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Genocide Studies and Prevention: An International Journal

Volume 10.1 - 2016

Genocide Studies and Prevention: An International Journal

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Volume 10.1 - 2016

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This issue of *Genocide Studies and Prevention* (GSP) is the very embodiment of the interdisciplinary nature of the journal. We have five articles, spanning the fields of history, politics, ethnic studies, law, anthropology and international relations. Geographically, the articles analyse genocides on four continents: Africa, Asia, Europe and North America. This clearly demonstrates the diversity of the fields of genocide scholarship, both in terms of discipline and the geographical ambit of mass atrocities. Genocide and related forms of mass violence are truly global crime phenomena that impact upon millions of people worldwide. It is no wonder, then, that genocide scholarship also crosses borders- disciplinary, geographical and subject-matter borders. A heinous crime creating millions of victims and survivors also motivates activists and scholars to work on awareness, memorialisation, justice, and overall, prevention. Part of this work is found in every issue of GSP, where we give voice to the scholars who cross boundaries in order to help understand and thus prevent genocide and other mass atrocities.

Three of the articles in this issue are a follow-up to [GSP Issue 9.2 Time, Movement, and Space: Genocide Studies and Indigenous Peoples](#). Guest editors David MacDonald and Tricia Logan have continued their work with GSP to bring you three more articles dealing with indigenous genocide issues. Their editorial discusses the three articles by Andrew Basso, Margery Grace Hunt Watkinson and Chris Powell, and provides an update on recognition of indigenous genocides around the globe, with a particular focus on the significant steps taken in Canada since the election of the Trudeau government.

The final two articles of this issue cover two distinct topics in the field of genocide studies. In the context of a formal justice mechanism, Annie Pohlman considers the role of oral history in remembrance and justice for victims of sexual violence during the 1965 violence in Indonesia. Carola Lingaas' article, based on her presentation at the 2015 International Association of Genocide Scholars (IAGS) conference in Yerevan, considers the difficulty that international courts have had in defining race, the challenges of the definition of race for the prosecution of genocide, and how Benedict Anderson's *Imagined Communities* theory can be applied in international courts and tribunals when considering race as a listed target group for genocide.

This issue also includes three book reviews and one review essay. There are two works that represent some facet of the Armenian Genocide. In one, Andrekos Varnava provides a thorough analysis of Fatma Müge Göçek's, *Denial of Violence: Ottoman Past, Turkish Present and Collective Violence against the Armenians, 1789-2009*. In the other, Taner Akçam's lengthier review essay gives extensive consideration to Joost Jongerden and Jelle Verheij's edited volume, *Social Relations in Ottoman Diyarbekir, 1870-1915*. Christopher P. Davey reviews the outcome of the conference proceedings on the legacies of colonialism in North America which are represented in the edited collection by Andrew Woolford, Jeff Benvenuto, and Alexander Laban Hinton on *Colonial Genocide in Indigenous North America*. Lastly, Tony Barta gives a poignant review of Nigel Eltringham and Pam Maclean's *Remembering Genocide*.

In recent decades, with some difficulty, some scholars have started to research the Franco years in Spain (1936-1975). Products of this research include the documentaries *Franco's Forgotten Children* (2002) and *Give Me Back My Child!* (2011), reviewed in this issue by Ruth Amir. These titles present the stories of the children removed from their parents by Franco's regime in order to impose a new identity on them. These actions are portrayed as a clear case of genocide that warrants the attention of genocide scholars.

GSP accepts submissions on a rolling basis, but also currently has three thematic calls for papers, details of which are [available on the website](#). We look forward to receiving more of your border-crossing submissions.

Melanie O'Brien
JoAnn DiGeorgio-Lutz
Lior Zylberman
Christian Gudehus
Douglas Irvin-Erickson
Randle DeFalco
Hilary Earl

Guest Editors' Introduction: Genocide Studies, Colonization, and Indigenous Peoples

As guest editors we are pleased to introduce the symposium on Indigenous genocide in Issue 10.1 of *Genocide Studies and Prevention: An International Journal*, featuring three articles on various aspects of this important topic. While the focus is primarily on selected Indigenous peoples of what are now the Americas, these articles also have comparative dimensions, suggesting a broader theoretical and practical applicability.

Last year, the full special issue of "Time, Movement and Space: Genocide Studies and Indigenous Peoples" (Issue 9.2) helped contribute to the growing dialogue and turn discussion to an increasingly decolonized vision of genocide studies. These two issues of the *Genocide Studies and Prevention* include and also transcend the discussion of definitional debates. The range of topics included in these special issues help to demonstrate how seemingly diverse cases of genocide compliment a unified narrative of how colonialism/colonization disintegrated Indigenous lives worldwide.

Since our previous special issue in 2015, the context of Indigenous-settler relations has somewhat changed in Canada. On 15 December 2015, Canada's Truth and Reconciliation Commission held its final event in Ottawa, a small ceremony in which a six volume report totaling over 2 million words was released to the media and the general public. The report was divided as follows: *The History, Part 1 - Origins to 1939; The History, Part 2 - 1939 to 2000; The Inuit and Northern Experience; The Métis Experience; Missing Children and Unmarked Burials; The Legacy; and Reconciliation*.

The primary concern of the TRC was promoting reconciliation according to 94 recommendations, which included a range of measures from increased funding for Indigenous programming for the Canadian Broadcasting Corporation to the adoption into domestic law of the UN Declaration on the Rights of Indigenous Peoples, as well as a national monitoring body to oversee and report back annually on the implementation of the TRC recommendations. The TRC commissioners posit that as the Indian Residential Schools system lasted for seven generations, so too might it take seven generations before reconciliation can be achieved in Canada. They have set an ambitious agenda, based on thousands of conversations with Survivors and many others, and their recommendations also build on the 1996 Report of the Royal Commission on Aboriginal Peoples.

Another major change took place on 20 October, when the Conservative government of Stephen Harper was decisively toppled by the Liberal Party of Justin Trudeau. Harper's administration was generally perceived as hostile to Indigenous interests, and much of the regime's legislation was designed to reduce the self-determining capacities of First Nations peoples. Indeed, Harper's legislative agenda (such as omnibus Bill C-45 removing federal protection from most forests and waterways) precipitated the formation of Idle No More in late 2012. Many prominent Harper-era cabinet ministers were not re-elected to Parliament, including Aboriginal Affairs minister Bernard Valcourt, who notably refused to rise or applaud the work of the TRC when they released their summary report in June 2015.

While it is too early to properly gauge the policies of the current Trudeau era, the government has been far more positive (at least rhetorically) in terms of embracing Indigenous rights. For example, former TRC Chief Commissioner Murray Sinclair was appointed as a Senator by the Trudeau government, and Trudeau has more widely consulted with First Nations leaders, and has forged strong relations with the Assembly of First Nations, in particular National Chief Perry Bellegarde.

In May of this year, the government pledged at the Permanent Forum on Indigenous Issues at the United Nations to formally adopt the UNDRIP and incorporate its provisions into domestic law, which will mean harmonizing existing law with the UNDRIP. This ended nine years of Conservative opposition to the Declaration. While Canada was the last of the four western settler states to adopt it (Australia, the United States, and New Zealand all changed their attitudes earlier) it's possible that Canada may adopt the most far-reaching changes to its domestic legislation.¹

Despite these high profile changes of attitude, problems within Indigenous communities remain serious, such as for example the recent crisis at the First Nation of Attawapiskat, which in early

¹ "Canada officially adopts UN declaration on rights of Indigenous Peoples" *CBC News*, May 10, 2016, accessed June 2, 2016, <http://www.cbc.ca/news/aboriginal/canada-adopting-implementing-un-rights-declaration-1.3575272>.

2016 declared a state of emergency due to a dangerously high suicide rate. While the population of this First Nations is around 2,000 people, over 100 people have killed themselves from September 2015 to April 2016, children as young as 11 years old. Deplorable housing conditions, systemic racism, extremely poverty, and many other issues have been cited as causes.² The federal budget has not gone far enough in terms of correcting the funding shortfalls of previous governments, despite federal government claims to the contrary.

Overall the government appears to be making some progressive change to improve relationships with Indigenous peoples as individuals and as nations. The situation will be more complicated than it currently seems since UNDRIP is not just about honouring existing treaties or forging better relationships with existing First Nations bands as recognized under the federal Indian Act. It is about a renewed relationship, which will also imply honouring Indigenous forms of government and identity which are not fully covered in existing legislation. Metis and non-status Indigenous peoples may in particular be strong beneficiaries of this change in direction.

Going into this second special issue, we are somewhat more hopeful about the future direction of Indigenous issues in Canada. Rather than being a laggard internationally, Canada has the potential to play a positive role in promoting UNDRIP, if sufficient political will exists. South of the Canadian border it is unclear what sort of changes will develop after the presidential and Congressional elections this coming November. At the time of writing neither Donald Trump nor Hillary Clinton has been confirmed as the presidential nominee for their respective parties. Neither candidate appears particularly progressive on Indigenous issues, although a Trump presidency would most likely be more retrograde than a Clinton one.

The three articles in this special issue explore various aspects of Indigenous genocide, employing comparative and theoretical perspectives. In her article, "In the Land of the Mountain Gods: Ethnotrauma and Exile Among the Apaches of the American Southwest," M. Grace Hunt Watkinson focuses her attention on the Mescalero and the Chiricahua Apaches of what is now New Mexico. In particular, her work explores how the brutality of colonization, which included vigilante violence and forced removal, created forms of collectively based "ethnotrauma." A key aspect of such ethnotrauma is exile from traditional lands, which can in part be resolved or healed by a renewal of sacred connections to the lands that sustained Indigenous communities over millennia.

Chris Powell develops the concepts of ethnosphere and ethnodiversity to highlight how cultural genocide of Indigenous peoples can best be understood in an increasingly globalizing age. As Powell explains, reflecting in part the work of Wade Davis: "The global ethnosphere is the totality of all living human cultures; ethnodiversity is the degree of cultural diversity in a given social arena." Linguistic and cultural extinction threaten to destroy the potential contributions of many of the world's Indigenous peoples. Building on Lemkin, Powell advances an argument in favour of viewing the loss of ethnodiversity through the lens of genocide. As a more global society evolves, Powell alerts us to some of the dangers it poses, particular for Indigenous peoples.

Finally, Andrew Basso has contributed an article entitled "Towards a Theory of Displacement Atrocities: The Cherokee Trail of Tears, The Herero Genocide and the Pontic Greek Genocide." Here, Basso employs stories of atrocity to focus on three cases of mass displacement. Through these cases, Basso poses a theoretical frame of "displacement atrocities". These cases are also representative of stories that are rarely examined and even more rarely, examined together. Basso's discussion of "indirect killing" through displacement atrocity opens a broader dialogue about long-term, systematic removal of populations through deprivation from food, water, shelter and medicine. This article is placed at an intersection between multiple segments of genocide studies including: displacement atrocities, mass deprivation and long-term, systematic killings.

Constructing a theoretical frame for these cases, Basso outlines how perpetrators use or do not use displacement to remove population. His cases are convincing and diverse but also, each case demonstrates how territory is unjustly claimed through destruction of a group. Between various cases and theories we always need to consider or re-consider how we work with comparative

² Laurence Mathieu-Léger and Ashifa Kassam, "First Nations community grappling with suicide crisis: 'We're crying out for help'", *The Guardian*, April 16, 2006, accessed June 2, 2016, <http://www.theguardian.com/world/2016/apr/16/canada-first-nations-suicide-crisis-attawapiskat-history>.

genocides. The way that Basso describes and names atrocity is compelling and lends to a discussion on the theories we select when labeling atrocities or genocide. Moreover, when we consider the set of cases selected for this article it reminds us how important it is to keep shifting the way we select cases and continually re-align our view in order to see things from a renewed perspective.

We should also note that this focus on Indigenous genocide has been echoed in the *Journal of Genocide Research*, where a special issue on Canada and Colonial Genocide was also released last year (Volume 17, Issue 4). As academics promoting a decolonizing turn in genocide studies, we both contributed articles to that issue. David's is entitled "Canada's history wars: indigenous genocide and public memory in the United States, Australia and Canada", and Tricia's is entitled "Settler colonialism in Canada and the Métis." We have been told that this special issue will be published as an edited book sometime within the next year.

Last but not least, our thanks go to the authors, our anonymous peer-reviewers, the *GSP* editorial board, and of course Mel O'Brien who has worked tirelessly to ensure that this volume was of high quality and made it to press on time. We look forward to working with her and with *Genocide Studies and Prevention* again in the future.

David B. MacDonald
Tricia Logan

Towards a Theory of Displacement Atrocities: The Cherokee Trail of Tears, The Herero Genocide, and The Pontic Greek Genocide

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Abstract: This article examines how displacement is used as a tool of atrocity perpetration and offers initial observations that will be used to create a future typology of Displacement Atrocities. Perpetrators' uses of forced population displacement coupled with systematic deprivations of vital daily needs (i.e., food, water, clothing, shelter, and medical care) combine to kill targeted victims through primarily indirect methods. A preliminary theoretical framework of Displacement Atrocities is offered and the critical elements that comprise this crime are explored. I argue that the Displacement Atrocity crime is a new way of understanding lethal forced population displacement. This theoretical framework is used to examine three typically understudied atrocities: the Cherokee Trail of Tears, the Herero Genocide, and the Pontic Greek Genocide. These processes of destruction are all classified as examples of Displacement Atrocities. This article is part of a larger research project on Displacement Atrocities to be completed in the coming years.

Keywords: atrocity, genocide, displacement, indirect killing, vital human needs, Cherokees, Hereros, Pontic Greeks

Introduction

The question 'How and why do perpetrators utilize displacement as a tool to commit atrocities against a targeted people?' yields a multi-layered and complex array of responses. This type of crime should be called a Displacement Atrocity (DA). Contemporary studies of human rights violations and atrocities often focus on the prevention and punishment of crimes with little attention paid to theorizing about the killing processes themselves and why perpetrators select some methods of killing over others).¹ There have been many single-case studies of atrocities that included displacement as a method of killing, but all have been explored on the individual case level and rarely strive to create theory.² These single-case studies of individual crimes juxtapose with attempts at building universal theories to account for how and why atrocities are committed, which can often be too broad and create variables that can account for almost anything or are too abstract to be pragmatically applied.³

Rather than focus on a single case or universal account, this paper seeks to construct a mid-range theory of a specific killing process used in atrocity crimes. This targeted study offers insights into methods of displacement killings tied together in theory form, something lacking in current comparative atrocity scholarship. Approaching atrocities at a mid-range theory level between single-case studies and universalist accounts is critical moving forward in atrocity scholarship. This article represents an initial attempt at understanding how displacement is used as a tool to commit atrocities and is part of a broader ongoing research project.

Research has been conducted through a comparative political science lens and provides a structural account of atrocities, a strongly suggested research agenda within the *Oxford Handbook*

¹ Benjamin Lieberman, "From Definition to Process," in *New Directions in Genocide Research*, ed. Adam Jones (New York: Routledge, 2012), 3-17 and Adam Jones, "Genocide and Structural Violence," in *New Directions in Genocide Research*, ed. Adam Jones (New York: Routledge, 2012), 132-152.

² Michael D. Green, *The Cherokee Removal: A Brief History with Documents* (New York: Bedford/St. Martin's Press, 2005), Horst Drechsler, "Let Us Die Fighting": *The Struggle of the Herero and Nama Against German Imperialism (1884-1915)* (London: Zed Press, 1980), Tessa Hofmann, "Cumulative Genocide: The Massacres and Deportations of the Greek Population of the Ottoman Empire (1912-1923)," in *The Genocide of the Ottoman Greeks: Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and Its Aftermath: History, Law, Memory*, eds. Tessa Hofmann, et al. (Sarsdale: Melissa International Ltd, 2011), and Joyce Apsel, "Research and Teaching about Genocide: history, challenges and new directions," in *Genocide Matters: Ongoing Issues and Emerging Perspectives*, eds. Joyce Apsel and Ernesto Verdeja (New York: Routledge, 2012), 3-5.

³ Ben Kiernan, *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur* (New Haven: Yale University Press, 2007), Mark Levene, *Genocide in the Age of the Nation State, Vol.1: The Meaning of Genocide* (London: I.B. Tauris, 2005), and Lieberman, "From Definition to Process," 5-8.

of *Genocide Studies*.⁴ This structural approach seeks to connect multiple cases of atrocities instead of treating them as isolated events and to examine how, “elites, political parties, bureaucracies, armed forces, and paramilitaries” are all connected in atrocity perpetration.⁵ This paper presents the beginnings of a typological theory of DA crimes using approaches and methodologies best outlined by Alexander L. George and Andrew Bennett in *Case Studies and Theory Development in the Social Sciences*, a standard text in qualitative comparative political research programmes.⁶ Within this approach, a most different case selection is employed, with the goal of linking typically understudied cases that each illuminate different kinds of DA crimes. The cases exemplify the diverse range of policy and policy implementation, government type, and geography, among many other elements, that comprise DA crimes.

A DA crime encapsulates the processes of forced population displacement and systemic deprivations of vital human needs (i.e., food, water, clothing, shelter, and medical care) to destroy populations in whole or in part. The DA crime is first defined and situated within contemporary scholarship and international legal frameworks. The five characteristic stages of the DA crime are then presented and outlined theoretically with few empirical examples. Following this, the DA framework is applied empirically to three atrocity cases that are typically understudied and have not been previously linked: the Cherokees in the United States of America (USA) (1838-1839), Hereros in German Southwest Africa (GSWA) (1904-1908), and the Pontic Greeks in the Ottoman Empire (1916-1918 and 1919-1923).⁷ All cases followed systemically similar steps of DA perpetration including displacement as the main method of killing despite other available options.

Defining and Situating ‘Displacement Atrocity’

The definition of DA crimes that I have developed and will use in this paper is:

A Displacement Atrocity is a type of killing process employed against a targeted population defined by the perpetrators which uniquely fuses forced population displacement and primarily indirect deaths resulting from the displacement and systemic deprivations of vital human needs to destroy a group in whole or in part.

The most critical component of the DA crime process is the primary use of indirect killing methods, e.g., systemic deprivations, to accomplish the population destruction desired by the perpetrators. DA crime theory is distinctly linked with genocide by attrition, first identified by Helen Fein. With the attrition concept, Fein intended to explain killing via indirect methods, sparking a new branch of atrocity research.⁸ More recent examples of applying attrition to atrocity cases have been completed by Eric Reeves and Samuel Totten to explain the crimes against Darfurians and the Nuba in Sudan, and by Sheri Rosenberg and Everita Silina as a framework to explain and link a number of other cases.⁹ However, what current genocide by attrition literature mostly neglects is the examination and understanding of the displacement process utilized in atrocities, something it had originally intended to accomplish. This DA crime study provides an explicitly targeted understanding of displacement processes to fill this gap in theory.

⁴ Donald Bloxham and A. Dirk Moses, *The Oxford Handbook of Genocide Studies* (New York: Oxford University Press, 2010), i-v and 1-18.

⁵ Anton Wiess-Wendt, “The State and Genocide,” in *The Oxford Handbook of Genocide Studies*, eds. Donald Bloxham and A. Dirk Moses (New York: Oxford University Press, 2010), 99-100.

⁶ Alexander George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, Massachusetts: MIT Press, 2004), 205-262.

⁷ Green, *The Cherokee Removal*, Drechsler, ‘*Let Us Die Fighting*’, and Hofmann, “Cumulative Genocide.”

⁸ Helen Fein, “Genocide by Attrition 1939-1993: The Warsaw Ghetto, Cambodia, and Sudan: Links between Human Rights, Health, and Mass Death,” *Health and Human Rights* 2, no. 2 (1997), 10-13.

