports speculation that genocides were committed in prehistory (Jones 2006, Kiernan 2007). But we know well enough that in every phase of recorded history, conquering armies could be counted on to massacre civilians, raze villages, burn crops, and poison wells, tactics which frequently resulted in the extermination or near-extermination of the subject population. But was genocide recognized before it had a name? The idea that conquest might extend to the total and deliberate destruction of a people can be found in the mythology of the ancient world. In the Iliad, Agamemnon says of the Trojans that "we are not going to leave a single one of them alive, down to the babies in their mothers' wombs – not even they must live. The whole people must be wiped out of existence, and none be left to think of them and shed a tear." In the Books of Deuteronomy and Joshua, the conquest of Canaan is recounted in terms that sound genocidal, as God instructs the Israelites "do not leave anything alive that breathes. Completely destroy them – the Hittites, Amorites, Canaanites, Perizzites, Hivites, and Jebusites" (NIV, Deut. 20, 16-17). In terms of actually accomplished genocides, scholars have argued that the Athenian massacre of the Melians (~416 BC), famously recounted by Thucydides as involving the

execution of the adult men, the enslavement of the women and children, and the subsequent colonization of Melos, may have been the first. More commonly, scholars depict the destruction of Carthage by the Romans (~146 BC) as history's first documented genocide, owing to the magnitude of the casualties, in excess of 100,000 even by conservative estimates, and the strong evidence that the Romans sought to eliminate the Carthaginians and their culture entirely (Kiernan 2004).

Lemkin begins his autobiography by explaining that during his childhood he read not only of Carthage, but of Genghis Khan's unprecedented campaigns of violence, of the persecution of Christians in Rome, Catholics in Japan, Huguenots in France, and of any similar incidents which he could learn of, "fascinated by the frequency of such cases, by the great suffering inflicted on the victims and the hopelessness of their fate, and by the impossibility of repairing the damage to life and culture" (Lemkin 2013, 1-2). But even if he hadn't been an avid reader, Lemkin's experience as an Eastern European Jew at a time when pogroms were common enough both in his native Poland and in the neighboring Ukraine, would have given him first-hand knowledge of persecution. Before long, the political evils that vexed Lemkin's imagination would burst into the consciousness of a nascent international community. In 1921, Soghomon Tehlirian, an Armenian who had been left for dead after his family was deported and then massacred by Ottoman soldiers during World War I, assassinated the Ottoman Interior Minister Talaat Pasha, and in doing so brought the shocking details of what would eventually be called the Armenian Genocide to the world's attention. The fact that the Ottomans had managed to oppress and destroy the Armenians with impunity, particularly the notion that "sovereignty" could insulate the perpetrators from reprisal, repulsed Lemkin. It was then that he decided to study law, hoping to contribute to international measures against "the destruction of national, racial, or religious groups" (Cooper 2008, 14-17).

Lemkin's first proposal to address this concern was directed to the League of Nations in 1933. By that point, Lemkin had more than the past suffering of the Armenians to consider. Lemkin had been closely observing Hitler's rise to power, but at that time few in the

international community took Hitler's bombastic rhetoric seriously, or saw anything unusual or actionable in the intensifying persecution of German Jews. For many European Jews, even, persecution was business as usual, something they resolved to get through as they always had. By far the greatest obstacle to Lemkin's endeavor was the dogmatic view of national sovereignty that held sway in the international community, and would continue to hold sway even as the full extent of the Holocaust became known and the Nuremberg trials made incremental progress toward justice. So long as persecution did not spill across national borders, as Hitler's plans had done so violently, what business did the international community have interfering?

In that context, Lemkin's initial attempts to articulate the distinctive wrong of cultural destruction are notable for their contention that such acts always rise to the level of international concern, regardless of who they are committed against or where they are committed. Campaigns of cultural destruction, he maintained, could be broken down into two constituent parts. Most immediate and shocking were what Lemkin called "acts of barbarity," or "acts of extermination directed against ethnic, religious, or social collectivities whatever the motive... for example massacres, pogroms, actions undertaken to ruin the economic existence of the members of a collectivity" (Lemkin 1933). Significantly, Lemkin considers the collectivity and not its individual members as the primary victim of barbarity. Discrimination or abuse targeted at individuals also falls under this heading, but only secondarily and insofar as those acts "have their source in a campaign of extermination directed against the collectivity in which the victim is a member." According to Lemkin, such campaigns must be considered a "general" or "transnational" danger not only because they are so offensive to our moral and social sensibilities, but also because they can lead to a complete breakdown of social relations, with destabilizing effects that may well pass between borders.

Though this category captures most of what is defined and prosecuted as genocide today, we can only appreciate the full scope of the crime which Lemkin was struggling to bring into view if we consider the category with which he insisted acts of barbarity be coupled. These

are “acts of vandalism,” “systematic and organized destruction of the art and cultural heritage in which the unique genius and achievement of a collectivity are revealed in fields of science, arts, and literature” (Lemkin 1933). Though the severity of these offenses seems to pale in comparison to the physical terror described by the former term, Lemkin’s concern with the integrity and security of national, racial, and religious groups is crucially bound up with his conception of culture. We can see this clearly in Lemkin’s argument that vandalism, too, is always and everywhere an international concern insofar as “world culture as a whole” is diminished when the contributions of a particular group are erased. Lemkin conceives of groups as units of culture, more specifically of each group as the unit of a unique culture. The uniqueness of cultures makes each one invaluable, and this is what makes their destruction so wrong.

As the first phase of his campaign stalled out, Lemkin redoubled his efforts to, on the one hand, document and detail Hitler’s aggression against Jews in Germany and, increasingly, occupied Europe, and on the other, to push for a strident international response. Struck by Churchill’s declaration that “we are in the midst of a crime without a name,” Lemkin began to conceptualize his work in terms of the search for a word. Drawing on his training in philology, Lemkin set out to coin a neologism – a word that would apply only to the offense he had in mind, would be impossible to mistake or mispronounce, and would, most importantly, combine analytic specificity with clear moral condemnation (Power 2002/2013, 28). The word that Lemkin came up with was genocide, an etymological centaur that affixed the Greek *genos* (race, people) to the Latin *cidere* (to kill). But the genius of Lemkin’s word is that one does not need to understand etymology to get the chilling connotations. Familiar words such as homicide, suicide, and regicide guarantee that the connection is made to killing and to crime; heard in any context the word could only designate killing on a massive scale. Lemkin’s term is therefore more suggestive than scientific. In fact, he wanted the word genocide to transfer the moral outrage we feel when a human being is murdered to a crime that did not, as far as he was concerned, always or even most centrally involve killing. As he explains in *Axis Rule in Occupied Europe*, the pivotal work in which he debuted the term:

By 'genocide' we mean the destruction of a nation or an ethnic group. Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group....

Genocide has two phases: one, destruction of the national pattern of the oppressed group; the other the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain, or upon the territory alone, after removal of the population and the colonization of the area by the oppressor's own nationals. (Lemkin 1944/2008, 79).

To think of human groups as each having their own "national pattern," in Lemkin's suggestive phrase, their own distinctive meshing of institutions, practices, and symbols out of which a shared way of life is constituted, puts into view both what is valuable about group membership and what is jeopardized by campaigns of extermination. The importance which Lemkin attaches to culture is a distinctive feature of his concept of genocide, and one that puts him at odds with the many contemporary scholars who argue that mass killing is the necessary and sufficient condition for genocide (cf. Charny 1994, Totten 2013). Lemkin argued that an account of genocide which stopped at mass murder "does not convey the specific losses to civilization in the form of the cultural contributions which can be made only by groups of people untied through national, racial, or religious characteristics" (1947, 147). Genocide derives its conceptual coherence and normative weight from an underlying philosophy of culture, one which imagines human civilization at large as a kind of ecosystem in which different cultures figure as species; all of them, even those which appear furthest from the top of the food chain, contribute something of value. As Lemkin puts it,

The world represents only so much culture and intellectual vigor as are created by its component national groups. Essentially the idea of a nation signifies constructive cooperation and original contributions, based upon genuine traditions, genuine culture,

and a well-developed national psychology. The destruction of a nation, therefore, results in the loss of its future contributions to the world. Moreover such destruction offends our feelings of morality and justice in much the same way as does the criminal killing of a human being: the crime in the one case as in the other is murder, though on a vastly greater scale. Among the basic features which have marked progress in civilization are the respect for and appreciation of the national characteristics and qualities contributed to world culture by the different nations - characteristics and qualities which, as illustrated in the contributions made by nations weak in defense and poor in economic resources, are not to be measured in terms of national power and wealth. (Lemkin 1944/2008, 91).

His invocations of “genuine culture” and “national psychology” put Lemkin squarely in the romantic nationalist lineage of Herder, much to the chagrin of the many liberal-cosmopolitan thinkers who value his contributions to international law (Cooper 2008, Benhabib 2009). Lemkin encountered Herder’s thinking while training in philology, and his argument that each people expresses a unique set of values through its language and culture evidently left a strong impression. But Herder’s notion of people (*Volke*) was decidedly more folkish than Lemkin’s. In arguing for the imperative to protect the distinct cultural units which comprised the human ecosystem, Lemkin typically turned to the realm of high culture and emphasized the contributions of great writers, scientists, and musicians. He maintained that the full magnitude of genocide would only be grasped “when we realize how impoverished our culture would be if the peoples doomed by Germany, such as the Jews, had not been permitted to create the Bible, or give birth to an Einstein, or a Spinoza; if the Poles had not had the opportunity, to give to the world a Copernicus, a Chopin, a Curie; the Czechs, a Huss, a Dvorak, the Greeks, a Plato and a Socrates; the Russians, a Tolstoy and a Shostakovich” (Lemkin 1946).