⁹ Eric Reeves, “Genocide by Attrition: Agony in Darfur,” *Dissent*, 52, 1 (2005), Samuel Totten, *Genocide by Attrition: The Nuba Mountains of Sudan* (New Brunswick: Transaction Publishers, 2012), and Sheri P. Rosenberg and Everita Silina, “Genocide by Attrition: Silent and Efficient,” in *Genocide Matters: Ongoing Issues and Emerging Perspectives*, eds. Joyce Apse and Ernesto Verdeja (London: Routledge, 2013).

The DA term was originally conceptualized in my previous research as 'Displacement Genocide'.¹⁰ However, David Scheffer's work influenced my decision to replace 'genocide' with 'atrocities' because of the encumbered, charged, and largely dogmatic (sometimes unproductive and stagnant) debates over what groups are protected under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.¹¹ To avoid labelling problems, an initial interest in writing this article was not labelling 'genocide', 'crimes against humanity', or 'war crimes' to any of the cases explored, but rather to strictly identify and understand the displacement killing processes themselves as 'atrocities'. However, it became readily apparent that the identification of the DA type of killing required an exploration of its implications for international law at the very least. While I certainly do not present an exhaustive list, nor a full exploration of how DA crimes could be codified as crimes in international law, further research programmes into how DA crimes fit within the present international legal regime can and should be a priority.

Article 6 of the Rome Statute of the International Criminal Court reiterates the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.¹² Within this crime, I argue that understanding Article 6(c) should include not just aspects of starvation and disease as conditions inflicted on a group to bring about its destruction (see Helen Fein's identification of genocide by attrition for a further elaboration on these concepts) but also displacement as a tool perpetrators utilize to destroy a group in whole or in part.¹³ This is not a completely new way of understanding the conditions of life clause in the Genocide Convention, rather it is a different and expanded way of understanding deliberately inflicted conditions to bring about group destruction.

In terms of Crimes Against Humanity, Article 7 of the Rome Statute, I believe there should be a new understanding of extermination (Article 7(1)(b)) that allows for lethal displacement to be tried as a crime. According to the Rome Statute, "'extermination' includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population."¹⁴ DA crimes should be considered part of the *inter alia* due to their deadly outcomes. While Article 7(1)(d) on deportation or forcible transfer of population seems to cover the DA crime, it differs slightly in that the DA crime is better described as a process of extermination via displacement, not just displacement for the sake of displacing or cleansing a people from a given territory.

Finally, Article 8 of the Rome Statute proscribes War Crimes. In this Article, there are no acts listed that outline the DA crime. Because of this, there should be a new crime defined within War Crimes that includes the DA crime definition and elements outlined in this article. There are multiple crimes within Article 8(2)(a)(b)(e) that could describe DA crimes, but they do not explicitly delineate acts that are similar to DA crimes.¹⁵

While it may be stated that DA crimes and ethnic cleansing are very similar, there are a few problems with the latter concept. First, comparing the two is a difficult enterprise because ethnic cleansing is primarily concerned with cleansing an area, not necessarily killing a population (which is the focus of the DA crime). Second, there are multiple, nebulous definitions for ethnic cleansing and it is difficult to triangulate which one holds the most intellectual weight. Finally, ethnic cleansing is not a crime in international law. While it has been referenced in some ICTY cases, it is a crime without clear definition and legal applicability.¹⁶

¹⁰ Andrew Basso, "Dying as Exiles: Deportation Genocide Theory and the Relationship Between Displacement and Genocide" (Master's Thesis, Wilfrid Laurier University, 2013) and Andrew Basso, "Towards a Displacement Atrocities Theory: The Cherokee, Herero, and Pontic Greeks" (paper presented at the Eleventh Meeting of the International Association of Genocide Scholars, Winnipeg, Manitoba, July 2014).

¹¹ David Scheffer, "Genocide and Atrocity Crimes," *Genocide Studies and Prevention*, 1, no. 3 (2006), David Scheffer, "The Merits of Unifying Terms: 'Atrocity Crimes' and 'Atrocity Law'," *Genocide Studies and Prevention* 2, no. 1 (2007), Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly, New York, 9 December 1948, no.1021, and Lieberman, "From Definition to Process," 3-17.

¹² United Nations, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6.

¹³ *Ibid.* and Fein, "Genocide by Attrition."

¹⁴ United Nations, *Rome Statute*.

¹⁵ *Ibid.*

¹⁶ Norman Naimark, *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe* (Cambridge: Harvard University Press,

Elements of Displacement Atrocities

DA crimes have five key facets that warrant further elaboration. These are: a defined targeted group, a responsibility for deaths, a displacement over a large territory, the distinction between indirect and direct killing, and necessary and sufficient variables for a DA label.

A Defined Targeted Group

Contributing to an earlier scholarly and legal debate about which groups are protected under the genocide convention and other definitions is not the intent of this mid-range theory paper, but these schools of thought require recognition. Unlike hardline legal and centre camps that seek to protect the uniqueness of the term 'genocide' or specifically delineate groups that are protected, a liberal scholar camp argues for redefining what groups are protected and how they can be defined.¹⁷ This paper is predicated on the ideas of the latter group of scholars, those in the liberal camp, who postulate that any group *as defined by the perpetrators* can be subjected to atrocities generally, which does not necessarily require a rigid definition of groups, and genocide specifically.¹⁸ Perpetrators can exogenously, or targets can endogenously, conceptualize their own existence – the broad literature on ethnicity, race, nationalism, and groups is helpful for understanding the fluidities and *non sequiturs* of group identity, formation, and inclusion/exclusion.¹⁹ How the perpetrators view the targeted group is, ultimately, the crucial element in understanding why the group is being destroyed.

Responsibility for Deaths

DA crimes can be understood as either genocide, crimes against humanity, or war crimes. Certainly if a verdict of genocide is to be rendered then a *dolus specialis* must be proven for an intent to destroy a group in whole or in part as such.²⁰ However, crimes against humanity and war crimes do not have the special intent threshold that genocide requires. Perhaps then, we can understand a DA crime as either intended, born out of recklessness, or as unintended. In all three situations, a DA is still an atrocity crime and still deserving of individual criminal prosecution at the International Criminal Court and in domestic courts. Perpetrators can discriminate among targets directly (for example, by removing men from communities as part of the DA crime process) and indirectly (meaning the perpetrator policy does not discriminate among targets). Perpetrators inflict conditions of life that at the very least will foreseeably lead to mass death or at the maximum are fully intended outcomes to destroy groups as such. This is best demonstrated by systematic deprivations of vital human needs. It is reasonable to assume that perpetrators know if individuals are not fed, clothed, and sheltered, then they will die. If policies are implemented to deprive individuals of these things during an exhausting displacement, it is reasonable to assert that perpetrators knew they would die as a result of these policies and conditions.

2001), Michael Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing* (New York: Cambridge University Press, 2005), Nicolas Werth, "Mass Deportations, Ethnic Cleansing, and Genocidal Politics in the Later Russian Empire and the USSR," in *The Oxford Handbook of Genocide Studies*, eds. Donald Bloxham and A. Dirk Moses (New York: Oxford University Press, 2010), 386-406, and *Prosecutor v. Krstić*, Appeals Chamber Judgment, 19 April 2004, IT-98-33-A.

¹⁷ William Schabas, "Genocide Law in a Time of Transition: Recent Developments in the Law of Genocide," *Rutgers Law Review* 61, no. 1 (2008), 164-178, Larry May, *Genocide: A Normative Account* (New York: Cambridge University Press, 2010), 1-22, Steven T. Katz, *The Holocaust in Historical Context: Volume 1: The Holocaust and Mass Death Before the Modern Age* (New York: Oxford University Press, 1994), 42-58, Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven: Yale University Press, 1982), 120, Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analyses and Case Studies* (New Haven: Yale University Press, 1990), 35, Martin Shaw, *What is Genocide?* (Malden: Polity Press, 2007), 154, and Helen Fein, *Genocide: A Sociological Perspective* (London: Sage Publications Ltd., 1993), 23.

¹⁸ Fein, *Genocide*, 23 and Chalk and Jonassohn, *The History and Sociology of Genocide*, 35.

¹⁹ Stuart J. Kaufman, *Modern Hatreds: The Symbolic Politics of Ethnic War* (Ithaca: Cornell University Press, 2001), Anthony Marx, *Making Race and Nation* (New York: Cambridge University Press, 1998), Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Los Angeles: University of California Press, 1985), and Joel Migdal, *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World* (Princeton: Princeton University Press, 1988).

²⁰ May, *Genocide*, 97-156 and Robert Cryer, et al., *An Introduction to International Criminal Law and Procedure* (New York: Cambridge University Press, 2010), 206-227.

Displacement Over Open Territory

Open territory can be described as a land mass that has few if any human communities. This type of territory is typically far removed from metropolitan areas. The land is inhospitable to human survival and can best be described as underdeveloped. This territory typically has few usable resources for the displaced peoples to use for survival and if resources exist, perpetrators have typically denied victims the opportunity to exploit these resources.²¹ The vastness of the open territory is conducive to forced marches, displacements, and other forced removal actions that are designed to kill a victim population away from the prying eyes of witnesses in urban and more developed rural areas.

A key distinction needs to be clarified regarding the difference between linear distance and total area. For DA crimes, perpetrators have in the past exploited both linear distance and total area to commit their atrocities. As will be demonstrated in the cases below, the Germans displaced the Herero into the Namib and Kalahari Deserts, places that are not necessarily overwhelming in linear distance from border to border, but are vast in terms of area squared.²² The Cherokees in the Southern USA were marched over 1,900 kilometres from the Carolinas to Illinois to Oklahoma, and the Pontic Greeks were marched from the Black Sea coastline to Der Zor, over 800 kilometres in linear distance.²³ All three of these DA examples are indicative of the strategic uses of space perpetrators have exploited and, theoretically, demonstrate that displacement does not necessarily have to occur in a place of vast linear distance; it can occur in a place that is simply vast in area. In both scenarios, linear distance and total area, the ultimate goal of population destruction is accomplished due to the path of displacement and the magnitude of the distance travelled either in a line or in an area.

The open territories utilized by perpetrators is a principal defining aspect of a DA as victims are displaced to these types of territories instead of stationary killing centres like the extermination camps in Poland during the National Socialist Genocides.²⁴ The goal of a DA is to utilize displacement as the primary killing method. This becomes especially evident in death marches, forced exposure to elements, and the systemic denial of vital human needs during displacement in multiple territorial locations. The large displacement in either linear distance or area causes physical exhaustion, conceals the killing process from potential objectors and saviours, and limits the possibilities for victim group resistance.

There is a relationship between space and time in DA crimes as well, as evidenced by a contrast between Serb-perpetrated crimes and killing in former Yugoslavia in the 1990s and the three cases under study in this article. The Cherokee, Herero, and Pontic Greek populations experienced death at substantially higher rates than Serb-targeted Croat, Muslim, and Kosovar Albanian populations in former Yugoslavia. The key differences may be spatial and temporal. First, Serb crimes were perpetrated in densely-populated areas and the spaces to which groups were displaced to were small in comparison to the relatively wide, open geography of North America, the Namib Desert, and Anatolia.²⁵ Temporally, Serb crimes were committed over a number of years, but there was a defining deficiency in time used to perpetrate crimes in comparison to the expansive amounts of time the Americans, Germans, and Turks devoted to killing the Cherokees, Hereros, and Pontic Greeks, respectively.²⁶ It could be reasonably stated that if the Serbs possessed larger territories and more time, then the death rates for Croats, Muslims, and Kosovar Albanians would have been significantly higher than they were.

²¹ Allan D. Cooper, *The Geography of Genocide* (New York: University Press of America, 2009), 70.

²² Drechsler, 'Let Us Die Fighting', 17 and 89.

²³ John Ehle, *Trail of Tears: The Rise and Fall of the Cherokee Nation* (New York: Doubleday Publishing Group, Inc., 1988), 350-389 and Hofmann, "Cumulative Genocide," 39-84.

²⁴ Saul Friedländer, *The Years of Extermination: Nazi Germany and the Jews* (New York: HarperCollins, 2007).

²⁵ Norman Cigar, *Genocide in Bosnia: The Third Balkan War, Third Revised Edition* (College Station: Texas A&M University Press, 1995), 27-29.

²⁶ David Rodhe, *Endgame: The Betrayal and Fall of Srebrenica, Europe's Worst Massacre Since World War II* (Boulder: Westview Press, 1998), 317-396.

Distinguishing Between Indirect and Direct Deaths

The DA crime uniquely fuses forced population displacement most often with primarily indirect killing methods. Direct methods are utilized only as a secondary feature to atrocity perpetration. The types of atrocities perpetrated on the victims will now be outlined. Indirect killing methods began to be systematically studied following Fein's identification of genocide by attrition – methods beyond direct killing that bring about the destruction of a population in whole or in part.²⁷ Indirect killings can theoretically be described as practices that do not include physical violence from perpetrators against victims, but rather systemic deprivations that bring about the destruction of victims. Practically, these methods can include, but are not limited to, starvation and/or dehydration; creating conditions conducive to the spread of disease; exposure to natural world elements, i.e., the heat or the cold; and inhumane maltreatments that lead to eventual death, i.e., deaths resulting from exhaustion on forced marches.²⁸ These indirect methods can be referred to as a systematic deprivation of vital human needs coupled with an exacerbation of the outcomes of these deprivations leading to large-scale demographic losses in the targeted group(s). This type of killing requires a significantly longer period of time to kill one person compared to direct killing. Conversely, indirect killing may be more cost effective and less time consuming to kill entire populations as the entire group may be displaced and destroyed at the same time, unlike direct killing methods where it takes years to kill millions in gas chambers, for example.

Direct killing, in contrast, includes any deaths that occur due to direct physical violence. These are much more 'traditionally' studied killing patterns – the *Einsatzgruppen* killing squads on the Eastern Front, the gas chambers at the extermination camps during the National Socialist Genocides, and *Interahamwe* killing squads in 1994 Rwanda.²⁹ Direct killing methods can include such tactics as fatal gunshot wounds, blade or blunt instrument strikes, gassings, and immolation. These practices cause nearly instantaneous deaths, ultimately more time efficient than indirect forms of killing, but certainly more costly due to the need for materiel to construct and outfit the machinery of death.

Perpetrators may uniquely combine these two killing practices during a DA. As will be discussed later, one of the key purposes of a DA is to reduce costs on perpetrating regimes, so indirect killing is favoured over direct killing for the simple economics of destruction. It can cost extraordinary amounts of human power, materiel, and money to commit atrocities if direct killing is selected as the primary method of destruction compared to indirect methods. Indirect and direct methods are different but can be utilized in conjunction.

Displacement Atrocities: Necessary and Sufficient Variables

One necessary element of DA crime theory is the open territory which allows killing to occur away from the awareness of others. The second necessary feature is indirect killing methods utilized against the displaced targeted population. When these two variables are combined, they meet the criteria to deem a process of systematically killing a targeted group, a DA. What is not necessary, but may be present, are direct killing methods. Direct killing methods are supplemental to the sufficient combination of displacement and indirect deaths. Direct killing sometimes occurs, but what is most vital to understanding displacement atrocities is the systematic deprivations of vital human needs, the weakened human bodies that result from these deprivations, and the deaths that are then caused by these deprivations exacerbated by forced displacements. Ultimately, the responsibility for not providing these vital human needs rests with the perpetrators, as the targeted group would not have been forcibly displaced had it not been for the malicious goals of the perpetrators - whether this be ethnic homogenization, ideology, religious difference, or territorial cleansing.

²⁷ Fein, "Genocide by Attrition," 10-45 and Totten, *Genocide by Attrition*, 2.

²⁸ Fein, "Genocide by Attrition," 10-45 and Totten, *Genocide by Attrition*, 2.

²⁹ Friedländer, *The Years of Extermination*, 13 and Jean Hatzfeld, *Machete Season: The Killers in Rwanda Speak* (New York: Farrar, Straus, and Giroux, 2005), 10-20.

Perpetrator Perspectives: Using Displacement

Why would perpetrators select displacement to commit atrocities? Logical speculations can begin to answer this question. This article offers four central reasons for why the DA crime is selected as the optimal mode of destruction: the cost-effectiveness of DA-style killing, the ability to lessen psychological strains on individual perpetrators, the pervasive social disruption among victim groups, and veiling the public.

Cost-Effectiveness

Of all the methods of killing available to perpetrators, DA-style killing is perhaps the most cost-effective. It requires so little of perpetrators. They exploit the natural world for the deadly environment it can be without food, water, shelter, clothing, and medical care as perpetrators exhaust victims to rapidly increase death rates. The perpetrators merely need to displace a population without these vital human needs and protect themselves while leaving the victims' bodies to deteriorate. Humans can survive up to 30 or 40 days without food, but this is only if they are hydrated. If they are not, and if they are being physically exerted, then the body degrades at a significantly faster rate.³⁰ If minor sustenance is provided, the body can survive for longer, but physical exertion and exposure to the natural world without vital human needs being met causes fatal bodily deterioration or fatal ailments such as heat stroke.³¹ Without question, extreme weather (heat; cold; storms, including dust, rain, and tornadic events; droughts, and flooding) can exacerbate bodily deterioration leading to death or instant mortality.³²

When hope is lost for survival, a negative psychological impact is seen on resilience and endurance.³³ Perpetrators exploit the fragility of the mind and actively work to degrade the body, deprive individuals of vital human needs, compel massive physical exertion, and attempt to psychologically destroy their targets. These factors create the indirect killing aspect of DA. These are highly cost-effective because the only requirement of perpetrators is that they forcibly displace a population and control them, a practice that does not necessarily require many perpetrators and almost none of the materiel for direct killing. In this case, perpetrators simply leave their targets to die of deprivations and exhaustion. Financial restraints during wartime can impact the choice of killing methods, necessitating the selection of DA as the method of destruction due to its limited need for resources. Creating conditions conducive to the spread of disease via the deprivation of vital human needs is also cost-effective for perpetrators as this only requires negative action (leaving victims to die), not positive action (actively killing them via direct methods).

Mental Strain on Perpetrators

There is a substantial definitional and philosophical difference between 'dying' and 'being killed'. Dying implies an endogenous naturalness to death; killing implies an unnatural, intended, and exogenous act that causes death at the hands of another.³⁴ There is a fine but distinct line between dying and killing. The nuanced nature of indirect deaths by systemic deprivations of vital human needs is a systemic process of killing, not merely victims dying of their own accord.

Studies on perpetrators have demonstrated that directly killing another human has caused serious mental stresses on the killers, something that may not be as prevalent among perpetrators of a DA crime.³⁵ Perpetrators are directly responsible for the murders they commit

³⁰ Michael Peel, "Hunger Strikes," *BMJ* 315, No. 7112 (1997), 829-830.

³¹ *Ibid.*

³² Jeffrey Berko, et al., "Deaths Attributed to Heat, Cold, and Other Weather Events in the United States, 2006-2010," *National Health Statistics Reports* 76 (2014), 1-16.

³³ Ervin Staub, *The Psychology of Good and Evil: Why Children, Adults, and Groups Help and Harm Others* (New York: Cambridge University Press, 2003), 289-418.

³⁴ Angus Stevenson and Maurice Waite (eds). *Concise Oxford English Dictionary* (New York: Oxford University Press, 2011), 398-399, 447, and 782, Will Cartwright, "Killing and Letting Die: A Defensible Distinction," *British Medical Bulletin* 52, no. 2 (1996), 354-361, and Helen Frowe, "Killing John to Save Mary: a Defence of the Moral Distinction Between Killing and Letting Die," in *Topics in Contemporary Philosophy: Action, Ethics and Responsibility*, eds. Joseph Keim Campbell, et al. (Cambridge: The MIT Press, 2007), 47-66.