Given this idiosyncratic foundation in what commentators have called “group pluralism” (Luban 2006) or an “ontology of the group” (Benhabib 2009) Lemkin’s definition of genocide has met mixed reviews from contemporary scholars. While scholars who emphasize the centrality of social or cultural destruction to genocide take Lemkin’s work to be foundational, those who prefer a more capacious definition of genocide, not to mention a less essentialist rendering of culture, have described Lemkin’s argument as “archaic,” “illiberal,”

and “even atavistic” (McDonnell & Moses 2005, Jones 2006, Shaw 2007). Even if one accepts Lemkin’s appealing premise that all cultures have equal ability to contribute to the spheres of art and science, there are certainly many groups which have become victims of genocide which are not units of cultural production on the scale of the “peoples” invoked by Lemkin. Social position, class, and political allegiance have all been important markers of group identity from the perspective of the perpetrators. Lemkin could, with perfect consistency, hold that such groups could not be targeted for genocide, only mass murder or persecution of another order, but most contemporary commentators find this division unacceptable. More attuned to the contingencies that accompany the construction and ascription of group identities, contemporary scholars also emphasize precisely the issue that perpetrators of genocide may define a cultural unit in a way that the ascribed members would not recognize or would assign relatively little weight. The Nazis had their own methods for deciding who was or was not Jewish, methods which had nothing to do with the real cultural dynamics of Judaism and everything to do with their own pseudo-Darwinian conception of race. The divide between Hutus and Tutsi in Burundi and Rwanda has been strongly politicized in some periods of post-colonial history and relatively downplayed in others, but it would be hyperbolic to describe membership in either group along the Herderian lines which Lemkin favored. The presumption of most scholars working today is that any identity which is strong enough to become the fault line for a massacre is strong enough to sustain a charge of genocide – it is the extermination of a social group which matters, not the character of the group.

These deficiencies notwithstanding, Lemkin’s account offers one plausible way of saying what makes genocide wrong as such. The perpetrators of genocides commit many serious crimes in the course of their campaigns: discrimination, persecution, mass murder. Each of these actions is non-controversially wrong. But the concept of genocide is only coherent if we hold that these actions amount to a distinctive wrong when they contribute to an effort to annihilate a particular group. This is true whether genocide is considered “the crime of crimes” or a crime among crimes, but in most accounts genocide is considered not only a logically distinct action but also a more egregious one. In that case, we are particularly in need of an

account of why destroying groups is wrong in a way that is not reducible to the wrongness of killing large numbers of people. Lemkin's strong normative appraisal of the group does give an independent grounds for condemning genocide as such, and of distinguishing the category conceptually from its nearest equivalent in international law, the varieties of persecution and extermination which are included under the rubric of crimes against humanity. Such lexical gate-keeping may seem trivial from the standpoint of the committed humanitarian confronted with the atrocious spectacle of mass murder, but the fact that these questions have neither been adequately answered nor decisively set aside by the parties to the Genocide Convention has contributed in turn to one underwhelming response after another. Confusion about what it means to suffer genocide and what it means to commit it have persisted ever since Lemkin's word became Lemkin's law.

II. CRIMINALIZING GENOCIDE: THE UN GENOCIDE CONVENTION

Lemkin's term caught on almost instantly. The publication of *Axis Rule* coincided with some of the first major news reports on the concentration camps, confirming the worst rumors and then some. At the exact moment that the international community found itself at a loss for words, Lemkin had one, and it wasn't long before it became the definitive term for the Nazi atrocities. And though Lemkin's concern extended far beyond the Jewish predicament – recall that Lemkin began formulating the term well before Hitler's regime arrived at its murderous nadir – the Nazi's campaign of extermination would become the definitive example of genocide. But Lemkin's effort to name this evil was only a first step in his effort to end it through the machinery of international law. At the time, nothing could seem more quixotic. The League of Nations was in shambles, soon to be disbanded for good, and as the Allies set out to reconstruct the international legal order for the post-war era, their focus was primarily on averting another cataclysmic war and punishing the aggressors for their belligerence. The Nazi extermination camps had shocked the world's conscience, but from a legal standpoint, what they had done to

their own citizens was harder to define and to punish than what they had done to the Allies in the course of the war.

Though prosecutors were skeptical that it was a winning charge, the indictments preceding the Nuremberg tribunals counted genocide among the offenses for which the defendants would be tried. Genocide had taken its first step from concept to law. However, the Nuremberg indictments considered genocide only as it had been carried out in the occupied territories, that is, as a war crime. Moreover, the language of genocide largely vanished from the Nuremberg proceedings by the time a verdict was reached, having been subsumed under the charges of “extermination” which were included as crimes against humanity (Kuper 1981, 21). For Lemkin, none of this was adequate. Alongside the framers of the Geneva Convention and the Universal Declaration of Human Rights, Lemkin turned his attention from exacting justice for the past to ensuring security in the future. As a result of Lemkin’s tireless campaigning, the idea of a special convention to outlaw genocide and make provisions for its prosecution made it on to the agenda of the first UN General Assembly, and the task of drafting the convention was underway. Though the Genocide Convention would eventually be passed by a unanimous vote, its drafting was highly contentious. One controversy in particular, the argument over the inclusion of political groups as potential victims of genocide, is worth attending to in greater detail because the eventual decision to exclude them has been repeatedly cited as the Genocide Convention’s great weakness (van Schaak 1997).