³⁵ Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York:

– the gunshot, blade strike, and floggings they inflict cause death right in front of their eyes. DA perpetrators, however, may be provided with a reduced recognition of their responsibility for the destruction of targets whom they forcibly displace. The systematic conditions of life meant to destroy groups obscure traditional understandings of killing. The victims of a DA crime ‘die’ along the route of displacement but these deaths are, undoubtedly, killing. While DA perpetrators do not *directly* murder targets, the conditions they impose ensure that all perpetrators have to do is simply *leave victims* to die. More research is needed on the psychological differentiations, if any, between mental stresses on perpetrators in direct killing versus indirect killing campaigns.

Displacement as Social Disruption

One goal of a DA, and atrocities more broadly speaking, is to disrupt the social bonds and networks of targeted groups so atrocities are easier to commit. This extermination of social fabrics is an idea best explored by Feierstein with his conceptualization of genocidal social practices.³⁶ This concept can be readily expanded to instances of forced displacement as a tool to disrupt routinized and familiar social patterns of targeted groups. Displacement is one of the ultimate forms of disruption – it rips individuals away from their homes, familiar places, and people, and takes away any and all authority they had over their lives. Almost all common bonds are destroyed which disorients the targets and disrupts social bonds that could lead to resistance and efforts that could delay atrocity plans.³⁷ Displacement disorients targets and may contribute to feelings of helplessness. In typical DA crimes, perpetrators separate men from women, weakening social fabrics. The displacement process means that individuals lose control of their world, reinforcing again the psychological control that perpetrators hold over the targets.

By displacing the targets, the killing process is moved away from victim community centres that could offer resistance, such as cities. These types of territories can cause many problems for an army, and perpetrators systematically avoid these types of environments by displacing targets to more open, unpopulated landscapes so the targets are easy to control and guide. Displacement to foreign lands also means that targets have less terrain knowledge and have a general inability to gather resistance resources, i.e., weapons, ammunition, and supplies, hindering resistance even further. Relocation decreases opportunities for targets to escape death; if they escape the displacement, they are in the middle of unfamiliar terrain and often face death due to survival problems. By displacing targets away from populated areas, there are fewer opportunities for the hiding of targets by saviours as well.

Veiling the Public

By moving the killing process outside of densely populated areas, perpetrators actively attempt to hide their crimes – a critical initial step in genocide/atrocity denial. Ironically, even if a population becomes incensed against the victim group(s), the killing process itself may upset bystanders and has the potential for making saviours/rescuers, objectors, or reformers out of even true believers.³⁸ The experience of violence and suffering can change opinions so removing the process away from prying eyes is a requirement. Instead, hiding the evidence of atrocity becomes remarkably easy for perpetrators: the dead are strewn about sparsely-populated routes of displacement where the victims fall, bodies decompose and are consumed by the natural world, and victims can dig unmarked mass graves never to be found. The killing process, while perpetrated in vast spaces, is hidden and secretive (by very nature of it being farther removed from populated centres) giving another layer of deniability to the crimes.

HarperCollins, 1995), 221, James Waller, *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing* (New York: Oxford University Press, 2007), iv-xiv and 267-280, and Hatzfeld, *Machete Season*, 157-164.

³⁶ Daniel Feierstein, “The Concept of ‘Genocidal Social Practices,’” in *New Directions in Genocide Research*, ed. Adam Jones (New York: Routledge, 2012), 18-36.

³⁷ Ibid.

³⁸ Staub, *The Psychology of Evil*, 289-418.

Choosing Displacement

If a perpetrating regime has access to a large open territory that is generally uninhabited, does not want to expend mass resources on atrocities, and desires to keep its crimes hidden without associated costs of mass graves and body disposal, then it is understandable why regimes select this type of killing. From the perpetrator perspective, it makes sense to select this killing pattern over, for example, the highly bureaucratized and mechanical workings of the National Socialists. Perpetrators may also select displacement as a method of killing as a contingency if other modes of killing are not feasible to implement, possibly due to physical/geographical or materiel limitations. Not all political decisions can be explained through instrumental or bounded rationality.³⁹ Rather, the context in which decisions are made can influence the outcomes of decisions – something I have attempted to demonstrate. There may be a correlation between different macro-historical processes such as colonialism and the choice to utilize DA crimes as a solution to perceived problems, but these questions require significant further research beyond the scope of this article. However, there are some reasons why perpetrators would not select DA crimes.

Perpetrator Perspectives: Not Using Displacement

Why perpetrators would utilize DA crimes to exterminate a population is one aspect of this style of killing, but perhaps a more important avenue of understanding is why perpetrators *would not* select displacement and indirect methods of killing. There are four central reasons why a perpetrating group may not select DA as an optimal mode of killing: territorial limitations; factoring for demographic density; the cost-effectiveness: time available ratio; and the cost-effectiveness: associated risks ratio.

Territorial Limitations

If a perpetrator group does not have access to an open, largely uninhabited territory, then a DA is very difficult to implement. Territories that resemble the American West, the open deserts of Namibia, and the vastness of the Turkish heartland are optimal areas to implement a DA. Areas that resemble the former Yugoslavia, East/Central Europe, the Canadian Rockies, and dense rainforests in South America are suboptimal for implementing a DA, but that does not mean it is impossible to destroy groups in these places using displacement. On the contrary, mountainous terrains can exhaust victims faster. Areas that do not have 'vast spaces' but are instead littered with towns and human communities (which may provide escape, shelter, and/or vital human needs) and land masses that are inhospitable to atrocities due to the capabilities of local knowledge, the survivability and availability of resources to meet vital human needs, and areas to hide from perpetrators present challenges to perpetrators that may drive them to select other killing methods. In this sense, a DA crime requires a sizable land mass and may only be possible to implement in countries that have open territories and where the chosen group does not have the survival skills for that particular terrain, for example the United States, Canada, Russia, Central Asian territories, Namibia, Turkey, and other large land masses.

Demographic Density

Demographically dense countries may be better suited for other types of killing campaigns, notably direct killing campaigns, and DA crimes may not be pragmatically possible. The extremely violent direct killing campaign in Rwanda was in part made possible due to Rwanda's demographic density and the mass mobilization of many individuals and groups in the genocide. In contrast to this societal-wide organized direct killing, DA crimes are perpetrated by comparatively smaller groups of perpetrators and require a longer time to destroy victims. In this way, DA crimes do not necessarily require the consent of the entire polity and does not require coercion into killing, which is conducted away from populated demographic zones.

Forcibly displacing victims in full view of onlookers may create objectors, rescuers, resisters, and others that oppose the perpetrating, but resistance in the face of atrocities can be incredibly

³⁹ Donald Green and Ian Shapiro, *Pathologies of Rational Choice Theory: A Critique of Applications in Political Science* (New Haven: Yale University Press, 1996), 1-32.

difficult, as demonstrated by German resistance efforts against Nazi authorities.⁴⁰ Ultimately, perpetrators may not have their power without the support of the mass public, whether imposed, tangential, or wholehearted as that may be, otherwise they would not require concerted efforts to veil the public nor attempt to homogenize their thoughts. Support for the killing may wane with the intensity of the visual impact of victims marching past – possibly eroding and undermining the support for killing process, a research problem yet to be examined by systemic scholarship. An example of halting killing processes due to public knowledge is the deportation of Aegean Greeks in 1914 and 1915. Greeks were displaced towards Greece and towards the Anatolian heartland, and men were drafted into the *amele taburları* (labour battalions), but these deportations stopped at the urging of the Germans.⁴¹ Presumably, the Germans did not want Greece to enter the First World War as a belligerent against the Central Powers. To avoid angering Greece, the deportations of Greeks were stopped and the deportations of Armenians began.

While this episode is telling of the broader implications of genocide in a cross-border sense, it is also telling in that the Ottomans recognized that visibility of their crimes could lead to negative repercussions for them. At the same time, however, Nazis paraded Jews through the streets. This paradox could be the beginning of future research programmes for studies examining the penetration of exterminationist ideologies and their acceptance among the broader polity – and just how much death and destruction civilians are willing to witness before they offer resistance.

Cost-Effectiveness: Time Available Ratio

An interesting paradox emerges with the cost-effectiveness of a DA. While previously argued that it is superior in conserving resources, it is deficient in the time required for the killing process. For example, it took only a few hours for the German *Schutztruppe* to destroy thousands of Herero warriors at the Battle of the Waterberg, but years to destroy the many more tens of thousands that fled the scene of the battle into the desert.⁴² In contrast, it only took a few hours, minutes even, for victims to be gassed and cremated at Sobibor and other extermination camps.⁴³ It took the Nazis years to kill *millions* using mainly direct killing methods, but it took years to kill *thousands* for the German DA perpetrators in GSWA. If materiel is plentiful and time is limited, perpetrators may decide to select direct killing methods over indirect ones due to the longer time requirements of indirect killing. As grotesque as it may be to argue, it takes time for bodies to die but this process is expedited by exposure to elements and exhaustion during displacement. Nonetheless, indirect killing takes time – significantly more than direct killing. The cost-effectiveness may, therefore, be a hindrance to regimes that have resources and *can* directly kill their victims quickly, as compared to indirect killing.

Cost Effectiveness: Associated Risks Ratio

Despite the limited number of troops and personnel utilized for a DA, this form of killing could increase the risk of victims overwhelming the perpetrators displacing them. While there are strong aspects of social disruption and control that a coordinated displacement perpetration plan offers, given that there are limited perpetrators compared to victims. Resistance may be made

⁴⁰ Klemens von Klemperer, *German Resistance Against Hitler: The Search for Allies Abroad 1938-1945* (Oxford: Clarendon Press, 1994), 1-18 and Peter Hoffmann, *History of the German Resistance 1933-1945, Third Edition* (Montreal, Quebec and Kingston: McGill-Queen's Press, 1996), ix-xii.

⁴¹ Taner Akçam, *The Young Turks' Crime Against Humanity: The Armenian Genocide and Ethnic Cleansing in the Ottoman Empire*, (Princeton: Princeton University Press, 2012), xvii, Taner Akçam, "The Greek Deportations and Massacres of 1913-1914: A Trial Run for the Armenian Genocide," in *The Asia Minor Catastrophe and the Ottoman Greek Genocide*, ed. George Shirinian (Bloomington: The Asia Minor and Pontos Hellenic Research Centre, Inc., 2012), 73-74, and George Th. Mavrogordatos, *Stillborn Republic: Social Coalitions and Party Strategies in Greece, 1922-1936* (Los Angeles: University of California Press, 1983), 199.

⁴² Isabel V. Hull, *Absolute Destruction: Military Culture and the Practices of War in Imperial Germany* (Ithaca: Cornell University Press, 2005), 7-55 and Isabel V. Hull, "The Measure of Atrocity: The German War Against the Hereros: The Military Campaign in German Southwest Africa, 1904-1907," *GHI Bulletin* 37 (2005), 39-43.

⁴³ Yitzhak Arad, *Belzec, Sobibor, Treblinka: The Operation Reinhard Death Camps* (Bloomington: Indiana University Press, 1999), 75-80 and 170-180.

possible by the combination of limited perpetrators linked with the wide, open spaces victims are displaced into, creating an especially possible opportunity for victims to overwhelm perpetrators, however slight this chance may be on a sustained basis. Victims may rebel, like the Armenians at Van, may try to formally resist in a large battle, like the Herero at the Waterberg, or may provide concerted nonviolent resistance like the Cherokee.⁴⁴ Despite the eventual defeats in these resistance movements, they still caused logistical and materiel setbacks and problems in executing atrocities.

Victims can pose problems to perpetrators during, before, and after displacement. The Pontic Greek collaboration with Russian forces in the Great War demonstrates one of the risks of intervention and collaboration in displacement atrocities. Despite the vast spaces utilized, logically interventions against the limited number of perpetrators can halt crimes. The few perpetrators utilized cannot withstand a military intervention from either internal or external resistance or forces. The few perpetrators required means less personnel with military-grade materiel; an easier ability for interventions to halt or destroy perpetrator groups due to the simple lack of arms and an asymmetrical balance of hard power. The same can be said of internal resistance. Displacement columns of victims 'escorted' by few perpetrators can be, logically, overwhelmed by a small group of resisters because of this asymmetry.

Stages and Cases: Displacement Atrocities in Practice

The preceding section has discussed a theory of displacement atrocities. This section offers an examination of five typical stages of DA crimes and applies the developed DA crime theoretical framework to the atrocities inflicted on the Cherokees, Hereros, and Pontic Greeks. Instead of a chronological exploration of each case, this theory testing section draws on previous research into the three atrocities and deconstructs their perpetration within the DA crime theory.

Target Identification

Populations can be targeted for any multitude of reasons. Gregory Stanton's Ten Stages of Genocide model, and Daniel Feierstein's genocidal social practices model provide useful theoretical beginning marks for understanding the trajectories of genocide and atrocities.⁴⁵ In a DA, perpetrators select their targets for any multitude of reasons including, but not limited to, a group's religion, social class, race, ethnicity, nationality, status, political views, or any other unique trait. Identification may be affected by recent historical animosities and/or poor or strained relations with the perpetrator group, however this is comprised. The three cases analysed in this article provide the diverse range of perpetrator reasons for displacing the targeted group, ranging from geographical, political, economic, military, and socio-religious reasons.

The Cherokee Trail of Tears should be understood within the context of colonial genocide in the Americas. This is yet another chapter of colonial forces acting against an indigenous group in order to secure rich and fertile lands, resources, and living spaces. The Cherokees were one of the 'Five Civilized Tribes', a colonial term in reference to the Cherokee, Choctaw, Muscogee (Creek), Chickasaw, and Seminole tribes in the Southern USA.⁴⁶ These tribes wore European clothing, engaged in the US capitalist economy, and willingly shifted their cultural practices to adopt dominant American values. In return for their loyalty, codified in treaties of non-interference, the US government promised that the tribes would remain politically sovereign in specified territories. A major promise was that the tribes would not experience interference by American settlers moving west.⁴⁷ Before the War of 1812 between the Americans and British/Canadians in North

⁴⁴ Raymond Kévorkian, *The Armenian Genocide: A Complete History* (London: I.B. Tauris & Co., 2011), 326-331, Hull, *Absolute Destruction*, 53-54, and Walter H. Conser, "John Ross and the Cherokee Resistance Campaign," *The Journal of Southern History* 44, no.2 (1978), 191-205.

⁴⁵ Gregory Stanton, "The Ten Stages of Genocide," *Genocide Watch*, <http://www.genocidewatch.org/genocide/tenstagesofgenocide.html>, and Feierstein, "The Concept of 'Genocidal Social Practices'," 18-36.

⁴⁶ C.H. Fitch, "The Five Civilized Tribes: Indian Territory," *Journal of the American Geographical Society of New York* 32, no. 1 (1900), 15 and Robert J. Miller, *Native America, Discovered and Conquered: Thomas Jefferson, Lewis Clark, and Manifest Destiny* (Westport: Praeger Publishers, 2006), 92.

⁴⁷ Miller, 92, Theda Perdue and Michael D. Green, *The Cherokee Removal: A Brief History with Documents* (New York: Bedford/St. Martin's, 2005), 8-15, and Amy H. Sturgis, *The Trail of Tears and Indian Removal* (Westport: Greenwood

America, Indigenous communities were believed to be wandering peoples and were entitled to reside in and cultivate their selected lands. After the war, though, Jacksonian Americans believed that Indigenous peoples were squatters on rightful American lands, forming a clear departure from previous conceptualizations of land rights regarding the Five Civilized Tribes. The white settler communities began to encroach on what the tribes believed to be their rightful lands.⁴⁸ The Seminole Wars (1814-1819, 1835-1842, and 1855-1858) and other engagements continued a period of extreme tensions between the US government and the Five Civilized Tribes.⁴⁹

General (later President) Andrew Jackson gained his 'Indian fighter' reputation for his numerous well-documented atrocities against Native Americans during the military campaigns.⁵⁰ His military service informed his political service as Jackson continually exhibited anti-Native American dogmas and racism, believing that the USA would not be safe if it did not eliminate Native American warring capabilities.⁵¹ The Jacksonian presidency can only be described as laying the legal and social frameworks required for killing and displacing Native Americans. His entire presidential campaign was centred on the promise of 'Indian Removals' and his reputation as an 'Indian fighter'.⁵² To make the removals possible, he persuaded the US legislative branches to pass the *Indian Removal Act* (1830) ('the Act'), which allowed the President to directly negotiate removals with individual Native American tribes.⁵³ A central component of the *Act* was designed to forcibly remove all Native Americans in the path of westward expansion; when tribes refused to leave, Jackson became increasingly repressive and forceful. This was quite evident against the Cherokees who did not want to leave their territory among the borders of Georgia, Alabama, Tennessee, and the Carolinas.⁵⁴

When American settlers began intruding on Cherokee lands, part of a larger discursive conceptualization of European/American colonization and expansionist policies, the State of Georgia passed laws eroding Cherokee sovereignty over their territory, requiring all whites in the Cherokee Indian Territory to obtain a licence to live there, contravening previous treaties that granted Cherokee sovereignty.⁵⁵ Samuel Worcester, Elizur Butler, and nine other white missionaries refused to obtain this licence and were sentenced by Georgia state law, which was eventually overturned in the Supreme Court by Chief Justice John Marshall, who asserted Cherokee rights over Cherokee lands. Jackson, however, manoeuvred around this.⁵⁶

Jackson's administration negotiated with a fringe Cherokee Treaty Party, an illegitimate political party that did not represent the majority Cherokee voices that resisted removal (at least 15,665 individuals). The Treaty Party travelled first to Washington, D.C. and then to New Echota where they signed the Treaty of New Echota, the document used to legally justify Cherokee displacement. It was ratified by a single Senate vote on 17 May 1836, requiring that the Cherokees had until 1838 to move west of the Mississippi River. Jackson's goal of Indian removal had finally been completed in theory; all that was left to do was to deport the Cherokees in the successive Presidency of Martin Van Buren.⁵⁷ The discovery of gold on Cherokee lands was a major

Press, 2007), 33.

⁴⁸ Gary Clayton Anderson, *Ethnic Cleansing and the Indian: The Crime That Should Haunt America* (Norman: University of Oklahoma Press, 2014), 112.

⁴⁹ John Missall and Mary Lou Missall, *The Seminole Wars: America's Longest Indian Conflict* (Jacksonville: University of Florida Press, 2004) and Brent R. Weisman, "Nativism, Resistance, and Ethnogenesis of the Florida Seminole Indian Identity," *Historical Archaeology* 41, no. 4 (2007), 198-202.

⁵⁰ F.P. Prucha, "Jackson's Indian Policy: A Reassessment," *The Journal of American History* 56, no. 3 (1969), 527 and 537-539.

⁵¹ *Ibid.*, 537-539.

⁵² Perdue and Green, *The Cherokee Removal*, 15-19 and Sturgis, *The Trail of Tears*, 37.

⁵³ United States Congress, *Indian Removal Act*, Twenty-First Congress, Sess. 1, Ch. 148, *Library of Congress*, 28 May 1830.

⁵⁴ Sturgis, *The Trail of Tears*, 59.

⁵⁵ Perdue and Green, *The Cherokee Removal*, 79-80, William G. McLoughlin, *Champions of the Cherokees: Evan and John B. Jones* (Princeton: Princeton University Press, 1990), 136, and Grace Steele Woodward, *The Cherokees* (Norman: University of Oklahoma Press, 1963), 201.

⁵⁶ *Worcester v. Georgia*, 31 U.S. 515 (1832).

⁵⁷ Ehle, *Trail of Tears*, 222-226 and Perdue and Green, *The Cherokee Removal*, 101-103.

precipitating factor for removal so white Americas could mine and reap the rewards of former Cherokee lands.⁵⁸

Similarly, Herero-German relations are that of an indigenous group facing rapidly shifting policies of their colonizers. The story of the Herero Genocide begins with Adolf Lüderitz's establishment of a permanent German settlement in GSWA in 1884 at Angra Pequena (Portuguese for "small cove"), naming his city Lüderitz.⁵⁹ This settlement was used as the launching point of racist and Social Darwinist German colonial attitudes towards the Herero and other groups residing within GSWA, with missionaries hoping to Christianize the local populations.⁶⁰ Aside from these broad social attitudes, there are four reasons why the Herero were killed.