Often, commentators have asserted that Russia’s representatives refused to accept a Genocide Convention that included political groups, fearing that this would lead to prosecution in response to Stalin’s purges. While it is true that Russia’s delegation did offer arguments against the inclusion of political groups at various points in the drafting process, it seems that their responsibility for the final outcome has been greatly overstated. Leo Kuper’s thorough historical account shows that the Genocide Convention included national, ethnic, racial, religious, and political groups through many drafts, and that political groups were only decisively omitted in November 1948, a month before the Genocide Convention would be put

to a vote. At that time, representatives from Iran, Egypt, and Uruguay re-opened the question, at which point the United States and other countries which had supported the existing definition moved to reconcile rather than risking controversy that could prevent the Genocide Convention from passing (Kuper 1981, 25-28; Schabas 2000, 43). Of course we may speculate about the real interests which motivated the final decision, but the arguments raised touched on any number of terminological, practical, and political issues. For example, the Russian delegation argued that genocides “scientific” and “juridical” meanings extended only to groups that shared a culture – and we can see that Lemkin’s own definition of genocide provides one way of defending this distinction. The Polish delegation argued that political groups lacked “identifiable characteristics” and therefore their extermination could not be pursued as systematically as cultural groups. But neither delegation, nor any of their sympathizers, meant to imply that states would have *carte blanche* to destroy their political opponents. They pointed out that the Declaration then under preparation by the Human Rights Convention would make political persecution a crime under international law, and thus that the Genocide Convention did not need to cover it.

Perhaps the most persuasive arguments raised for the inclusion of political groups – some scholars would say the most prescient as well – were those raised by the French and Haitian delegates. The French argued that genocide should be dissociated from the specific genocides committed by the Nazis, and that in the future political groups would be targeted more frequently than racial or religious groups. The Haitians pointed out that political identity could easily provide a pretext for racially motivated killings since political and racial allegiances frequently map onto each other. The basic concern animating both complaints is that by excluding political groups from protection, the Genocide Convention would become a less effective instrument for stopping states from exterminating their citizens. But these concerns had to be balanced against others: the political interests of the negotiating parties, the practical need to define genocide in a way that was both limited and readily identifiable, and the division of labor between the Genocide Convention and other components of international law.

The Genocide Convention which was eventually drafted and voted into law has the following structure:

- Article I declares genocide a crime under international law and stipulates that the parties to the Genocide Convention must act to prevent and punish genocide wherever it occurs.
- Article II defines genocide as “acts committed with intent to destroy, in whole or in part, a national, ethnical racial, or religious group”(Gaeta 2009). This article further specifies the direct and indirect means through which genocide can be committed:
 - Killing members of the group.
 - Inflicting serious bodily or mental harm.
 - Imposing “conditions of life” which will accomplish the above.
 - Preventing births.
 - Forcibly transferring children outside the group.
- Article III notes that genocide can be prosecuted not only for the direct commission of genocide, but also for conspiracy, incitement, attempt, or complicity.

While the overall focus of the Genocide Convention is on the physical destruction of groups rather than their cultural or “social” destruction (Shaw 1997, 40), aspects of Lemkin’s original account can still be seen, particularly in the last two clauses of Article II. Attempts to prevent a group’s physical or cultural reproduction can rise to the level genocide, though in practice genocide has never been declared or prosecuted under the Genocide Convention in any instance where these practices were not coupled with systematic killing. Forced sterilization and the transfer of children have been especially common techniques in genocide’s committed against indigenous peoples, with the latter being used to devastating extent against Australia’s aboriginal population (AHRC 1997). Notably absent is anything like what Lemkin had called vandalism – acts which targeted the outward manifestations of a group’s culture rather than its members themselves. It is easy enough to understand why these acts would be considered an order of severity lower than those included; even so, it is worth noting that the Genocide

Convention is in many ways a narrowing of Lemkin's concept of genocide. Compared to Lemkin's capacious understanding of the process by which one "national pattern" is eliminated and replaced with another, the Genocide Convention seems only to capture what we might call genocidal emergencies – severe and violent campaigns of extermination that demand the immediate attention of the international community.

How well has the Genocide Convention succeeded in this regard? Scholars and other commentators have found the legal definition (Article II) both too narrow and too vague, in a way that has made identifying and prosecuting genocide difficult. Debates about the applicability of the term have hamstrung international responses, while the concept of "intent" has made securing prosecution on charges of genocide a unique burden (Alvarez 2009, Campbell 2013). The exclusion of political groups, as indicated above, has remained a major point of contention as well, both in its own right (van Schaak 1997, Nersessian 2010) and to the extent that it can provide a cover for ethnic killings under the auspices of counterinsurgency (Gellately & Kiernan 2003).

Aside from the definitional disputes, the Genocide Convention's lack of a clear mechanism of enforcement has also been grounds for criticism. Article I instates a responsibility to prevent and punish genocide, but does not indicate what concrete obligations or rights this entails, for individual nations or for the international community as a whole. The fact that the Genocide Convention specifies an international response of any kind makes it a unique instrument of international law. When we look back on the framework of international law that took shape after the Second World War, it is plausible to see Lemkin's work as a piece with efforts like the Universal Declaration of Human Rights. Both seem to be concerned with erecting bulwarks against the varied horrors of the World Wars and the Holocaust. But in fact Lemkin was deeply concerned that the overlap between the Declaration and the Genocide Convention would cause the latter to go ignored. He was also skeptical of the utility of "declaring" human rights without specifying how they would be enforced. Looking back on the first half-century of the Genocide Convention, Michael Ignatieff has argued that history has not

vindicated Ignatieff's hunch, and that the softer norms of human rights have proven a more flexible and broadly applicable instrument for preventing atrocities than the Genocide Convention (Ignatieff 2001). In theory, the Genocide Convention creates firm norms for intervention, but in practice the combination of Article I's requirement of action and Article II's vagueness has contributed to non-compliance and under-diagnosis. The rhetoric of human rights, precisely because it is not in any way linked to the UN or its Security Council in terms of interpretation and enforcement, has been enlisted in countless contexts, with bureaucrats, activists, diplomats, and others finding ways to advance specific causes and policies under the general heading of human rights. Thus, our understanding of human rights and their implementation seems to have been able to evolve in a way that our understanding of genocide has not. This problem of an overly static concept of genocide may be the most general sense in which the Genocide Convention has been a victim of its own success.

III. DEFINING GENOCIDE: COMPETING PARADIGMS IN CONTEMPORARY RESEARCH

For scholars who want to understand the dynamics of genocide and policymakers who want to know when and how to intervene, the legal definition of genocide is only a starting point. For those working within the world of international law to prosecute perpetrators, the legal definition must obviously carry more weight. But even in that context, the concept of genocide has continued to evolve, particularly with regard to the issue of intent. Below I speak to some of the recurring debates in scholarship on genocide which concern the definition and application of genocide, as well as some of the similar concepts which now compete with it.

The specificity of genocide

One of the most striking tendencies in contemporary "genocide studies," an interdisciplinary field which has expanded rapidly since 1990s, is a concerted movement away from the definition of genocide established in the Genocide Convention. As far as many working

scholars are concerned, genocide is a synonym for mass murder committed against any identifiable group. Chalk and Jonassohn argue, for example, that, “Genocide is a form of one-sided mass killing in which a state or other authority intends to destroy a group, and that group and members in it are defined by the perpetrators” (1990, 23). Many other scholars have advanced broadly compatible definitions.¹ Underwriting this shift is a sense that the specialized legal meaning that genocide carries under international law should yield when it comes into conflict with the “ordinary use” (presumably broader) of the term. Several scholars have suggested that the charge of genocide will mount a more effective condemnation of atrocities if technical debates about which crimes count as genocide can be bypassed. Charny captures both of these ideas, writing that, “there should be no situation in which thousands and even millions of defenseless victims of mass murder do not ‘qualify’ as victims of genocide.... The definition of genocide must also be consistent with the everyday usage of the word by reasonable people when they stand and face a mass of murdered people and naturally apply to such an event the only word there is in the human language for such occurrences” (1997, 64). But not all of the applications which Charny has in mind are as commonsensical as he seems to think. For instance, he calls the Tiananmen Square massacre a genocide “in common sense and understanding,” and while the massacre has become a paradigmatic representation of authoritarian repression, it is almost never mentioned in works on genocide.

This debate has played out more recently in the context of scholarly discussions over the international community’s response to the genocide in Darfur. Luban argues that the term genocide should have been used to describe the situation as soon as large-scale violence broke out, even when it was still possible to see the killing as politically motivated, and only incidentally related to ethnicity. Like Charny, Luban supports his argument with an appeal to ordinary language: “In everyday speech, we think of genocide as deliberate annihilation of masses of civilians, regardless of the specific intention” (2006, 316). By narrowing the field of potential victims to national, racial, religious, or ethnic groups whose extermination has been

¹ Drost, Fein, Charny, Katz, Jones

extensively pre-mediated “the laws of genocide part ways with the common meaning of the word, and not for reasons that reflect any coherent moral vision.” By contrast, van Schaak argues that it may be more fruitful “to disentangle the discourse on genocide and humanitarian intervention by arguing that any right or duty of states to engage in humanitarian intervention should be untethered from specific findings of genocide” – determinations which are “irrelevant outside the context of an international tribunal” (2005, 1103-1104). Luban and van Schaak agree that any large-scale killings or crimes against humanity justify a humanitarian response, and they both want to avoid situations like Darfur where the UN’s finding that no genocide was occurring encouraged the misperception that the violence was not severe or was simply a matter of internal unrest. But whereas Luban thinks that maintaining the concept of genocide and leveraging its strong moral connotation, van Schaak thinks that international law can effectively prevent atrocities without attaching any specific importance to the concept of genocide. For van Schaak, the clearest course of action is to fold genocide into a larger and more encompassing concept of crimes against humanity.