The first is Samuel Maharero, the Chief of the Hereros. He worked with German Governor Theodor Leutwein to centralize power to himself, marginalizing powerful oppositional Herero voices and leaders in the shift of power to Maharero. While he did lead the Hereros in revolt in 1904, Maharero acquiesced to Leutwein's demands which led to limited formal Herero objections to German policies, paving the way for the atrocities of 1904-1908.⁶¹ Second, the Germans desired a railway network connecting their major mining assets in the interior of GSWA and the colonial coastline cities to make resource extraction far easier. However, the railways ran directly through Hereroland meaning the land had to be taken initially by treaty, and eventually by force. The Hereros were used as slave labourers during the genocide to complete the lines by 1908.⁶² German theft of land for the railroads, and colonial practices in general, were conducted by crafting treaties which were misinterpreted by the Hereros as temporary loans of the land, not permanent acquisitions. By the time that the Herero realized the land would not be returned to their possession, there was little they could do because the Germans had brought more settlers and weapons to GSWA.⁶³ From 1894 to 1904, German colonials began a period of increasing military and bureaucratic control over captured lands, rejecting any and all Herero claims to the land.

Third, with their livelihoods diminished due to the lost lands, the Hereros had to take out loans at exorbitant rates from the Germans that were virtually unrepayable.⁶⁴ The Herero had no choice but to accept these percentages because their lifestyle and income had been disrupted by German land theft. When the Hereros could not repay the loans, GSWA was thrown into an economic crisis, 'solved' by well-intentioned but misguided legislation from Leutwein mandating that on 1 November 1903 all loans would be eliminated with no reimbursement by the German government. In reaction, German colonials recalled their loans in different ways, most notably by forcing the Herero to pay for the lost money with cattle and other livestock.⁶⁵ These animals were critical to the Herero's existence, but were desired by Germans who wanted to fill their newly-acquired lands with livestock. Herero income and livelihood were threatened and on the brink of collapse. A rinderpest outbreak among Herero cattle exacerbated the loss of traditional forms of income

⁵⁸ Ehle, *Trail of Tears*, 222-226 and Perdue and Green, *The Cherokee Removal*, 101-103.

⁵⁹ Jan-Bart Gewald, *Herero Heroes: A Socio-Political History of the Herero of Namibia 1890-1923* (Athens: Ohio University Press, 1999), 3-6 and Jeremy Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers* (Cape Town: UCT Press, 2011), 16.

⁶⁰ Sarkin, *Germany's Genocide of the Herero*, 16, 62, 78, 89, 91, 96, 131, 140, and 236.

⁶¹ Gewald, *Herero Heroes*, 61, 87, and 102-109, Jon M. Bridgman, *The Revolt of the Hereros* (Los Angeles: University of California Press, 1981), 59 and 68, and Drechsler, 'Let Us Die Fighting', 84-88.

⁶² Sarkin, *Germany's Genocide of the Herero*, 123-124 and Jürgen Zimmerer, "War, Concentration Camps and Genocide in South-West Africa: The First German Genocide," in *Genocide in German South-West Africa: The Colonial War (1904-1908) in Namibia and its Aftermath*, eds. Jürgen Zimmerer and Joachim Zeller, trans. Edward Neather (Monmouth: The Merlin Press Ltd., 2008), 20.

⁶³ Sarkin, *Germany's Genocide of the Herero*, 67, Drechsler, 'Let Us Die Fighting', 11-114, Jürgen Zimmerer, "The Model Colony? Racial Segregation, Forced Labour, and Total Control in German South-West Africa," in *Genocide in German South-West Africa: The Colonial War (1904-1908) in Namibia and its Aftermath*, eds. Jürgen Zimmerer and Joachim Zeller, trans. Edward Neather (Monmouth: The Merlin Press Ltd, 2008), 27, and Zimmerer, "War, Concentration Camps and Genocide in South-West Africa."

⁶⁴ J.H. Wellington, *South West Africa and its Human Issues* (Oxford: Clarendon Press, 1967), 190-191 and Bridgman, *The Revolt of the Hereros*, 59.

⁶⁵ Wellington, *South West Africa and its Human Issues*, 190-191, Bridgman, *The Revolt of the Hereros*, 59, and Drechsler, 'Let Us Die Fighting', 118-119.

and forced the Herero to work as labourers for German colonials on the railroad which, ironically, would then resupply and transport German troops that perpetrated the genocide. In addition, it totally broke all forms of traditional Herero socio-political systems, forcing them to work within dictated German frameworks. At this point, Hereros were near-fully subjugated within the German colonial system as subjects.⁶⁶

Finally, it was the German interest in creating Herero reserves which intended to segregate the Herero. However, the plans were rejected by German colonials as they believed the lands for the Herero were too great.⁶⁷ The Herero, quite obviously, reacted negatively towards the idea of being shuttled to reserves. While Maharero had acquiesced to previous German commands, he and the Hereros finally rose up against colonial domination, leading to Maharero's finest quote, "let us die fighting."⁶⁸

The Pontic Greeks, in one of the most layered and intricate steps toward atrocities, were killed for a multitude of complex factors. The Pontic Greeks were situated along the southern Black Sea coastline and contributed many Greek legends, philosophical and scholarly works, and have one of the oldest cultures in the western hemisphere.⁶⁹ Turks from the Turkmen region of Central Asia began to emigrate to Pontus and the general modern-day Turkey region in the 11th Century.⁷⁰ This gradual process of demographic change marked the beginning of Turks becoming the majority group in the region. The two groups thrived under the Byzantine Empire and survived its decline, only to witness the rise of the Ottoman Empire after the conquests of Osman Gazi (Osman I) in 1281.⁷¹ The Ottoman Empire dominated the Middle East and Southern Europe and lasted from Mehmed II's conquests against the Byzantine Empire to the rise of Mustafa Kemal's (Atatürk) nationalist drive in 1923, forming modern-day Turkey. The Empire, for the Pontic Greeks and other Christian minorities, was repressive politically, economically, and socially. The proliferation of Islam throughout the Ottoman Empire caused rifts between believers in Islam and 'gavurs' (a pejorative term for infidels, non-believer Christians).⁷² Religious difference between the Christian Pontians and Muslim Turks was a backdrop that informed Ottoman reactions to short-term crises causing the genocide, but it does not explain the broader Ottoman Genocide of Christian Minorities (Armenians, Greeks, and Assyrians, 1912-1925) of which the Pontians were victims from 1916-1918 and 1919-1923.⁷³ In all, 353,000 Pontians were killed as part of the approximately 2.5 million Christians in total (primarily 1,500,000 Armenians; 750,000 Greeks; and 250,000 Assyrians).⁷⁴ Religious difference may have been a necessary variable for the types of violence employed against the Pontic Greeks, but it is certainly not a sufficient variable in explaining why they were targeted and killed.

Christian minorities were persecuted based on their perceived injustices against Muslim Turks. These ideas are contextually placed within the declining Ottoman Empire which was being scapegoated on 'scheming' Christian populations.⁷⁵ Christians were never given full and equal rights in the Ottoman Empire as their Muslim counterparts. Despite the Tanzimat Reforms (1839 to 1876) designed to equalize Christians and Muslims, among a number of other goals, few reforms were implemented and a civil rights disparity was ever-present in pre-genocide Ottoman

⁶⁶ Gewalt, *Herero Heroes*, 130-140.

⁶⁷ Drechsler, 'Let Us Die Fighting', 114-116 and Bridgman, *The Revolts of the Hereros*, 57-58.

⁶⁸ Drechsler, 'Let Us Die Fighting', i.

⁶⁹ Thea Halo, *Not Even My Name: A True Story* (New York: Picador, 2001), 39-40.

⁷⁰ Christos Papoutsy, *Ships of Mercy: The True Story of the Rescue of the Greeks: Smyrna, September 1922* (Portsmouth: Peter E. Randall Publisher LLC, 2008), x-xi.

⁷¹ Andrew Mango, *Atatürk: The Biography of the Founder of Modern Turkey* (New York: The Overlook Press, 1999), 4.

⁷² Hofmann, "Cumulative Genocide," 84.

⁷³ Taner Akçam, *A Shameful Act: The Armenian Genocide and the Question of Turkish Responsibility* (New York: Henry Holy and Company, LLC, 2006), 109-204, Peter Balakian, *The Burning Tigris: The Armenian Genocide and America's Response* (New York: HarperCollins, 2003), 35-62 and 103-196, and Hofmann, "Cumulative Genocide," 39.

⁷⁴ Hofmann, "Cumulative Genocide," 106 and Adam Jones, *Genocide: A Comprehensive Introduction, Second Edition* (New York: Routledge, 2011), 150-151.

⁷⁵ Naimark, *Fires of Hatred*, 26-32 and Erick J. Zürcher, *The Young Turk Legacy and Nation Building: From the Ottoman Empire to Atatürk's Turkey* (New York: I.B. Tauris & Co Ltd., 2010), 49-150.

territories. Christians did not have equal legal, political, economic, or social rights and were considered outcasts of the Empire which adopted Islam as an official religion.⁷⁶

Economically, Christians were largely ostracized from the traditional Ottoman economy of agriculture and subsistence-level business, but thrived in the positions they were forced into: professional employment, banking, small business ownership, and trade and commerce. The backward, agrarian economy had to be modernized if the Empire was to thrive in the contemporary world and compete with the Great Powers of the 19th and early 20th Century Europe. To modernize, the Sultan recruited western advisers to transform the Ottoman economy. The areas which were to be expanded were positions to which Christians had been ironically ostracized previously.⁷⁷ To the Turks, this appeared to be thinly-veiled 'Christians helping Christians' to undermine the Empire. Ironically, to fund these modernization projects, the Sultan had to borrow from the very nations from which the advisors came: Christian European countries. The loans from these countries to the Empire became so large that at one point, over 90 percent of the Ottoman banking system was controlled by western countries, mostly Britain and France.⁷⁸ This severely handicapped Ottoman citizens' abilities to secure loans and gave the appearance of high-level economic and political control of the predominantly Muslim Empire by Christians both internally and externally.

The Christian wars of independence in the Balkans and Southeastern Europe, areas of Ottoman holding, solidified the idea that Christians wanted to undermine the Empire's existence so they could have their own state(s). Not wanting to see more countries separate after Bulgaria, Greece, Montenegro, and Serbia achieved independence from 1912-1913, Ottoman citizens began to believe that Christian minorities could truly not be trusted.⁷⁹

The combination of these socioeconomic and political factors made Ottoman citizens desire change, which arrived in the form of the Young Turk (YT) revolution. Originally targeted to Pan-Ottomanism, conceptualizing all citizens as equals, this policy shifted to Pan-Turkism, and Christian minorities were targeted in revolutionary scapegoating, exploiting the previous systemic repressions, deprivations, and negative attitudes.⁸⁰ The killing processes began in 1912 and did not end until 1925, encompassing both the revolutionary YT regime and the regime of Mustafa Kemal (Atatürk). A main justification offered by perpetrators was not religious difference itself, but that Christians in the Empire's interior might try to undermine the Empire so they could separate. In order to stop this, the two regimes instituted genocidal policies.

Elimination of Resistance

As with the previous section demonstrating the diversity of reasons populations are targeted, this section on eliminating target group resistance will elucidate the different types of resistance-crushing opportunities to make displacement possible. Resistance can be eliminated in many ways, including legislated pacification and violence, destruction in battle, or raids targeting communities.

The Cherokees were disarmed by legislated removal processes which were enacted by the US military. Jackson ordered the disarming of the Cherokee Nation as early as 1836 and this policy

⁷⁶ Akçam, *A Shameful Act*, 32 and Ronald Grigor Suny, "Writing Genocide: The Fate of the Ottoman Armenians," in *A Question of Genocide: Armenians and Turks at the End of the Ottoman Empire*, eds. Ronald Grigor Suny, et al. (New York: Oxford University Press, 2011), 33.

⁷⁷ Rouben Paul Adalian, "The Armenian Genocide," in *Century of Genocide: Critical Essays and Eyewitness Accounts, Fourth Edition*, eds. Samuel Totten and William S. Parsons (New York: Routledge, 2013), 55, Walter F. Weiker, "The Ottoman Bureaucracy: Modernization and Reform," *Administrative Science Quarterly* 13, no. 3 (1968), 452 and 469-470, Donald Quataert, "Labor History and the Ottoman Empire, c. 1700-1922," *International Labor and Working-Class History* 60 (2001), 98-105, Erick J. Zürcher, *Turkey: A Modern History, Revised Edition* (New York: I.B. Tauris, 2004), 85, and Hans-Lukas Kieser, *Nearest East: American Millennialism and Mission to the Middle East* (Philadelphia: Temple University Press, 2010), 76-77.

⁷⁸ Balakian, *The Burning Tigris*, 35-36 and Akçam, *A Shameful Act*, 19-27 and 100.

⁷⁹ John Mourellos, "The Persecutions in Thrace and Ionia in 1914 and the First Attempt at an Exchange of Minorities between Greece and Turkey," in *The Genocide of the Ottoman Greeks: Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and Its Aftermath: History, Law, Memory*, eds. Tessa Hofmann, et al. (Sarsdale: Melissa International Ltd, 2011), 114 and Hannibal Travis, "'Native Christians Massacred': The Ottoman Genocide of the Assyrians during World War I," *Genocide Studies and Prevention* 1, no. 3 (2006), 327-328.

⁸⁰ Jones, *Genocide*, 151-153.

was initially carried out by General John Ellis Wool, though he was relieved of his command due to his stated personal connections with the Cherokees and the charge, for which he was later exonerated, that he requisitioned American property to aid the Cherokees.⁸¹ General Winfried Scott assumed command and from 1836-1838, American troops swept through Cherokee communities confiscating weaponry that could have been used to fight displacement even though Cherokee Chief John Ross did not intend resistance. A number of documented shootings and executions demonstrate that the disarming process was not always peaceful, as Scott supposedly intended.⁸²

In a much different fashion, the Herero rebellion, and almost all resistance opportunities, were crushed at the Battle of the Waterberg (11 August 1904). Lothar von Trotha had been sent to GSWA from Germany with a fresh contingent of *Schutztruppe* to defeat the Herero, now in full rebellion. In the days preceding the battle, von Trotha expressed his desire to “annihilate,” or at least expel, the Hereros from GSWA.⁸³ The Herero brought 6,000 predominantly male warriors to the battle but the Germans, much more well-equipped with artillery and machine guns, were easily able to defeat the Herero, who suffered casualties in the thousands compared to Germany’s 45 casualties.⁸⁴ Von Trotha desired the destruction of the Herero at the Waterberg entirely, but when he was unable to surround the other 50,000-60,000 Hereros in the vicinity of the battle, he chose to forcibly displace them into the inhospitable desert.⁸⁵ After this battle, the Herero warrior class were effectively neutralized, key military materiel was destroyed or captured, and the Herero could not offer effective resistance after this event.

The Pontic Greeks suffered similar gendered genocide (gendercidal) policy outcomes.⁸⁶ The brutal *amele taburları* were organized and Pontian men were sent there to be slave labourers for the Ottoman Army.⁸⁷ In this sense, the YT and later Kemalist regimes solved two problems at once: they were able to move military materiel and were able to do so by killing Pontian men by indirect means (working them to death) which eliminated a significant portion of the population able to resist genocide.⁸⁸ This is not to say females were not offering resistance, but in the context of traditional resistance, males were more active participants. The elimination of fighting-age Pontian men was of central importance to the genocidal plans as this gendercidal segregation and killing helped make the later deportation columns from Pontus to Der Zor possible as they were devoid of resistance fighters.

Social Disruption

As previously explored, one of the major reasons that perpetrators select displacement as a method of atrocity is due to the social disruption and confusion that displacement causes among victims, making the process much easier to perpetrate. Disruption in all cases meant the bypassing, exclusion/isolation, or killing of target group leadership. The legitimate Cherokee leadership was excluded by circumventing the true representatives of the Cherokee nation. Legitimate representatives

⁸¹ Woodward, *The Cherokees*, 193 and Vicki Rozema, *Voices from the Trail of Tears* (Winston-Salem: John F. Blair, Publisher, 2003), 65-69.

⁸² Thurman Wilkins, *Cherokee Tragedy: The Story of the Ride Family and the Decimation of a People* (London: Collier Macmillan Ltd, 1970), 309, Woodward, *The Cherokees*, 205, Sturgis, *The Trail of Tears*, 57-59, and Russell Thornton, “Cherokee Population Losses during the Trail of Tears: A New Perspective and a New Estimate,” *Ethnohistory* 31, no. 4 (1984), 292.

⁸³ Gewald, *Herero Heroes*, 173.

⁸⁴ Sarkin, *Germany’s Genocide of the Herero*, 38-39, Bridgman, *The Revolt of the Hereros*, 112-113 and 124, Drechsler, ‘*Let Us Die Fighting*’, 155-156, and Jon M. Bridgman and Leslie J. Worley, “Genocide of the Hereros,” in *Century of Genocide: Critical Essays and Eyewitness Accounts, Third Edition*, eds. Samuel Totten and William S. Parsons (New York: Routledge, 2009), 27.

⁸⁵ Drechsler, ‘*Let Us Die Fighting*’, 161-163 and Zimmerer, “War, Concentration Camps and Genocide in South-West Africa,” 47.

⁸⁶ Adam Jones, “Gendercide and Genocide,” *Journal of Genocide Research* 2, no.2 (2000), 185-191 and Helen Fein, “Genocide and Gender: The Uses of Women and Group Destiny,” *Journal of Genocide Research* 1, no. 1 (1999), 43-46.

⁸⁷ Erick J. Zürcher, “Ottoman Labour Battalions in World War I,” in *The Armenian Genocide and the Shoah*, eds. Hans-Lukas Kieser and Dominik J. Schaller (Zürich: Chronos-Verlag, 2002), 187-194.

⁸⁸ *Ibid.*

were silenced and excluded by undue legislative processes.⁸⁹ The diversity in Herero leadership was mostly silenced before the genocide with the centralization of power with Maharero, but the Battle of the Waterberg caused many more deaths among leadership, leaving the Herero with few individuals to quickly organize either escape or resistance.⁹⁰ Like the Herero, direct deaths were used by the YT and Kemalist regimes to quickly kill Pontic Greek leadership. As early as 1909 and 1911, Greek leadership in the Ottoman Empire was being destroyed. Politically, Greeks were completely segregated from the YT (previously Young Ottoman) revolutionary organization and government primarily after the 1913 internal coup that led to the rise of the YT, consisting of Mehmed Talaat, Ismail Enver, and Admed Djemal – the ‘Three Pashas’ or the ‘Triumvirate’.⁹¹

Initial Displacement Operations

The three previous stages of DA crimes culminate in the initial displacements of the populations. These can take multiple forms but this is the stage where perpetrators institute their plans fully. These initial operations are typically where the bulk of the direct killing occurs. The sustained displacement operations which follow are where the primarily indirect killings take place.

The initial Cherokee displacements occurred in Spring 1838 when the Cherokee were displaced to the forts (concentration camps) that Scott’s infantry had constructed for the operations. In these forts, approximately 1,000 Cherokees died by hunger or disease. A small number of Cherokees resisted but they were subdued by US forces.⁹² The initial plan to use river systems to transport the Cherokees was set aside after it proved to be too costly and logistically difficult. It should be noted, though, that four voluntary caravans left before the later forced removals. The first caravans experienced 21 deaths out of an approximate total of 1,681 persons displaced.⁹³ Three forced military-guided deportations experienced much higher death rates, with operations spanning from June to September. It is estimated that there were hundreds of deaths (the precise number is uncertain) out of 2,698 deportees.⁹⁴

The later forced removal caravans were the ones that experienced the highest death tolls. The government elected to displace the Cherokees in caravans of approximately 700 to 1,700 persons each overland from Tennessee, to Illinois, to the Indian Territories (in Oklahoma).⁹⁵ The Cherokees were promised enough resources and funds to make their way to the Indian Territories, but resources were rarely available or provided and the funds were insufficient to cover the cost of 16,000 deportees.⁹⁶ The deportation caravans were pushed forward by soldiers at first, but were eventually taken over by Chief Ross to reduce the harm that was being done to the Cherokees due to mismanagement, neglect, or intentional maltreatment.⁹⁷ Above all, the USA was responsible for the Cherokees killed during what became known as the Trail of Tears.

The Battle of the Waterberg was initially intended to destroy all Hereros in the vicinity of the skirmish, but when the Hereros escaped, the Germans shifted their strategy to displacement into the desert. The *Schutztruppe* under von Trotha began to force the Hereros deeper into the desert and the Hereros began dying at extraordinary rates – one estimate of perhaps 30,000 in the first three weeks in the desert.⁹⁸ When the Germans came upon Hereros who had fallen or were stragglers from the main group, they would either kill them immediately or send them to the extermination/work camp on Shark Island.⁹⁹ Others were left to die in the sand and some others were assigned to

⁸⁹ Sturgis, *The Trail of Tears*, 48-49.

⁹⁰ Gewald, *Herero Heroes*, 61, 87, and 102-109, Bridgman, *The Revolt of the Hereros*, 59 and 68, and Drechsler, ‘Let Us Die Fighting’, 84-88.

⁹¹ Adalian, “The Armenian Genocide”, 114.

⁹² Woodward, *The Cherokees*, 194 and Sturgis, *The Trail of Tears*, 58.

⁹³ Rozema, *Voices from the Trail of Tears*, 189.

⁹⁴ Ibid.

⁹⁵ Sturgis, *The Trail of Tears*, 59.

⁹⁶ Ibid and Woodward, *The Cherokees*, 208-212.

⁹⁷ McLoughlin, *Champions of the Cherokees*, 182 and Woodward, *The Cherokees*, 205-208.

⁹⁸ Kiernan, *Blood and Soil*, 383-384.

⁹⁹ Ibid., Casper Wulff Erichsen, “Forced Labour in the Concentration Camp on Shark Island,” in *Genocide in German South-*

be slave labourers to work on the unfinished railroads.¹⁰⁰ The initial battle led to displacement and though the initial plans did not call for this, the Germans adapted to the changed strategic situation they encountered; with the Hereros already fleeing into the desert, the Germans fluidly altered their plans for the annihilation of the Herero people.¹⁰¹

The YT and Kemalist regimes did not have the same kind of intense battle as the Germans did with the Hereros, though there were small skirmishes and battles, most notably at Musa Dagh with the Armenians.¹⁰² Instead, Pontic Greek men (aged 18-48) were forcibly conscripted into the *amele taburları* and died in great numbers, sometimes upwards of 90 percent.¹⁰³ Beginning in the countryside and later urban areas, the Turks raided Pontic Greek homesteads and initiated the deportation caravan process. The Turks marched the remaining Pontic Greeks towards Der Zor in caravans, and they experienced death rates of approximately 80 to 90 percent. These caravans were 'escorted' by the *Teşkilât-ı Mahsusa* (Special Organization) or Çetes (organized brigands), and were harassed by these two groups throughout the operations.¹⁰⁴ The killing of Pontic Greeks came in waves as they were first deported from rural centres, then from urban centres, over a number of years, into the desert. This has led Hofmann to argue that the entirety of the Greeks' spatial and temporal atrocity victimhood experiences amounts to a cumulative genocide.¹⁰⁵

Sustained Displacement Operations

With the Cherokees displaced, the American government failed in all respects to deliver resources and funds required to complete the displacement safely, meaning that the American government bears responsibility for the neglected promises and for the deaths associated with the Trail of Tears (the Cherokees would not have moved themselves if not for American edicts). The thirteen Cherokee caravans were sent from 23 August to 5 December 1838, arriving in the new Indian Territories from 4 January to 24 March 1839.¹⁰⁶ These departure and arrival dates necessarily mean that there was no possible way for the Cherokees to survive winter with the material assistance, or lack thereof, they were provided.¹⁰⁷ The Cherokees had to march from Tennessee to Illinois to Oklahoma guided entirely on their own, save for a select few white missionaries accompanying the caravans. Since there was no escape for the Cherokees, who already intended no military resistance, American military involvement during displacement appears unnecessary. According to one estimate by Russell Thornton, of 16,000 Cherokees displaced, at least 4,000 died along the Trail of Tears, and at least another 4,000 died within the first few weeks and months in the Indian Territory due to the deprivations suffered during the displacement. These figures show that approximately 8,000 Cherokees or 50 percent of the population, died during the Trail of Tears.¹⁰⁸ Other estimates place the death toll at 4,000, around 25 percent of the Cherokee population.¹⁰⁹ Another recent estimate

West Africa: The Colonial War (1904-1908) in Namibia and its Aftermath, eds. Jürgen Zimmerer and Joachim Zeller, trans. Edward Neather (Monmouth: The Merlin Press Ltd, 2008), 85, and Drechsler, 'Let Us Die Fighting', 150 and 207.

¹⁰⁰ Gewald, *Herero Heroes*, 186-188.

¹⁰¹ *Ibid*, 173.

¹⁰² Michael Bobelian, *Children of Armenia: A Forgotten Genocide and the Century-Long Struggle for Justice* (New York: Simon & Schuster, 2012), 82-85 and Franz Werfel, *The Forty Days of Musa Dagh*, trans. Geoffrey Dunlop and James Reidel (New York: Carroll & Graf, 2012), vii-xvii.

¹⁰³ Stavros T. Stavridis, "International Red Cross: A Mission to Nowhere," in *The Genocide of the Ottoman Greeks: Studies on the State-Sponsored Campaign of Extermination of the Christians of Asia Minor (1912-1922) and Its Aftermath: History, Law, Memory*, eds. Tessa Hofmann, et al. (Sarsdale: Melissa International Ltd, 2011), 278, Hofmann, "Cumulative Genocide," 64 and 74, and Akçam, *The Young Turks' Crimes Against Humanity*, 95-96.

¹⁰⁴ Hofmann, "Cumulative Genocide," 57 and 102.

¹⁰⁵ *Ibid*.

¹⁰⁶ Rozema, *Voices From the Trail of Tears*, 189 and United States Department of the Interior, *National Register of Historic Places, Multiple Documentation Form: Historic and Historical Archaeological Resources of the Cherokee Trail of Tears*, OMB No.1024-0018 (1992).

¹⁰⁷ Sturgis, *The Trail of Tears*, 59 and Woodward, *The Cherokees*, 208-212.

¹⁰⁸ Thornton, "Cherokee Population Losses during the Trail of Tears," 289-298.

¹⁰⁹ James Mooney, *Historical Sketch of the Cherokee* (New Brunswick: Transaction Publishers, 2009), 127.

by Gary Clayton Anderson is 1,000 deaths during incarceration in the camps and 2,000 deaths along the Trail of Tears and upon immediate arrival in Oklahoma.¹¹⁰ Thus, while exact figures are impossible to confirm, it is estimated that anywhere between 3,000 and 8,000 Cherokees died. While Ross went to St. Louis to get supplies in early 1839, many Cherokees had already died and were dying due to exposure, starvation, and disease.¹¹¹ The initial deportation aim of 70 days was expanded to 120 days as Cherokee caravans began to reach the Indian Territory in January 1839, but the majority did not arrive until spring 1839.¹¹² By poor execution of the displacement and neglect of human beings at least, and certainly as a part of the colonial genocide process over 400 years in North America, the US government was responsible for the deaths of up to half the Cherokees it deported from their homelands.

German forces had a different plan of perpetration. Instead of escorted caravans of deportees, the Germans guarded the borders of the deserts so the Herero could not escape the deserts. In this death trap, the Germans also guarded water wells so when the victims attempted to gain access to these, they were shot at and driven away. If they were undefended, the wells were poisoned by the Germans.¹¹³ There were many cases of Hereros digging for water only to find more sand and no water. After killing their few remaining cattle for food, the Hereros quickly died in the desert when resources were depleted. Of the 50,000 or 60,000 displaced to the desert, only 3,000 escaped to neighbouring countries safely.¹¹⁴ Of the 17,000 Hereros sent to labour camps, 6,000 had died by 1907.¹¹⁵ This was a quintessential genocide by displacement with killing by primarily indirect methods. As Isabel Hull writes, "most Herero died of thirst, not shooting, and it was the act of pursuit itself more than its manner that led to mass death."¹¹⁶

The Pontic Greek caravans were subjected to levels of brutality that match what was done to the Armenians, well documented by a number of penetrating studies of the genocide.¹¹⁷ The *Teşkilât-ı Mahsusa* and Çetes subjected the Pontic Greeks to physical, mental and sexual abuse, and humiliation during the displacements. When the escorts desired, they beat victims, sometimes committing massacres through direct killings. The caravans were directed across the Turkish heartlands and death was nearly guaranteed.¹¹⁸ The perpetrators utilized very few escorts to direct the caravans south, a vital element of this genocide since the wartime restrictions on personnel and materiel placed strains on the forces available for killing operations. From 1916-1918 and 1919-1923, the Pontic Greeks were destroyed by these death caravans through the harsh Turkish heartland and eventually the Syrian Desert. A correlation in the Ottoman Genocide of Christian Minorities is that killing processes were instituted against Christian minority populations in connection with oncoming invasion efforts of Entente campaigns (the Russian invasion from the North and the British Mesopotamian front in the South). The presence of war fronts may have been a precipitating factor in the decision to kill potential revolutionary or Christian populations who could have been 'liberated' by other Christians invading, as perceived by the Turks. In all, 353,000 Pontic Greeks were killed and the other 347,000 were deported to

¹¹⁰ Anderson, *Ethnic Cleansing and the Indian*, 170.

¹¹¹ Wilkins, *Cherokee Tragedy*, 311-313.

¹¹² Thornton, "Cherokee Population Losses during the Trail of Tears," 289-298, Kenny A. Franks, *Stand Watie and the Agony of the Cherokee Nation* (Memphis: Memphis State University Press, 1979), 56-57, 64-67, and 94-104, and Ehle, *Trail of Tears*, 355.

¹¹³ Sarkin, *Germany's Genocide of the Herero*, 115 and Hull, *Absolute Destruction*, 53-54.

¹¹⁴ Bridgman and Worley, "Genocide of the Hereros," 32.

¹¹⁵ Kiernan, *Blood and Soil*, 385.

¹¹⁶ Hull, "The Measure of Atrocity," 42.

¹¹⁷ Akçam, *The Young Turks' Crimes Against Humanity*, Akçam, *A Shameful Act*, Balakian, *The Burning Tigris*, 265 and 286, and Hannibal Travis, *Genocide in the Middle East: The Ottoman Empire, Iraq, and Sudan* (Durham: Carolina Academic Press, 2010), 248 and 289-292.

¹¹⁸ Halo, *Not Even My Name*, 64-76, Akçam, "The Greek Deportations and Massacres of 1913-1914," 73-74 and 86-87, and Matthias Bjørnlund, "The Persecution of Greeks and Armenians in Smyrna, 1914-1916: A Special Case in the Course of the Late Ottoman Genocides," in *The Asia Minor Catastrophe and the Ottoman Greek Genocide*, eds. George Shirinian (Bloomington: The Asia Minor and Pontos Hellenic Research Centre, Inc., 2012), 93 and 101.

Greece in the Greco-Turkish population transfers of 1923.¹¹⁹ After genocide, forced conversions and population cleansing, Turkey was almost entirely homogenized and no longer had major Christian minority populations within its borders. Much like the United States of America and Namibia, modern-day Turkey finds its foundational socio-political pillars in atrocity perpetration and victimization.

Displacing and Killing Populations

These three atrocities offer a diverse range of case-specific traits. The same DA crime was perpetrated on three continents, at three different times, by three different regimes, against three different targets, and by a number of similar and tailored methods to the goals of killing operations. What is similar, however, is the perpetrating regimes' exploitation of large territories, systemic deprivations of vital human needs, primarily indirect killing methods, and limited perpetrators, among the many other similarities explored above, to displace and kill targeted populations as the perpetrators conceptualized them. Certainly there are more cases involving forced displacement and the promise of expanding research into DA crimes to those other cases may help understand systemic perpetration and killing methods even further.

Concluding Remarks

This article began by asking how and why do perpetrators utilize displacement as a tool to commit atrocities? To answer this, a definition of a DA crime was initially offered, followed by a theoretical construction of the term and its relevant concepts; a logical exploration of why DA crimes may or may not be selected as the method of killing; and a final examination of the five stages of DA crimes applied to three different historical cases: the Cherokees, Hereros, and Pontic Greeks. The purpose of creating a DA crime theory is to highlight the particular style of atrocity perpetration utilizing displacement and primarily indirect killing methods and to demonstrate the need to incorporate this style of killing as a crime in international law. The conceptual exploration expands the knowledge and understanding of why forced deaths occur and adds to a base of understanding atrocities more generally. The DA concept may be particularly useful in understanding the modern internally-displaced person (IDP) phenomenon, especially if there is killing involved and large territories where crimes are perpetrated.

Atrocities are clearly not always prevented and if some form of intervention is undertaken to stop rights violations, it is critical to understand what killing processes are *actually being utilized*. If these are known, it is easier to understand how to halt flagrant human rights violations militarily and diplomatically, using a plethora of targeted hard and soft power tactics under a broad strategy of undermining perpetration efforts. It is important to theorize about how perpetrators may exploit different sociopolitical situations, geography, and available resources to create machineries of death in order to understand killing processes themselves and to create strategies to prevent, halt, and punish rights violations.

The most important element of atrocity scholarship, however much theorizing is completed, is to engage in a deep dialogue with cases selected, for it is these stories that should never be overlooked. It is critical to create empirically-precise, contextualized scholarship of mass atrocities while not forgoing the call to create theory. The perpetrating regimes of the three atrocities explored in this article are vastly different: a liberal democracy, a strong empire, and a crumbling empire which was reforming into a democracy. Despite the spatial, temporal, and regime type differences, perpetrators implemented similar DA crime processes. DA crimes are not limited to any particular regime type nor society – they can be implemented anywhere with the perpetration requirements outlined in this article. A major benefit of the structural approach to atrocities is the creation of strong middle-range theory in the style of the DA concept. If scholarship only examines single case studies or strives for meta-theoretical advances to apply to all atrocities, readily applicable typographical or killing process theories may be overlooked and sorely missing when they are needed to explain contemporary

¹¹⁹ Hofmann, "Cumulative Genocide," 106 and Renée Hirschon, *Heirs of the Greek Catastrophe: The Social Life of Asia Minor Refugees in Piraeus* (New York: Berghahn Books, 2008), 2, 9-10, 25-26, and 37.

crimes. The structural and comparative approach to atrocities should be explored in further scholarship.

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In the Land of the Mountain Gods: Ethno-trauma and Exile Among the Apaches of the American Southwest

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Abstract: *In the mid to late nineteenth century, two Indigenous groups of New Mexico territory, the Mescalero and the Chiricahua Apaches, faced violence, imprisonment, and exile. During a century of settler influx, territorial changeovers, vigilante violence, and Indian removal, these two cousin tribes withstood an experience beyond individual pain best described as ethno-trauma. Rooted in racial persecution and mass violence, this ethno-trauma possessed layers of traumatic reaction that not only revolved around their ethnicity, but around their relationship with their home lands as well. Disconnected from the ritual resources and sacred geographies that made up every day Apache living, both groups faced a profound and uphill struggle to maintain their community and very identity in the wake of immense and collective psychological distress. This essay emphasizes the role that geography plays in both the immediate impact of exile trauma and in the healing possibilities that this sacred connection to place has to offer Indigenous communities, even in the midst of exile.*

Keywords: *trauma, indigenous, race, violence, imprisonment, exile, place, geography*

“Listen my child, listen carefully,” Dilth-cleyhen’s mother had said. “Listen, and maybe you can hear the songs, the drumming—but you must listen. It is very faint. It is the sound of our sacred ones, the Mountain Gods.”¹

Introduction

During an 1861 raid on Apache Chief Geronimo’s camp, Mexicans captured and sold into slavery a young seventeen-year-old Native named Francesca, known to her Chiricahua Apache brethren as Id-is-tah-nah. Francesca’s captors sold her, along with three other Apache girls, to a maguey planter in Sonora, Mexico. Five years later, under the facade of attending a local religious event at a nearby church, Francesca and her friends escaped, walking north through mountains and deserts in order to reach their homeland. They slept during the day to evade capture, surviving largely on *tunas*, the fruit of the prickly pear cactus. One night in the mountains, a jaguar attacked the group, nearly killing Francesca in the process. Though the girls managed to kill the jaguar and treat Francesca’s wounds as best they could, this near-death experience seriously injured Francesca and postponed further travel of the group for a month. Eventually, the girls made their way back to their home in Arizona, but Francesca carried the scars of her horrific journey on her face and hands for the rest of her life. She often hid marks left by the attack from even her own people, but the rest of the Chiricahua Apaches viewed her scars as a sign of her drive, tenacity, and devotion to home. This experience with captivity, however, would not be Francesca’s last.²

Francesca’s story, though unique in its inclusion of a jaguar attack, represents only one of several oral histories within Apache history telling of escape and the journey home. The Apache peoples, though largely “nomadic” and mobile, have always held an intimate connection to the landscape of the Southwest and their homeland. This distinctive spiritual connection, passed down through sacred stories and tangled within their cultural, economic, and social institutions, remains an integral part of Apache identity.

During the mid-nineteenth century, even as their lands faced increasing instability and constriction with the onset of American settlement, Apache tribes such as the Chiricahua and the Mescalero retreated further into the heartlands of their territory. With the United States military’s removal of hundreds of Mescalero people to Bosque Redondo reservation in New Mexico Territory in 1861, and decades later, the Chiricahua relocation to a prison camp in Saint Augustine, Florida,

¹ Ruth McDonald Boyer and Narcissus Duffy Gayton, *Apache Mothers and Daughters: Four Generations of a Family* (Norman: University of Oklahoma Press, 1992), 5.

² Sherry Robinson, *Apache Voices: Their Stories of Survival as Told to Eve Ball* (Albuquerque: University of New Mexico Press, 2000), 27-29.

in 1886, this exile created a severe rift within their ethnic identity as the federal government sent them far from home.³ Due to their intimate and visceral connection to their landscape, the forced relocation produced a unique layer of ethno-trauma which pushed these two groups into reactive identities of survival in an exiled captivity.

Indigenous Ethno-trauma

This essay establishes the term *ethno-trauma* to describe the layered experience of trauma within Indigenous communities, emphasizing the importance of sacred geography among Indigenous peoples as a particularly profound factor in this collective trauma. Ethno-trauma exists as an expanded version of the wounding of soul felt by victims of natural disaster, violence, and intense psychological duress, but beyond typical trauma, the experience of ethno-trauma lurks within racial, religious or culturally-based persecution and encapsulates multiple, building layers. The foundation of this ethno-trauma lies first within the self, as the individual psyche processes traumatic events. Group persecution then adds to this experience, lasting psychological effects beyond the individual experience of post-traumatic stress syndrome.⁴ Within communally rooted cultures, particularly Indigenous peoples, this ethno-trauma develops out of an attack on not merely a person or people but on the cultural identity of the group at large.