Genocidal Intent

In order to qualify as genocidal, mass killings have to be committed with the intent to destroy a group in whole or in part. But in the courtroom and in the opinion of the international community, intent has proven difficult to establish for a number of reasons. First, there has been a question about what, if any, thresholds are relevant in establishing the intent to destroy a group. But whereas military and political leaders can be connected to specific massacres or campaigns of violence, there is rarely evidence available to establish that the specific acts which constitute a genocide are part of a systematic campaign. Most perpetrators do not produce a document like Hitler’s *Mein Kampf*, in which the intention to eliminate a group is laid out starkly (and of course, few in the international community took Hitler’s intentions at face value when that work originally appeared). In these instances, proving genocidal intent can seem to require evidence about the subjective states of perpetrators – not only material facts about who did what, but speculation about motivations as well. Such evidence as perpetrators are liable to

produce about their intentions is often destroyed or suppressed, particularly now that prosecutions for genocide have been made successfully. Second, the idea of genocidal campaigns as being carried out as part of a master plan on the scale of Hitler's genocide against the Jews has largely been displaced in contemporary scholarship by a more complex, sociological account which emphasizes that genocide is a contingent process (Fein 1990). This means that genocide takes place over time and in response to changing circumstances. A limited campaign of intimidation may intensify or expand if the victims fight back, thus providing a scapegoat for further reprisals; if the international community seems indifferent or otherwise unlikely to intervene, the perpetrators may conclude that they can move forward with impunity; in other instances, intense periods of genocidal killing may punctuate what is otherwise a longer and slower-moving process of discrimination, dislocation, or persecution. Thus, looking for a "smoking gun" which shows beyond doubt that some or all of the perpetrators of a genocide intended to exterminate the victims is complicated by the fact that what the perpetrators intend has to be measured against what they can realistically attain, and this is likely to shift over time.

In response to these difficulties, the International Criminal Tribunals for Rwanda and the former Yugoslavia have moved toward a less stringent standard of intent, in the hopes that this can make genocide charges easier to argue. The shift, observable in proceedings from both tribunals, is from requiring proof of "special intent" to something closer to a preponderance of evidence (Totten 2013, Campbell 2013). Prosecutors now also tend to present evidence about which outcomes perpetrators could realistically expect their actions to have, as well as about the facts of their actions themselves, as basis for imputing intent. The difference this makes is that a massacre of civilians from a particular group cannot be described as something other than genocide simply because the perpetrator did not explicitly ideate the massacre as part of a campaign of extermination (or did so without producing any evidence). The fact that a considerable portion of the victim's group was destroyed is enough.

Ethnocide and ethnic cleansing

We have already seen that for Lemkin the destruction of culture is what makes genocide such a grave offense. But what if the destruction of culture could be accomplished through less violent means – at the very least without mass killing – would this still be genocide? And what type of international response would it merit? According to UNESCO's 1981 statement, ethnocide occurs when "an ethnic group is denied the right to enjoy, develop and transmit its own culture and its own language, whether individually or collectively" (Schabas 2000, 189). UNESCO further stipulates that ethnocide is "cultural genocide," and at that, "a violation of international law equivalent to genocide." As noted above, certain clauses in Article II of the Genocide Convention support the idea that cultural destruction is genocide, but whereas only extreme and coercive measures to interfere with a group's reproduction qualify as genocide under the Convention, UNESCO's statement leaves the means unspecified. Given the international community's reticence to act even in instances where genocidal killings occur with shocking speed and violence, it seems unlikely that cultural genocide will ever become a rallying point for international intervention. However, this does not mean the concept is without use. Claims of cultural genocide have provided a rallying cry for activists working to increase recognition of historical crimes committed against indigenous persons. And even when the suppression or persecution of a culture does not approach the severity of genocide, it can be an indicator of or precursor to a genocidal campaign of violence.

However, not all neologism related to genocide serve such benign aims. Particularly during the 1990s, the emergence of a global mass media and a sequence of shocking genocides in Europe and Africa created tremendous pressure for policymakers to respond swiftly, decisively, and publicly. What frequently occurred instead was a grasp for euphemistic language which would allow for the violence to be discussed in a way that would not incur an obligation to act. Additionally, because few genocides approach the apocalyptic magnitude of the Holocaust, many commentators hesitate to use the term genocide for any but the most extensive and organized killings (Jones 2006, 48-50). The phrase "ethnic cleansing" was

popularized to describe Serbia's campaigns of violence in Croatia and Bosnia-Herzegovina, and has remained a preferred term for describing killings that resemble genocide in their tactics and intentions but fall below some unspecified threshold of magnitude. Others have used ethnic cleansing to describe near-genocides which are oriented toward the removal of a population from a specific territory rather than their all-out destruction (Bell-Fialkoff 1993, Spencer 2012).

IV. PREVENTING AND PUNISHING GENOCIDE: THE POLITICS OF NAMING

As the controversies above indicate, there is rarely a unanimous consensus that genocide is occurring, even in cases where violence is extreme and many of the other signifiers of genocide are in place. The uncertainties and grey areas which scholars have confronted as they try to make the dynamics of genocide more comprehensible and thus more susceptible to intervention also have implications for the way that the international community responds to genocide. Some of the same ambiguities regarding intent, scale, and violence, which have impelled scholars to wrangle over definitions of genocide have also provided convenient loopholes for policymakers concerned with avoiding any responsibility for an intervention. Samantha Power's *A Problem from Hell* presents, in unsparing detail, the contortions of language and logic which US policymakers in particular have engaged in order to avoid describing plainly genocidal killings as such. Drawing on her influential account as well as other commentaries on the genocides in the former Yugoslavia, Rwanda, and Darfur, I want to briefly highlight the ways in which international leaders have attempted time and again to frame genocide as anything other than genocide, and how this type of response has been fed into by some of the deficiencies and ambiguities in the legal definition of genocide discussed above.

Yugoslavia

The extended humanitarian crisis that began with the break-up of Yugoslavia can be thought of as three separate events, each of which corresponds to a period of Serbian aggression against one territory and its population: the offensives against Croatia (1991-1995), Bosnia (1992-1995), and Kosovo (1998-1999). In each of these campaigns, the Serbian army led by Slobodan Milosevic, often with the assistance of para-military groups, attempted to expel non-Serbian populations from their homes in order to create larger pockets of ethnic homogeneity. As Croatia and Bosnia withdrew from Yugoslavia, Milosevic hoped that Serbia would be able to maintain control of majority-Serb areas of each country, using targeted violence and concentration camps to expel Croats and Bosnian Muslims while carving out Serbian strongholds. Because Bosnia had a larger Serb population than Croatia, Milosevic was willing to fight harder for its territory, and because Bosnia had been the most ethnically integrated of the Yugoslav nations, it took an especially brutal and protracted campaign of genocide to produce the ethnically homogenous centers of power which Milosevic desired. However, the media frequently framed the violence as an outbreak of “ancient hatreds,” rather than taking account of the proximate political and territorial calculations motivating Milosevic’s atrocities. Related framings included the insistence that what was taking place was a civil war rather than a humanitarian crisis, that “all sides” were committing atrocities. To some extent these claims are true, but they obscure more than they clarify about what was actually taking place in the Balkans. The Serbs were better equipped than the Croats or the Bosnians – they still acted for Yugoslavia and had access to its military, and also had a willing supplier of arms in Russia, whereas the European and American diplomats who sympathized with the plight of the Croats and Bosnians were reticent to send more weapons into the region. Moreover, one study found, in retrospect, that more than 90% of the atrocities committed in the course of the conflict were committed by Serbian military or para-military forces. The framings chosen by the global media created a false equivalence between victim and perpetrator, and presented the struggles over succession, territory, and population as grand civilizational clashes which the international

community would be powerless to defuse. It also in the context of these campaigns that the term “ethnic cleansing” achieved broad currency among policymakers attempting to justify a stance of non-intervention. In this context it is worth noting that the language of “ethnic cleansing” originates with the perpetrators of genocides, going back to the “čišćenje” of the Serbs by the Croats during the 1940s. Among the advantages of this term for perpetrators is that it makes their own actions seem less horrific, allowing leaders to order atrocities without directly calling for extermination in a way that would make them legally (or morally) culpable (Power 2002/2013). When the international community adopts the rhetoric of ethnic cleansing, it not only risks obscuring the recognition of a genocide in progress, but there is also the worry that it rhetorically cedes to the perpetrator’s version of events (Jones 2006).

Rwanda

Temporizing via terminological dispute was also a characteristic of the international response to the genocide that took place in Rwanda during the spring and summer of 1994. In this case, the blurring of political and ethnic identities was part of the reason why genocide was not immediately recognized. Romeo Dallaire, the Major-General of United Nations Assistance Mission for Rwanda, noted that when the Hutus first began killing the Tutsis en masse, he believed them to be targeting their political enemies only (Barnett 2002, Power 2002/2013). It took the realization that thousands, not dozens or even hundreds, of Hutus were being killed, and that they were being killed in an indiscriminate fashion which included women and children, to realize that the killing were not political in nature. But even at this point, Dallaire struggled with whether to describe what he was witnessing as a genocide or to consider it a crime against humanity:

I was self-conscious about saying the killings were ‘genocidal,’ because to us in the West, ‘genocide’ was the equivalent of the Holocaust or the killing fields of Cambodia. I mean millions of people. ‘Ethnic cleansing’ seemed to involve hundreds of thousands of people. ‘Genocide’ was the highest scale of crimes against humanity imaginable. It was so far up there, so far off the charts, that it was not easy to recognize that we could be in such a situation. I also knew that if

I used the term too early, I'd have been accused of crying wolf and I'd have lost my credibility. (Power 2002/2013, 358).

Within the first month of the killings, however, Dallaire had put the pieces together and warned the international community that it needed to act quickly if it wanted to avert the genocide.