Yet for the Mescalero and Chiricahua peoples of the nineteenth century American Southwest, their experience contained an additional layer of trauma, based within their forced uprooting from their homeland. Their ultimate exile and imprisonment after decades of war and conflict pushed both Apache groups into a liminal disconnect from their cultural landscape and a brokenness that could only be mended through a processing of pain within ritual and community. This cultural genocide committed by both state and citizen impacted on multiple generations in both captivity and beyond.

Though the application of the term “genocide” has long caused scholarly controversy within Native American academic studies, genocide, much like the term ethno-trauma, consists of a variety of layers situated along a spectrum. Ethno-trauma in the case of the Mescalero and Chiricahua Apaches exists largely as a reaction to this cultural genocide, or ethnocide, a term first theorized in Rafael Lemkin’s *Axis Rule in Occupied Europe*.⁵ More recently, scholars Benjamin Madley, Patrick Wolfe, Alex Alvarez, and others have expanded the concept of both cultural and physical genocide into a broader term of nuanced proportions, shifting away from its legalistic definition coined in the aftermath of World War II.

Benjamin Madley argues for a closer reviewing process of the individual treatments of bands and Native units, rather than the broad and often inaccurate application of a victim and perpetrator binary to post-contact Indian history.⁶ Meanwhile, Patrick Wolfe moves genocide into a different and far broader conceptualization with his exploration of settler colonialism. Wolfe argues that the process of settler colonialism remains, at its heart, a process of developing patterns of genocidal intent through the establishment of colonial infrastructures and institutions.⁷ Alex Alvarez further expands on Wolfe’s theories when he refers to this process of ethnic inclusion via these colonial systems at the cost of genocidal exclusion as “inherently exterminatory.”⁸

As one examines the removal of both these Apache groups, and particularly the lead-up to their exile, one cannot help but note these patterns, noted more broadly by Madley and Alvarez, of

³ For more information on the Apache removal periods, see C.L. Sonnichsen, *The Mescalero Apaches* (Norman: University of Oklahoma Press, 1958); Edwin R. Sweeney, *From Cochise to Geronimo: The Chiricahua Apaches, 1874-1886* (Norman: University of Oklahoma Press, 2010).

⁴ Aameena T. Ahmed, Selina A. Mohammed, and David R. Williams, “Racial Discrimination and Health: Pathways and Evidence,” *Indian Journal of Medical Research* 126, no. 4 (2007), 318.

⁵ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation - Analysis of Government - Proposals for Redress* (Washington, D.C.: Carnegie Endowment for International Peace, 1944), 79- 95.

⁶ Benjamin Madley, “Reexamining the American Genocide Debate: Meaning, Historiography, and New Methods,” *The American Historical Review* 120, no. 1 (2015), 98-139.

⁷ Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8, no. 4 (2006), 387-409.

⁸ Alex Alvarez, *Native America and the Question of Genocide* (Lanham: Rowman & Littlefield, 2014), 57.

ethnically-driven persecution. Often violent, these encounters were perpetrated by both the non-Indigenous public as well as federal and territorial actors and institutions. Yet physical violence, as explored later in this article, only accounts for half of the Apache suffering. Once imprisoned, the cultural genocide caused by this experience of enclosure would create a lasting wound within the Apache collective consciousness. Perhaps the most clarifying conceptualization of the specific Apache experience with genocide, however, lies in the Apache people's own words on the topic. When twentieth century historian and author Eve Ball interviewed Mescalero Apache Frederick Peso about his people's possible experience with genocide at Bosque Redondo, he stated eloquently, "I am sure that that was the intention. The surest way to kill a race is to kill its religion and its ideals... That is to kill the soul of a people. And when the spirit is killed, what remains?"⁹

Cycles of Violence and Trauma within a Sacred Geography

Both the Mescalero and Chiricahua Apaches faced vigilante and military violence in the American Southwest through numerous decades at the hands of the Mexican and later American military, culminating in forced removal, criminalization, and imprisonment. While the Mescalero Apaches faced direct physical destruction through forced incarceration for several years at the inhospitable Bosque Redondo reservation in 1860s New Mexico, the Chiricahua Apaches faced a more indirect path to ethnotrauma through decades of harsh separation from their homeland as prisoners of war in the east. Additionally, these groups faced a long, spiritual pain far more devastating to them than their physical persecution, as the bonds between place and existence fractured during the exile and incarceration process. Through their research, trauma scholars Dominick LaCapra, Michael Rothberg, and Cathy Caruth have created a more complex understanding of this multigenerational trauma that groups such as the Apaches faced as ethnic collectives.¹⁰

Apache peoples of the nineteenth century dealt with cyclical violence on an everyday basis. Both the Mescalero and Chiricahua tribes were embroiled during this period in the Indian and Mexican slave trade, a practice more akin to indentured servitude than to East Coast chattel slavery but no less traumatic for its victims.¹¹ Facing increasing hostilities from white settlers pouring in from the East and in the aftermath of the Apache wars with the US military, these two Apache groups contended with a fracturing of their cultural selves and an agonizing sense of limbo as they struggled to maintain their communal systems in a land far away from the drumming of the mountain *gahns*.¹²

Due to their semi-mobile nature, the Mescalero and Chiricahua's traditional territory encompassed a wide swath of lands. Stretching from the Sierra Blanca in southeastern New Mexico all the way into the Texas panhandle, the Apaches inhabited the ranges of the Guadalupe as well as the Davis mountains. Although culturally rooted to the arid highlands and peaked ranges of the region, the Apaches also lived and hunted among the deserts and brush lands with the changing seasons.¹³ Though raiding featured heavily within the Apache economy, particularly during the seventeenth and eighteenth centuries, Apache well-being and material culture still revolved entirely around the seasonality of nature. Yet regardless of this mobility, the Apaches, down to individual bands and family units, always returned to their sacred spaces, rooted in spiritual and oral history, whether in the mountains, among the rivers, or deserts and plains. The Spaniards referred to this vast expanse of tribal territory as *Apacheria*.¹⁴

⁹ Eve Ball, *Indeh: An Apache Odyssey* (Norman: University of Oklahoma Press, 1980), 81.

¹⁰ For more information on the concept of multigenerational trauma, see Dominick LaCapra, *Writing History, Writing Trauma* (Baltimore: John Hopkins University Press, 2001); Michael Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization* (Stanford: Stanford University Press, 2009); Cathy Caruth, ed. *Trauma: Explorations in Memory* (Baltimore: John Hopkins Press, 1995).

¹¹ James F. Brooks, *Captives and Cousins: Slavery, Kinship, and Community in the Southwest Borderland* (Durham: University of North Carolina Press, 2011).

¹² **Gahns* or *Ga'ans* are ancestral spirits linked with Apache creation stories who dwell within the mountains of the Apache homeland, protecting Apache peoples from harm.

¹³ Sonnichsen, *The Mescalero Apaches*, 4.

¹⁴ Daniel L. Thrapp, *The Conquest of Apacheria* (Norman: University of Oklahoma Press, 1967).

In 1539 when the Spaniards first pierced the landscape with exploration, Apache groups dotted this new empire's northern borderlands. Western Apaches thrived in the countryside along the Rio Grande, and Eastern Apache groups stretched as far northeast as Kansas. Apache bands at the time consisted of those still found today, such as the Mescaleros, Jicarillas, and Lipans, as well as some lesser known groups such as the Carlanas, Palomas, Apaches del Perillo, Faraones, and Natages. All of these groups, however, periodically merged and separated based on the leadership and resources available, and in light of alterations to population resulting from violence and disease.¹⁵

Regardless of the size and scope of their territory as well as their semi-nomadic lifestyles, both the Chiricahua and Mescalero Apaches have always held a distinctive connection to their territory. In November 1951, Percy Big Mouth, the last living Apache scout under Geronimo and a child prisoner with many Mescalero Apaches at Bosque Redondo, declared in reference to *Apacheria* during one interview with Eve Ball, "It has always been our country."¹⁶ Similarly, recalling the Chiricahua homeland, Geronimo once stated,

For each tribe of men Usen created He also made a home. In the land for any particular tribe He placed whatever would be best for the welfare of that tribe. When Usen created the Apaches. He also gave them their homes in the West. He gave them such grain, fruits, and game as they needed to eat...He gave them a pleasant climate and all they needed for clothing and shelter was at hand. Thus it was in the beginning: the Apaches and their homes each created for the other by Usen himself. When they are taken from these homes they sicken and die.¹⁷

The stereotype of the constantly prowling, disconnected Apache, however, fed into public notions of Apache homelessness with American annexation of the region from Mexico in 1848. Espousing an entirely Western view of sedentary living as a pinnacle of civilization, American settlers perceived Apaches as rogue groups lacking a definitive home, but the Apaches always maintained a deep understanding of their territorial bounds, with their demarcations centered on the sacred places of modern day New Mexico, Arizona, and northern Mexico.¹⁸

Philosopher Edward S. Casey has long argued that place, centuries ago, lost its importance among time and space as philosophers sought to analyze who we are as both individuals and as collectives of individuals. In his treatment of place, Casey looks at the temporal and memorial or historical factors at work in moving the critical nature of geography beyond mere positioning and into a realm far more meaningful for the individuals or peoples under analysis. Casey argues further that bodily movement established in many cases a sort of civil disobedience in regard to place.¹⁹ In the same way that the increasing motion of warring Apaches alarmed and incited warfare with the American military, so too did the continued motion and raiding practices constitute spatial ownership and agency for the Apache peoples.

Harry Basehart, an ethnographer of the Apaches, described the movements of the Mescalero Apaches in his study, arguing that while some leaders followed patterns, moving camps small distances in the short term and to particular mountains at specific times of year, other leaders and their bands moved much more sporadically, reflecting the variation in mobility among individual groups. One Mescalero Apache whom Basehart interviewed referred to this region not as the territory of his people, but as "our country."²⁰ The American government's vast misunderstanding

¹⁵ Sonnichsen, *The Mescalero Apaches*, 32.

¹⁶ Eve Ball, "Big Mouth," n.p., Eve Ball Papers, November, 1951, Manuscript Collection 3096, L. Tom Perry Collection, 20th and 21st century Western and Mormon Americana, Harold B. Lee Library Provo, U.S., Box 3, Folder 22.

¹⁷ Angie Debo, *A History of the Indians of the United States* (Norman: University of Oklahoma Press, 1970), 3.

¹⁸ William M. Clemens, *Imagining Geronimo: An Apache Icon in Popular Culture* (Albuquerque: University of New Mexico Press, 2013), 69.

¹⁹ Azucena Cruz-Pierre, Donald A. Landes, and Contributors, *Exploring the Work Of Edward S. Casey: Giving Voice to Place, Memory, and Imagination* (London: Bloomsbury, 2013), 37-56.

²⁰ Harry W. Basehart, *Apache Indians XII; Mescalero Apache Subsistence Patterns and Socio-Political Organization* (New York: Garland Publishing Inc., 1974), 105-110.

of symbiotic Indigenous land relations, however, would ultimately undermine Apache claims to their homeland in the aftermath of both the Mescalero and Chiricahua wars.

The Apache War Period

For the Mescalero Apaches, their rift from their homeland came during the early 1860s. By the start of the Civil War, the Mescalero people shared an unstable relationship with the still new American government in the region. While some chiefs continued leading violent raids, other chiefs such as Cadette negotiated with local Indian agents and attempted less mobile settlements and agricultural practices. Working from broad and simplistic assumptions that Apaches were innately violent and war mongering, however, the New Mexico territorial government, with the backing of the federal government in Washington, gave Union General James Carleton unbridled control over the Mescalero people's future. With the Civil War raging in the east, the territorial government sought to placate the various tribes in the region who had begun raiding anew in the chaos of a failed Confederate invasion. Concise and brutal, General Carleton's military action targeted not only fighting Mescalero Apache warriors of the tribe but women and children as well.²¹ Begun during the summer of 1862, the campaign lasted a mere five months. Eventually, this campaign would culminate in the forced incarceration of many Mescalero Apaches at a bleak and isolated location near Fort Sumner in eastern New Mexico territory, known as Bosque Redondo.²²

Carleton ordered the application of total warfare tactics that typified methods practiced against Native Americans of the time period. Oral histories from survivors, and the children and grandchildren of survivors, still attest to the painful experiences of watching fathers die as they fought back soldiers while their wives and children scaled canyon walls to evade capture. Big Mouth, a Mescalero Apache who spent his childhood at Fort Sumner, spoke of his family's traumatic recollections to Eve Ball. Big Mouth described the deaths of both his father and other warriors early on during the campaign as they fought to protect fleeing women and children from capture by American soldiers.²³ Afterward, Big Mouth and his surviving family members made the long walk with other captured Mescalero people to Fort Sumner and the Bosque. The journey into exile totaled around 137 miles with few rations.²⁴ Big Mouth stated in reference to his people's experience:

It was a terrible journey, for the women were attacked by the soldiers, and no officer did anything to prevent it. Mescalero women were chaste and very modest. The men could not look at each other; they could do nothing to protect the women and were ashamed. They wished they had chosen death in the land given them by Ussen, but it was too late; they were now captives.²⁵

Stories of the "Long Walk," such as Big Mouth's, do not merely contain tales of bodily pain but also reflect upon the complex emotional shame and sorrow of people experiencing tremendous racial persecution and an uncertain incarceration in foreign lands. The stories that trickled down into the oral histories of the Mescalero people all seem to center upon this psychological wounding indelibly stamped into Apache memory. Dominick LaCapra argues that victims of trauma face a shattering of identity and a rupture in memory, leaving them at a crossroads to recreate the self.²⁶ The Mescalero Apaches, after suffering through the hardships of total warfare, faced a brokenness caused by violence and racial persecution that led them to reevaluate their communal identity upon reaching Bosque Redondo. Yet beyond this fracturing of self and culture, the Mescalero people also contended with a rupture of identity and place. This intertwined Indigenous identity, characterized

²¹ Sonnichsen, *The Mescalero Apaches*, 99-120.

²² William A. Keleher, *Turmoil in New Mexico: 1846-1848* (Albuquerque: University of New Mexico Press, 1952), 29.

²³ Ball, *Indeh*, 121.

²⁴ John C. Cremony, *Life Among the Apaches* (San Francisco: A. Roman & Company, 1868), 201.

²⁵ Ball, *Indeh*, 121.

²⁶ Dominick LaCapra, *History and Memory after Auschwitz* (Ithaca, NY: Cornell University Press, 1998), 9.

by strong social, familial, and cultural ties to the broader community and encompassing a variety of traditional subsistence practices, then had to be reconstructed on a new reservation in the wake of physical and emotional destruction.

During those first fateful months at the Bosque, while the Apaches worked diligently creating a new communal home, the population began to feel the shock of being removed from their traditional homeland to such a desolate landscape. Placed among the sagebrush and sparse cottonwood trees of the barren New Mexican East, these Apache bands faced a monumental change of place when compared to their previous wooded mountain ranges in the territory's southern borderlands.²⁷ Ripped away from the places that defined them and still reeling from the horrors of war, the Mescalero carefully followed the military's guidance in regard to farming, housing structures, and political organization while on the reservation.²⁸

Ultimately, after the population swelled to over 4,000 with the addition to the reservation of captured Navajo Indians, these Native prisoners faced increasingly dire circumstances with famine, blight, outside Indian attacks from various Plains groups, restriction from off-reservation hunting, as well as malnutrition and disease. Finally, on November 3, 1865, under cover of night and the guidance of the elders of the group, all Apaches, then totaling close to 400, disappeared from the Bosque, leaving only nine sick Apaches who within a few days also vanished.²⁹ This return home for the Mescalero, much like Francesca's return home to the land of the Chiricahua, did not merely represent a connection to place for the Apaches. Instead, this defiant bid for freedom also symbolized the resonant sense of agency that did not lead the Mescalero into exiled hiding but rather to freedom in the mountain hollows of *Apacheria*.

For the Chiricahua Apaches, their largest removal came after several decades of intermittent warfare with the Mexicans, settlers, and American troops along the territorial Southwestern borders. During this violent period which occurred in the lead-up to Chiricahua removal in 1886, known as the Apache Wars, various Apache chiefs from Cochise and Victorio to Naiche and Geronimo sought peace on one hand and violence on the other as they attempted to stop white incursion into their territory and provide food and shelter for their peoples. In the early 1870s, the Apache leader Cochise negotiated a possible reservation within his people's homeland.³⁰ During these talks, federal agents and military men pushed for Cochise to relocate his warring band to a reservation at Tularosa, around 100 miles away from Canada Alamosa, a place which Cochise's people considered to be the heart of their homeland. Cochise similarly rejected this location as a reservation, stating; "I want to live in these mountains; I do not want to go to Tularosa. That is a long ways off. The flies on those mountains eat out the eyes of the horses. The bad spirits live there. I have drunk of these waters and they have cooled me; I do not want to leave here."³¹ Cochise also questioned the government's role in dictating another people's definition of home, stating: "When I was young I walked all over this country, east and west, and saw no other people than the Apaches. After many summers, I walked again and found another race of people had come to take it. How is it? Why is it that the Apaches wait to die—that they carry their lives on their fingernails?"³² At this point in Cochise's life, in poor health and over sixty years old, the leader recognized that his choices had increasingly narrowed to keep his remaining followers alive. Regardless, he still attempted to defend his group's place near their mountainous stronghold.

Apache Religion and the Holy Landscape

The public image of the Apache Indian denotes a marauder on horseback, raiding and roaming across a barren desert landscape among the shrubs and arid lands. This stereotype, however, lies

²⁷ Martin Ball, "Sacred Mountains, Religious Paradigms, and Identity Among the Mescalero Apaches." *Worldviews: Global Religions, Culture, and Ecology* 4, no. 3 (2000), 264-282.

²⁸ Sonnichsen, *The Mescalero Apaches*, 116.

²⁹ *Ibid.*, 118-121.

³⁰ Edwin R. Sweeney, *Cochise: Chiricahua Apache Chief* (Norman: University of Oklahoma, 1991), 322-339.

³¹ *Ibid.*, 339.

³² Edwin R. Sweeney, ed. *Cochise: Firsthand Accounts of the Chiricahua Apache Chief* (Norman: University of Oklahoma, 2014), 179.

far from how the Mescalero and Chiricahua Apaches see themselves in the past and present.³³ Both of these groups possess a profound association with the mountains that surround their territories. For these peoples on an economic and militaristic level, their mountain ranges represented a seasonal holdout where game remained ample in the face of changing weather and where deep, defensible canyons waited for the Apache people in times of trouble.

For many non-Indigenous settlers of the Southwest, this concept of place attachment seemed difficult to comprehend. Penelope Harvey characterized this strong connection to the environment when examining geographic agency within the worldview of Indigenous Andeans, stating, "In this respect it is important to understand that the personhood of hills and pathways is not a metaphorical extension of human attributes. Personhood is literal."³⁴ In the same manner, the Chiricahua as well as Mescalero Apache wars with Spaniards, Mexicans, and Americans over multiple centuries empowered the Apache landscape through these conflicts, all the while intersecting with the agency of the land itself. Knowledge of these formidable desert and mountain spaces provided Apaches, regardless of their racial and class position within various societies and time periods, with pieces of this power. Once removed from their homelands by American forces, however, the power of place fractured in traumatic ways.

One facet of this place attachment lies in Apache theology and spirituality. Protecting Native religious beliefs in the face of forced conversions and socio-political pressures allowed the Mescalero Apaches, like many other tribes of the Southwest, to maintain their spiritual practices throughout the centuries. Much as Ussen, creator of all supernatural power, linked the spirit world with that of his physical creations, abstract religious beliefs merged with everyday life and cultural systems, linking multiple levels to economic institutions within the tribe. Though these beliefs seemed to non-Indigenous individuals from Spain, Mexico, and America as pagan and primitive, Mescalero Apaches lived so enmeshed within their concept of the spiritual world that any attack upon this system became an attack upon their identity as a people. Asa Daklugie, an Apache interviewed by Eve Ball, expressed the absolute importance of understanding Apache religion in reference to their collective identity:

Without at least a little understanding of our religion it is difficult to comprehend what motivates the Apache. My people have never liked to talk about our religion, partly because they anticipate ridicule, but more because it is the only thing we possess of which the whites have not robbed us. Instead of trying to force it upon all whom we contact, as your people seem to be obligated to, we preserve it for ourselves and our children. It is the one thing of which we cannot be deprived... Each morning as the sun first appears on the horizon, the father of the family stands at the door of his tepee, always facing the east, and with eyes and arms uplifted prays to Ussen – not to the sun, but to Ussen.³⁵

For Daklugie, this inseparable aspect of Apache identity also represents a remaining bastion of cultural stability. With a history rife with cyclical violence, racial persecution, massacre, and exile, this tangling of spirit and the everyday brought a sense of continuity to the Apaches, even in times of collective trauma, and much of that entanglement continually engaged the resources and geographic anchor points of the Apache world on a religious level.

For the Chiricahua Apaches, though Ussen created the world, the spaces within that world take on a separate meaning in regard to particular events. Berle Kanseah, a Chiricahua tribe member stated in reference to the spiritual power of land, "It's ours, and it's sacred, and it's how we were intended to be, placed here in the Southwest."³⁶ As the Chiricahua moved down from

³³ For more on the long manipulated white-produced image of the Apaches, see Janne Lahti, "Silver Screen Savages: Images of Apaches in Motion Pictures." *Journal of Arizona History*, 55, no. 1 (2013), 51-79.

³⁴ Penelope Harvey, "Landscape and Commerce: Creating Contexts for the Exercise of Power," in *Contested Landscapes: Movement, Exile, and Place*, ed. Barbara Bender and Margot Winer (Oxford: Berg Publishers, 2001), 198.

³⁵ Ball, *Indeh*, 56-58.

³⁶ H. Henrietta Stockel, "Rocks, Waters, and Earth: Chiricahua Apache Spiritual Geography," *Journal of the West* 46, no. 4 (2007), 12.

the North into their present homeland in southwest Arizona and New Mexico, they applied their own notions of community to the spaces around them. For this Apache group, land and place represented entities with which to develop a separate but equal relationship. This relationship, characterized by mutual sustainability, then became ingrained within their spiritual, economic, and cultural practices.³⁷

Martin Ball described Apache belief systems as “a religion of place.”³⁸ The Mescalero Apaches in particular consider the mountains of their Southwestern territory to be holy. In this vast landscape, often the most sacred of spots possessed water, rich biodiversity, or other strategic resources. While the Mescalero Apaches can name multiple sacred mountains, only a few of these mountains are considered “medicine mountains.”³⁹ Yet Ball does not describe the mountains as possessing what he terms “spiritual ecology” and power because of their abundance of medicinal fauna.⁴⁰ Instead, Ball argues that the mountains produce such fauna because of their own primal inundation with power. Mescalero Apaches that Ball interviewed claimed that often this power can become tangible and tactile as one gets closer to the peaks. One interviewee described to Martin Ball how when Ussen flooded the world in its earliest days, the spirits had no place to go. The mountain peaks, however, still jutted out of the floodwaters. The spirits invaded these peaks and there the *gahns*, or mountain gods, assumed their present form, giving their power to the landscape. According to tribal leader Paul Ortega, as long as the Mescalero Apaches remained centered within the four sacred mountains which gave the four Crown Dancers life, then the people there would remain protected.⁴¹

Apache religion does not revolve around solely the largest entities of the natural world. Even the smallest of substances within the landscape can take on tremendous spiritual symbolism and power. Tule pollen, called *hoddentin*, marks the bodies of Apaches during much of their ceremonial practices. This yellow substance, carefully prepared by medicine men from the cattail plant at a particular point in the flora’s lifespan, moves through Apache life and even death. Warriors would carry this symbol of the sun’s life-giving power into battle and would use it in prayer at the bedsides of the dying. In combination with frequent prayers, the pollen could also be thrown into the four sacred directions to express gratitude for a good hunt or battle won. In this manner, Apache, earth, life, death, sun and stars remained inextricably linked.⁴²

The Mescalero Apache world remains rooted in everyday rituals and constant alignments that connect their people to their past and a greater, more metaphysical “cosmivision,” a connection between religion and astronomy. While working with elder Bernard Second on the Mescalero Apache reservation, Claire Farrer observed that puberty ceremony lodges and other constructions aligned with the sun and constellations in a perfectly coordinated pattern, complex and simultaneously riddled with metaphors and symbols. Farrer noted that pre-school-aged Apaches rode their bicycles in an east to west pattern, following the rising and setting of the sun. In addition, she also noted that all Apaches carefully spread salt on their food at meals in a similar motion. Farrer realized that these everyday rituals constantly confirmed the supreme connection still held between Apache, earth, and the cosmos.⁴³

Religious rituals of both Apache groups remain a key part of Apache spirituality, reminding practitioners of the past and of place within their everyday lives. Anthropologist Morris Opler noted that when near their birthplaces, individual Apaches will sometimes roll on the ground in the four sacred directions to honor the sanctity of their birthplace. Similarly, a child’s first laugh ceremony honors their entry from the spirit world of the ancestors into the physical realm of his or her living family. Other rituals such as the cradle ceremony incorporate native natural elements under the

³⁷ Ibid., 18.

³⁸ Ball, “Sacred Mountains, Religious Paradigms, and Identity among the Mescalero Apache”, 264.

³⁹ Ibid., 267.

⁴⁰ Ibid., 268.

⁴¹ Ibid., 267-278.

⁴² H. Henrietta Stockel, *Salvation through Slavery: Chiricahua Apaches and Priests on the Spanish Colonial Frontier* (Albuquerque: University of New Mexico Press, 2008), 16.

⁴³ Claire R. Farrer, *Living Life’s Circle: Mescalero Apache Cosmivision* (Albuquerque: University of New Mexico Press, 1994).

guidance of the shaman in the construction of an infant's cradle board.⁴⁴ The Apaches also use the act of naming as a way of building meaning into and creating dynamic power relations within their spiritual geography, viewing their history less in terms of when events occurred and more in terms of where events occurred. These names, recorded through generations of oral tradition, establish a method of connecting with the land's "personhood," engaging with geography in a manner that allows for continuity as well as change.⁴⁵

Harry Basehart's ethnographic study of the Mescalero people expands on this concept of an organic relationship with the land, complicating the image of the Apaches' sacred geography. In the 1970s this ethnographer analyzed the multiple place names and the concurrent meanings that these names evoked to the elders he interviewed within this Apache group. The Mescalero referred to their peaks in New Mexico as "the sacred mountains," believing that these spaces did not merely symbolize home but that they also held a spiritual power all their own. Though Basehart interviewed multiple Natives on the place names and importance of local spaces, all seemed to hold Guadalupe Peak in great regard. The elderly noted this peak as "a holy place...people go to that mountain and raise their hand up to the mountain and pray for all the good things: that no sickness will come to them and that the good luck will be with them."⁴⁶ Much like the sacred sites of saintly miracles in Christian beliefs, the Mescalero Apaches invoked stories of their origins and how their world came to be when Basehart asked them about specific locations. Some of these sites held more reverence than others, while other places hearkened back to critical lessons learned by Mescaleros in the past. In one location bison emerged from the earth in the early days of existence. At another location a woman died after improperly cutting down a pinon tree.⁴⁷

Intertwined within the sacred geography and cosmology of the Apaches lies the balance of all power. The Chiricahua believe that in the era before creation by Ussen, only time and power existed.⁴⁸ Ussen represented this power and all the aspects contained within it. Power begot power, and power fought power as dueling entities of pure force battled to overcome the balance of the universe. Once Ussen, power's culmination, created the world, these spiritual powers continued to clash for superiority in the spiritual realm, largely ignoring humankind and their petty affairs. Within this eternal struggle, however, no concept of good or evil existed. Instead these varying concepts of power merely loomed, lacking in any proscribed morality or contrast. Apaches strive to harness these powers within their own lives, yet Apaches also firmly believe that power seeks out human beings to possess it. Additionally, one could refuse power bestowed by these metaphysical spirits since taking on such a tremendous energy also entails grave responsibility to the accepting person. In this manner the earth and the cosmos, comprised of this eternal and sacred power, move through the Apache individual with their own agency and life force. Some Apache people believe that these powers will remain incomplete until harnessed by an individual while other Apaches add more humanistic qualities to this entity, arguing that the power desires companionship most of all.⁴⁹ Geronimo, warrior leader and medicine man of a band of Chiricahua, claimed that Ussen had not only given him the power of clairvoyance in relation to his enemies but that the creator also protected him from death in battle.⁵⁰

Oral traditions pass on this legacy of holy places, yet the stories these places carry do not always involve spirituality. Many of these stories are literally retellings of journeys home. One such story of this arduous journey home comes from a more recent oral history of the young warrior Massai and his desperate return to the Southwest in 1886.⁵¹

⁴⁴ Morris Edward Opler, *The Apache Life-Way; The Economic, Social, and Religious Institutions of the Chiricahua Indians* (Chicago: University of Chicago Press, 1941), 10.

⁴⁵ Stockel, "Rocks, Waters, and Earth," 21-22.

⁴⁶ Basehart, *Apache Indians XII*, 82.

⁴⁷ *Ibid.*, 63-82.

⁴⁸ D.C. Cole, *The Chiricahua Apache, 1846-1876: From War to Reservation* (Albuquerque: University of New Mexico Press, 1988), 13-16.

⁴⁹ *Ibid.*, 15-16.

⁵⁰ Clemens, *Imagining Geronimo* 140-141.

⁵¹ Sherry Robinson, "Massai and Zanagoliche: An Apache Abduction Turned Enduring Love Story," *Wild West* 25, no. 4

Though Cochise died during a brief respite in the long Apaches Wars, the insurgency against white incursion into Apache homelands continued under the leader Geronimo and his band of warriors, including young Massai. Massai and many of his brethren, after the surrender of Geronimo in 1886, were transferred by train to their exile in Florida at Fort Marion as prisoners of war. In stifling conditions and with the windows nailed shut with boards, Massai likely pried off one of the roof vents in order to make his escape. As the train neared St. Louis, Missouri, Massai leaped from the car, surviving his fall and eventually making his way back to his sacred homelands in Western New Mexico.⁵²

While stories of homecomings feature prominently in Apache oral histories, stories of grief and historical trauma also tie into the Apache sense of place. Two locations in particular, Janos in Chihuahua, Mexico, and Bacoachi in Sonora, Mexico, lurk within Apache collective memory as spaces of forced enclosure. While Spanish missionaries detained Apaches at their Janos mission by force, the Spanish government later confined the Chiricahua to Bacoachi as part of a peace settlement. Many Apaches had sickened and died in these enclosed spaces, leaving a legacy of death, and these stories remain a critical aspect of the Chiricahua spiritual landscape. Apaches view these locales of trauma as sacred to their people, owing to their historical importance. Here, after a life of terror and violence, many Apaches journeyed into the spiritual world through death.⁵³

Exile Trauma: A Spiritual Amputation

The Mescalero Apache removal to Bosque Redondo in Eastern New Mexico in the 1860s, and the Chiricahua Apache removal to Florida and beyond in the 1880s, created an experience akin to a cultural and spiritual amputation. Though they could find ways to heal from this separation through ritual and community, the scars of their removal from their sacred geography would linger. Keith Basso, an anthropologist of place and space in the Apache world, described this loss when discussing homeland attachment and separation in his work with the Western Apaches. He argues that depriving people of their geographic attachments creates a metaphysical dislocation, felt intimately as a threat to the identity. Additionally, he states that, "Places, we realize, are as much a part of us as we are a part of them, and senses of place- yours, mine and everyone else's- partake complexly of both."⁵⁴

The spiritual amputation of exile created cultural phantom pains within the Apache people. As the Long Walk of the Mescaleros progressed and as the train of Chiricahuas moved further away from *Apacheria*, the feeling would continually remind the Apaches of the lost limb, their heart and homeland that disappeared and simultaneously lingered behind them.

Within these shattered groups, Apache warriors in particular found themselves emasculated by this rift from place. In one way they chose what they hoped would be the immediate safety of their families through a negotiated surrender. In exchange for this peace through removal and cessation of warfare, the warriors of the Mescalero Apaches and later the Chiricahua faced a new life removed from their own relationships with the landscape and its resources. One Chiricahua man, Carl Mangas, the son of famed leader Mangas Coloradas, declared that he could not even care for his family and became inconsolable. As the prison train moved from Holbrook, Arizona, to Florida with his captured family and band on board, he jumped from a train window in an attempted suicide.⁵⁵

Apache women also faced great challenges in their removal from *Apacheria*. These women played an integral part in the family unit as both a caregiver and resource gatherer. More importantly, women also possessed a sacred connection to the earth around them, uniting their families and band to the land through ritual, ceremonies, and spiritual power. Just as the principle

(2012), 22.

⁵² Joseph C. Jastrzembski, "Traitorous Towns in Mexico: Chiricahua Apache Personal Narratives of Horror." *Western Folklore* 54, no. 3 (1995), 169-196.

⁵³ Stockel, "Rocks, Waters, and Earth," 23.

⁵⁴ Keith Basso, *Wisdom Sits in Places: Landscape and Language among the Western Apache* (Albuquerque: University of New Mexico Press, 1996), xiii-xiv.

⁵⁵ Boyer and Gayton, *Apache Mothers and Daughters*, 101.

Apache deity White Painted Woman had brought men, her children, into being when the world was still new, women represented the ultimate spiritual force: creation.⁵⁶

The puberty ceremony, rooted in celebration of menarche and a young lady's rise to possible motherhood, remains one of the Apache's oldest and most important rituals. As economic leaders, women also provided the majority of daily food, with gathering traditions taught to daughters at a young age. Women directed the migration patterns across the region during particular seasons according to the growth patterns of traditional wild crops. These women did not merely take from the earth as needed. Instead they engaged in this economic practice in a way that intermingled with the spiritual.⁵⁷ When gathering these necessities from the earth, Apache women always prayed in thanks of the power that each food contained, as they did for all plant and animal resources that existed within their territory.⁵⁸

Apache children of the 1880s occupied a much more chaotic world than their grandparents. In the maternal oral traditions of the Gayton family, young Beshad-e grew up under the shadow of her grandfather Victorio's wars. As a child she learned to carry a knife hidden somewhere on her body at all times. More importantly, she learned to incorporate aspects of the environment into her daily existence as a means of flight.⁵⁹ Apaches taught their young children to carry pouches of dried foodstuffs constantly, in case of a sudden attack and a need for rapid escape, so that the children would be fed until they found their way back to the band. Similarly, Apaches hid preserved foods within the caches of canyon walls, committing their location to memory for those days of terror, fleeing and hiding from either Mexicans or Americans. Having already faced violence and racial persecution, the suffering of removal and exile simply added another layer to the complex ethno-trauma that the Apaches lived with each day as a people.⁶⁰

Edward Said profoundly expressed the agony of removal in his essay "Reflections on Exile." He proclaims exile as "the unhealable rift forced between a human being and a native place, between the self and its true home: its essential sadness can never be surmounted."⁶¹ Said seeks to dispel the romanticism of exile so commonly featured in literature, arguing that this process remains a real, historical trauma for those living through it. Exile does not exist as its own entity or as a process in which to take part. Rather, one group of people imposes this experience upon another group.⁶² Exile for the Chiricahua and Mescalero Apaches, with such innate connections both economically, culturally, and spiritually to their home space, would prove doubly traumatic. As prisoners of war and transported far from home, this exile imposed a new present. Apache life was constantly haunted by echoes of places within their past, putting both groups into a limbo of extreme duress and heartache. Scents, sounds, and tactile experiences grew into bittersweet connections to their ever-present grief as the Apaches began their adaptation to a new landscape far away from home.

Amanda Wise argues in "Embodying Exile," as she explores trauma and collective identities among East Timorese refugees in Australia, that this community even in exile remains permeated by the memory of previous violence.⁶³ Wise examines how East Timorese refugees, in the wake of twentieth century Indonesian occupation of their homeland, became a group bound by the trauma of exile. Ghosts of places of violence and group members lost plagued the Apaches as well. While living in *Apacheria*, these Indigenous groups placated the haunted lands through ceremonies, connecting them back to the now cleansed earth. As many loved ones died far from home, Apache peoples feared ghost sickness, a physical and emotional condition brought on by the death of a family member and normally avoided through meticulous burial practices tied in

⁵⁶ Trudy Griffin-Pierce, *Chiricahua Apache Enduring Power* (Tuscaloosa: University of Alabama Press, 2011), 32-33.

⁵⁷ *Ibid.*, 33-35.

⁵⁸ Boyer and Gayton, *Apache Mothers and Daughters*, 19.

⁵⁹ *Ibid.*, 94.

⁶⁰ *Ibid.*, 94.

⁶¹ Edward Said, *Reflections on Exile and other Essays* (Cambridge: Harvard University Press, 2000), 173.

⁶² *Ibid.*, 173-186.

⁶³ Amanda Wise, "Embodying Exile: Trauma and Collective Identities among East Timorese Refugees in Australia," *Social Analysis* 48, no. 3 (2004), 31.

with the Apache landscape.⁶⁴ As both the Mescalero and the Chiricahua peoples moved eastward, disconnection from their home and themselves grew exponentially greater. Wise further notes how trace memories of places and homes in the past could even impact young children born in exile. For Wise, trauma exists in multiple forms, whether through direct violence or a narrative legacy of violence, which becomes an integrated part of the community in Diaspora.⁶⁵ Children born into these exiled Native groups in western New Mexico territory, Florida, and later in Alabama and Oklahoma arrived through their birth into this ongoing trauma. Stories and songs passed down from their parents and the oral histories of creation and spirit created a metaphorical ghost among the Apache children, one that many of these children, born into captivity, could chase but never capture.

Further complicating this exile trauma, Wise notes that traumatized communities living in diaspora are barraged with whatever role the public that surround them creates in their regard.⁶⁶ Similarly, Apaches found themselves forced to carry a burdensome identity for the public, eternally defined and incarcerated for their supposed “crimes” based on their group ethnic guilt. Thus the racial persecution that they faced previously through violence continued as a narrative thread in exile and within the layers of larger ethno-trauma. Though this persecution had lost most of its violent elements, it then took on a more subtle and sinister nature, attempting to control the very identity of the Apache people.

In the case of both Apache groups, this enforced disconnect from earth’s creations made their survival exceedingly difficult, hindering their ability to adapt while enclosed and imprisoned. Yet the Apache story does not remain hopeless. As the Mescalero symbolically reaffirmed their own agency as a people through their emboldened escape from Bosque Redondo, the Chiricahua people continued the critical rituals of puberty ceremonies and spiritual dances during their time in captivity in Florida and beyond until their ultimate release from prisoner status in 1913. While some of the Chiricahua Apaches would remain in Fort Sill, Oklahoma, their final removal location as prisoners of war, other members of the Chiricahua tribe would eventually return to the Southwest, sharing a home with their cousin tribe, the Mescalero Apaches, in southern New Mexico.⁶⁷

Conclusion

The story of young Francesca’s experience with violence and captivity is one of many Apache stories which illustrates concept of ethno-trauma as lived through by many other Native peoples of the American Southwest. For Mescalero and Chiricahua peoples, their experience with ethno-trauma would possess unique, Indigenous characteristics as these two groups faced the traumatic implications of collective exile from their sacred homeland. In 1886 Francesca found herself a captive yet again, but not as a slave in a foreign land. This time the United States military shipped her and her family along with other members of Geronimo’s band to Fort Marion near Saint Augustine as prisoners of war. Though she never fully regained the use of her hands and often hid the scars from her fight with the jaguar on her face with a cloth, she became a revered medicine woman for the group while in captivity. Other Apaches remembered her ceremonial singing during the Dance of the Mountain Gods, even while hidden behind a veil to cover what she viewed as an ugly mark on her beauty. During the Chiricahua imprisonment in Fort Marion, and with women and children dying around her from disease in a harsh, foreign climate, Francesca sang the songs of her people that connected them with a land which seemed so infinitely far away.⁶⁸ To the public who periodically ventured to see the Apaches imprisoned as local curiosities, these sounds likely seemed foreign and could have been interpreted as merely an expression of a Native woman’s

⁶⁴ Morris E. Opler and William E. Bittle, “The Death Practices and Eschatology of the Kiowa Apache,” *Southwestern Journal of Anthropology* 7, no. 4 (1961), 383–94.