The response of the international community indicated that this was not, in fact, a priority. In a perverse recognition of the duties entailed by international law, the US Departments of Defense and of State specifically avoided using the language of genocide to describe what was happening in Rwanda because it was widely believed that doing so might obligate the United States to make a unilateral intervention. The United States also blocked attempts by the UN Security Council to use the term genocide, insisting that it be referred to instead as a "crime punishable under international law." In perhaps the most bizarre and frustrating abuse of language, spokespeople for the US Department of Defense adopted the line that "acts of genocide have occurred" in Rwanda while denying that the situation as a whole or any particular incident which comprised it constituted genocide. Even when, after months of equivocation and hundreds of thousands of deaths in Rwanda, the term genocide was finally accepted by the United States, policymakers continued to frame the events as a civil war and denied any obligation to get involved.

Darfur

If US policymakers learned anything from the controversy over Rwanda, it was that the semantic squirming was not necessary if the only concern was to sidestep an obligation to intervene. Though the Genocide Convention articulates a shared responsibility to prevent and punish genocide, it does not make any claims about the obligations incurred by specific parties to the convention, nor does it explicitly counsel unilateral action in the absence of a coordinated international response. Thus, when the news from Darfur came to the attention of the international community in 2004, the United States was unusually forthright about acknowledging the genocide underway. The evidence suggested that the Sudanese government

was employing Janjaweed militias – and in some instances supporting them with airstrikes – to destroy and displace the Fur, Masalit, and Zaghawa populations from Western Sudan. What began as a counterinsurgency targeting a liberation movement drawn largely from these ethnic groups eventually led to a terrifying spectacle of rape, murder, and dislocation that impacted millions. Addressing the crisis in mid-2004, Colin Powell, then Secretary of State, asserted that genocide was taking place in Darfur, but that the United States had no obligation to intervene (Luban 2006, Hagan & Ryman-Richmond 2009). The UN Security Council was effectively hamstrung when it came to addressing the issue, since China was willing to levy its veto to protect the Sudanese government from reprisals. Then, in early 2005, the United Nations struck a decisive blow to the international campaign for an intervention when it declared, contra Powell, that no genocide was taking place. A commission appointed by the UN to investigate the situation had concluded that while the Sudanese government was guilty of various atrocities and breaches of international law, its campaign of killing and displacement did not evince a clear intent to destroy the victim groups as such. Despite the commission's assertion that the crimes which were taking place in Sudan might be “no less serious and heinous” than genocide, many in the international community concluded from the findings that the situation in Darfur was not as serious as they had been led to believe.

Skeptics of intervention also took these findings to heart. Mahmood Mamdani has been a vocal detractor from the “Save Darfur” movement and the humanitarian intervention which it sought to mobilize (2007, 2009). He has repeatedly deflated the claim of genocide by arguing that framing the conflict as one between ethnic groups, one victim and one perpetrator, does not do justice to the patterns of insurgency and counterinsurgency which gave rise to the violence. He also highlights the hypocrisy in Darfur's having become a cause célèbre among humanitarians while the crisis in Congo, with its comparatively higher death toll and more pronounced ethnic dimension, gets passed over in silence. In indicating the selectivity with which the term genocide is deployed and calling attention to the “politics of naming,” Mamdani shows how the moral force of the language of genocide can be instrumentalized by various actors on the international stage. That said, Mamdani's attempts to reveal the “real” interests

behind the US's focus on Darfur, which have to do with the strategic aspects of the War on Terror, are not eminently plausible. If Darfur mattered so much to the United States, then why did Colin Powell so emphatically deny a responsibility or intention to get involved? Mamdani is surely right that more goes into such judgments than a neutral application of legal criteria, but his read on this particular incident is unconvincing. But there are other cases where his argument may be vindicated: over the last few months, the United States has gradually escalated its military presence in Iraq and Syria in order to combat the radical Islamist group known as ISIS/ISIL. The threat that ISIS/ISIL would commit genocide against Iraq's religious minorities was a major point in the White House's case for an intervention. This is not to say that if Mamdani is right than the White House must be lying – it is entirely possible that genocide was prevented, for example, against Iraq's Yazidis or its Christians. But Mamdani's wider point, that the moral weight of the charge of genocide makes it a powerful means by which to sell an interventionist foreign policy, seems more plausible in light of this most recent phase in the War on Terror.

Conclusion

The word genocide has now been a part of the lexicon of human rights and international law for sixty years. But Lemkin's conviction that putting a word to the "crime without a name" would empower the international community to prevent it in the future has yet to be borne out. The normative, legal, conceptual, and political valences of the term seem frequently to be at odds, leading to confused and confusing responses in those moments of crisis when clarity is most desperately needed. Generally speaking, the international community's track record for preventing genocide remains poor, while the efforts of ICTY and ICTR have improved the effort to punish genocide considerably. The truth is, no word, no matter how forceful it sounds or precisely it is defined, will compel sovereign nations to act against their own interests. Though Lemkin's project has fallen short of its remarkable ambitions – and how could it not? – his word has given us a handle on a twentieth century whose violence might have been overwhelming without some way to comprehend it, and a basis from which to respond to what lies ahead in

the twenty-first. Lemkin's efforts have thus changed the word by making it comprehensible where previously it defied comprehension. The passage from comprehension to action will require more than a word, of course, but being able to name the distinctive evils of our times is a necessary step on the way to a more peaceful and less endangered world.

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