⁶⁵ Wise, “Embodying Exile,” 31.

⁶⁶ *Ibid.*, 36.

⁶⁷ John Anthony Turcheneske, *The Chiricahua Apache Prisoners of War: Fort Sill, 1894-1914* (Boulder: University Press of Colorado, 1997), 155-166.

⁶⁸ John Albert Sleicher, ed. “Huera: Instigator of the Apache Outbreak” *Leslie’s Vol. 61-63*, New York: F. Leslie, (July 31, 1886) 380.

longing for home. To one more familiar with Apache culture, however, this keening would seem almost like the wailing songs performed in the hours after a beloved's death. With no peaks or canyon cliffs in sight, perhaps the Apaches mourned not only for those loved ones they had lost in their struggles but also for a loss of spirit, as they strained to hear the distant drumming of the Mountain Gods.

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Revitalizing the Ethnosphere: Global Society, Ethnodiversity, and the Stakes of Cultural Genocide

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Abstract: This paper uses the concepts of ethnosphere and ethnodiversity to frame the stakes of cultural genocide in the context of the emerging global society. We are in an era of rapid global ethnodiversity loss. Global ethnodiversity is important because different cultures produce different solutions to the subjective and objective problems of human society, and because cultures have an intrinsic value. Rapid ethnodiversity loss is a byproduct of the expansion of the modern world-system, and Lemkin's invention of the concept of genocide can be understood as a dialectical reaction to this tendency. The current phase of globalization creates pressures towards global monoculture, but movements towards polyculture can be observed. Genocide scholars have an interest in three underdeveloped lines of inquiry: measuring ethnodiversity loss; constructing valid measures of the vitality and life or death of cultures; and developing techniques for resolving social differences without the need for cultural consensus.

Keywords: genocide, cultural genocide, indigenous peoples, ethnodiversity, ethnosphere, world-system, difference, globalization, polyculture

Introduction

This paper uses the concepts of "ethnosphere" and "ethnodiversity" to frame the stakes of cultural genocide in the context of the emerging global society. The global ethnosphere is the totality of all living human cultures; ethnodiversity is the degree of cultural diversity in a given social arena. The high rate of language extinction in the present era suggests a correspondingly high rate of ethnodiversity loss in the global ethnosphere. I argue that global ethnodiversity is important for three reasons: first, different cultures provide different solutions to the problem of reconciling subjective motivations and the objective necessities of material production; second, different cultures produce different forms of embodied knowledge through which humans relate to nonhuman nature; and third, cultures have an intrinsic value. From this perspective, I argue that the importance of the concept of genocide derives from its role in protecting global ethnodiversity. Rapid ethnodiversity loss is a byproduct of the expansion of globalization and the incorporation of formerly autonomous cultures into networks of capitalist exploitation and state sovereignty. Raphael Lemkin's conception of genocide can be understood as a dialectical reaction to these processes; as an attempt to reconcile the universalizing claims of European Enlightenment with a particularistic valuation of local cultures. This ambitious project faces new challenges in the current era of globalization, as a truly global society takes shape for the first time in human history. Global monoculture appears to be one possible outcome of this development, but I argue it is not the only possibility; developments such as the United Nations Declaration of the Rights of Indigenous Peoples and the Bolivian Constitution of 2009¹ suggest avenues towards the possibility of a global polyculture. Achieving this polyculture will require significant intellectual innovation, however. I conclude that genocide scholars have an interest in three underdeveloped lines of inquiry: measuring ethnodiversity loss; constructing valid measures of the vitality and life or death of cultures; and, most ambitiously, developing techniques for resolving social differences without the need for cultural consensus.

Ethnosphere and Ethnodiversity

The concept of an ethnosphere was coined by anthropologist Wade Davis to refer to the totality of all living human cultures on Earth at any given moment.² "Culture", for social

¹ United Nations, *Declaration on the Rights of Indigenous Peoples*, Sept. 13, 2007 (UN Doc. A/RES/61/295); Plurinational State of Bolivia, "The Political Constitution of the Plurinational State of Bolivia," (Sucre: Plurinational State of Bolivia, 2009).

² Wade Davis, "The Naked Geography of Hope: Death and Life in the Ethnosphere," *Whole Earth*, no. 107 (2002); Wade Davis, *Light at the Edge of the World: A Journey through the Realm of Vanishing Cultures* (Vancouver: Douglas & McIntyre, 2007); see also R.J. Barendse, "The Feudal Mutation: Military and Economic Transformations of the Ethnosphere in the Tenth to Thirteenth Centuries," *Journal of World History* 14, no. 4 (2003); Wayne K.D. Davies, "Globalization: A Spatial Perspective," in *Unifying Geography: Common Heritage, Shared Future*, John A. Matthews and David T. Herbert, eds. (London: Routledge, 2004), 200.

scientists³, refers to all human accomplishments that can be taught or otherwise passed on from one generation to another.⁴ This includes language, beliefs, and social institutions, but also practices, knowledge, and objects made or modified by human labour. The singular “culture” refers to “a specific, historically contingent, way of life, which is expressed through its specific ensemble of artefacts, institutions, and patterns of behaviour”.⁵ In other words, a culture is a distinct ensemble of mutually interacting symbolic and material practices that a human group uses to survive and thrive in the world. Cultures are intrinsically contested and dynamic; members differ in how they interpret and enact the culture, and they continually modify, discard, and add to the elements of the culture. Furthermore, although cultures may be said to be bounded and distinct, they interact with one another. Davis’s concept of ethnosphere suggests that all the local human cultures on Earth form a global system, comparable to the biosphere, atmosphere or lithosphere, and that the dynamics and overall state of this system should concern us.

One aspect of this system is its diversity. It is difficult to directly measure the number of human cultures that exist and that have existed, but one reasonable proxy indicator is language. A language expresses not only a distinct terminology but distinctive concepts—ideas, associations, distinctions, and so on—emerging from the ways of living unique to each culture. Davis estimates that about 10,000 human languages have existed over the lifetime of our species, and that about 6,000 exist today.⁶ However, of these several thousand living languages, fully half are not being taught to children, which means that they are poised to become extinct when the current generation dies. Of the remainder, only three hundred are spoken by more than a million people, and only six hundred are considered stable and secure by linguists. It would appear, therefore, that the diversity of the ethnosphere is declining precipitously within our lifetime.

Some authors use the term ethnodiversity to refer to the degree of cultural diversity within a given social space.⁷ The construction of the term parallels that of “biodiversity”, suggesting an analogy between the two.⁸ Biodiversity is intrinsically important because all species require other species to survive and thrive; without adequate biodiversity, an ecosystem becomes vulnerable to disruptions and to collapse.⁹ The decline in global biodiversity—in the diversity of the biosphere—is therefore a cause for grave concern. An analogy between biosphere and ethnosphere, biodiversity and ethnodiversity, suggests that the current decline in global biodiversity could be similarly problematic.

What’s more, biodiversity and ethnodiversity may be linked. Linguistic and biological diversity tend to co-occur in the same geographical spaces. Globally, approximately 70% of the world’s languages are spoken in areas of high biodiversity, and even if the New Guinea Wilderness

³ The changing meanings of the word “culture” itself play a part in the story of ethnodiversity loss. In eighteenth-century European thought, the term “culture” was singular and connoted “a universal scale of human progress”, and “in the hands of empires wherever they imposed power it has served a useful tool for introducing elitist norms”. Nigel Rapport, *Social and Cultural Anthropology: The Key Concepts*, 3rd ed. (New York: Routledge, 2014), 120; see also Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (London: Fontana/Croom Helm, 1976), 76.

⁴ D.F. Aberle et al., “The Functional Prerequisites of a Society,” *Ethics* 60, no. 2 (1950), 102.

⁵ Rapport, *Social and Cultural Anthropology: The Key Concepts*, 121; Edward Burnett Tylor, *Primitive Culture: Researches into the Development of Mythology, Philosophy, Religion, Art, and Custom* (New York: Gordon Press, 1974), 1.

⁶ Gorenflo et al. give a slightly higher estimate of “more than 6,900”; see L.J. Gorenflo et al., “Co-Occurrence of Linguistic and Biological Diversity in Biodiversity Hotspots and High Biodiversity Wilderness Areas,” *Proceedings of the National Academy of Sciences* 109, no. 21 (2012), 8035..

⁷ Meriam A. Bravante and William N. Holden, “Going through the Motions: The Environmental Impact Assessment of Nonferrous Metals Mining Projects in the Philippines,” *The Pacific Review* 22, no. 4 (2009), 528; Efraim Lev, “Ethno-Diversity within Current Ethno-Pharmacology as Part of Israeli Traditional Medicine – a Review,” *Journal of Ethnobiology and Ethnomedicine* 2, no. 4 (2006); William N. Holden, “Indigenous Peoples and Non-Ferrous Metals Mining in the Philippines,” *The Pacific Review* 18, no. 3 (2005), 433; William N. Holden and R. Daniel Jacobson, “Civil Society Opposition to Nonferrous Metals Mining in Guatemala,” *Voluntas* 19 (2008), 333.

⁸ Hans-Dieter Evers, Anis Yusoff, and A.BB. Shamsul, “Ethno-Diversity and Bio-Diversity: Methods and Measurement,” *Munich Personal RePEc Archive* 24429 (2010); Hans-Dieter Evers, Anis Yusoff, and A.BB. Shamsul, “Ethnic Diversity in Malaysia-Lessons Learned from Bio-Diversity Research,” in *Rethinking Realities, Reimagining Pluralism: Future Landscapes of Pluralism for Democratic Societies* (Bangi: National University of Malaysia, 2010).

⁹ Bradley J. Cardinale et al., “Biodiversity Loss and Its Impact on Humanity,” *Nature* 486 (2012), 60.

Area is removed from the analysis the proportion is still 56%.¹⁰ The reasons for this are complex. In some areas, for instance, the ecological conditions producing high biodiversity have also favoured high linguistic diversity, but this is not true across the board. However, social processes are also a factor. As Gorenflo et al. point out, “the European biological expansion of people, crops, diseases, and languages served to reduce cultural and linguistic diversity in many localities on our planet.”¹¹ Many areas with high biodiversity and high ethnodiversity have been only weakly integrated into the global economy until recently. In these areas, rapid economic growth and globalization appear to be drivers of decline in both biodiversity and ethnodiversity.¹²

If this is true, then cultural genocide may share a common cause with anthropogenic ecocide. The term “ecocide” refers to a process of extensive damage to an ecosystem, sufficient to cause or threaten to cause a catastrophic collapse of that system.¹³ Anthropogenic ecocide can be carried out intentionally as part of a campaign of war or intentional genocide, but more commonly it occurs as a byproduct of economic growth. The concepts of ethnodiversity and genocide on the one hand and biodiversity and ecocide on the other, may therefore designate not only analogous but interconnected forms of systemic transformation.

Ethnodiversity Loss: Causes for Concern

I propose three and a half reasons why ethnodiversity loss should concern us. The first reason is that different cultures produce different experiences of reality. Human experiences of reality are not just mediated, but produced through social relations.¹⁴ Part of this productive process is cognitive and arises from the different conceptual schemes produced by different cultures.¹⁵ But part of this process is practical and embodied.¹⁶ For example Davis describes the Australian Aboriginal ritual of walking the Songlines:

A moment begins with nothing. A man or a woman walks, and from emptiness emerge the songs, the musical embodiment of reality, the cosmic melodies that give the world its character. The songs create vibrations that take shape. Dancing brings definition to the forms, and objects of the phenomenological realm appear: trees, rocks, streams, all of them physical evidence of the Dreaming. Should the rituals stop, the voices fall silent, all would be lost. For everything on Earth is held together by the Songlines, everything is subordinate to the Dreaming, which is constant but ever changing. Every landmark is wedded to a memory of its origins and yet always being born. Every animal and object resonates with the pulse of an ancient event, while still being dreamed into being. The world as it exists is perfect, though constantly in the process of being formed. The land is encoded with everything that has ever been, everything that ever will be, in every dimension of reality. To walk the land is to engage in a constant act of affirmation, an endless dance of creation.¹⁷

The Songlines illustrate how, in a meaningful sense, different cultures produce different realities, and the extinction of a culture is the extinction of a reality. Or, in less relativistic terms,

¹⁰ Gorenflo et al., “Co-Occurrence of Linguistic and Biological Diversity,” 8035; see also William J. Sutherland, “Parallel Extinction Risk and Global Distribution of Languages and Species,” *Nature* 423 (2003).

¹¹ Gorenflo et al., “Co-Occurrence of Linguistic and Biological Diversity,” 8035.

¹² Tatsuya Amano et al., “Global Distribution and Drivers of Language Extinction Risk,” *Proceedings of the Royal Society* 281 (2014).

¹³ Franz Broschwimmer, *Ecocide: A Short History of Mass Extinction of Species* (London: Pluto Press, 2002); Polly Higgins, Damien Short, and Nigel South, “Protecting the Planet: A Proposal for a Law of Ecocide,” *Crime, Law, and Social Change* 59, no. 3 (2013); Susana Borràs, “New Transitions from Human Rights to the Environment to the Rights of Nature,” *Transnational Environmental Law* 5, no. 1 (2016).

¹⁴ Maurice Merleau-Ponty, *The Phenomenology of Perception*, trans. Colin Smith (London: Routledge Classics, 2002); Alfred Schutz, *The Phenomenology of the Social World*, ed. John Wild, trans. George Walsh and Frederick Lehnert (Evanston: Northwestern University Press, 1967); Christopher Powell and François Dépelteau, eds., *Conceptualizing Relational Sociology: Ontological and Theoretical Issues* (New York: Palgrave, 2013).

¹⁵ Nelson Goodman, *Ways of Worldmaking* (Indianapolis: Hackett Publishing Company, 1978).

¹⁶ Iris Marion Young, *On Female Body Experience: Throwing Like a Girl and Other Essays* (Oxford: Oxford University Press, 2005).

¹⁷ Davis, *Light at the Edge of the World*, 186.

one can say that different cultures make possible different forms of human experience and, by extension, different ways of being human. Western modernity is only one modality of human experience amongst many others. There is no culture-independent method of claiming that Western modernity is the best possible of all such modalities, let alone that its merits justify the extinction of all others. Even on its own terms, Western modernity is flawed. For instance: every society faces the problem of integrating the objective necessities of material production and social interdependence with subjectively satisfying meanings.¹⁸ In modern societies, critical sociologists have observed a hollowing out of the subjectively meaningful, communicative, and emancipatory dimensions of social relations under modern conditions, a diminution of the lifeworld through a reduction of social relations to instrumental rationality.¹⁹ These analyses suggest that, in psychological terms, intrinsic motivations are subordinated to extrinsic motivations.²⁰ As Davis describes them, at least some Indigenous cultures appear to have done a better job of reconciling the objective necessities of material production and social interdependence with subjectively satisfying meanings.²¹ It is precisely this reconciliation that makes so-called traditional cultural forms appear mystifying to the Western observer. But the collective spiritual wellbeing, so to speak, of even modern subjects may depend on reconnecting the objective and subjective worlds, which the modern constitution²² has sundered.

The second reason to be concerned about ethnodiversity loss has to do with material culture. Different cultures produce not only different ways of rendering the world meaningful, but different ways of acting in it materially. For example, many Indigenous peoples of the Americas cultivated forest ecosystems through sophisticated techniques that increased the supply of food substantially beyond what would have existed without human intervention, allowing the land to support an increasing population.²³ European colonizers unfamiliar with these techniques, could perceive only a supposedly pristine, uncultivated wilderness, sparsely populated by people who were themselves uncultured. Cultures can enable material practices which are invisible or appear useless to members of other cultures or, more specifically, to outsiders who lack the local cultural knowledge.

In every human society, people have to interact with each other and the nonhuman world to produce the material means of their existence.²⁴ Industrial capitalism is only one of many modes of production that humans have developed to meet this need. This mode of production has achieved wonders never before possible, both in the scale and intensity of human transformation of nonhuman nature, but this accomplishment has also seriously disturbed the ecosystems on which we rely. Capitalism is premised on constant expansion of production, but the ecosystem resources of the Earth's biosphere are not unlimited. For this reason alone, and perhaps also because of certain self-destructive tendencies built into the logic of capitalist systems,²⁵ capitalism cannot persist indefinitely. Many Indigenous cultures, on the other hand, have devised modes of production capable of persisting over long time scales without depleting the ecosystem services on which they

¹⁸ Aberle et al., "The Functional Prerequisites of a Society"; Talcott Parsons, *The Social System* (New York: The Free Press, 1951).

¹⁹ Jürgen Habermas, *The Theory of Communicative Action, Volume 2: Lifeworld and System: A Critique of Functionalist Reason*, trans. Thomas McCarthy (Boston: Beacon Press, 1985); Herbert Marcuse, *One-Dimensional Man: Studies in the Ideology of Advanced Industrial Society*, 2nd ed. (Boston: Beacon Press, 1991); George Ritzer, *The McDonaldization of Society*, 20th Anniversary ed. (Thousand Oaks: SAGE, 2012).

²⁰ Richard M. Ryan and Edward L. Deci, "Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-Being," *American Psychologist* 55, no. 1 (2000).

²¹ Davis, *Light at the Edge of the World*; Wade Davis, *The Wayfinders: Why Ancient Wisdom Matters in the Modern World* (Toronto: House of Anansi Press, 2009).

²² Bruno Latour, *We Have Never Been Modern*, trans. Catherine Porter (Cambridge: Harvard University Press, 1993).

²³ William M. Denevan, "The Pristine Myth: The Landscape of the Americas in 1492," *Annals of the Association of American Geographers* 82, no. 3 (1992).

²⁴ Karl Marx and Frederick Engels, "The German Ideology," in *Karl Marx, Frederick Engels: Collected Works, Volume 5, Marx and Engels: 1845-47* (Moscow: Progress Publishers, 1976).

²⁵ Karl Marx, *Capital: A Critique of Political Economy, Volume III*, ed. Ernest Mandel, trans. David Fernbach (Toronto: Penguin Books, 1981).

depend. The Palawa of Tasmania, for instance, flourished for ten thousand years without depleting the ecosystem of their island.²⁶ Many of these modes of production have been dismantled through the violent expansion of the capitalist world-system.²⁷ Some have not, however.²⁸ And even those production modes that have been shattered have left pieces of themselves behind in the form of knowledge and practices, which could prove invaluable in the (re)construction of a sustainable relation between humans and nonhumans.²⁹

However, this utilitarian argument for the value of ethnodiversity has sharp limits. While many threatened cultures, including many Indigenous cultures, may well have vital ecological wisdom which could benefit our collective human future, reducing the value of those cultures to that specific contribution is a mistake, for at least three major reasons. First, not all threatened cultures necessarily have such wisdom. Second, reducing the value of any culture to a single dimension stereotypes and therefore dehumanizes the members of that culture. Indigenous cultures in particular have often been reduced to the stereotype of the ecological Indian, with deleterious effects.³⁰ Third, such a reduction can actually contribute to cultural genocide (and anthropogenic ecocide) in the form of capitalist appropriation and commodification of local ecological knowledge.³¹

Consequently, my third reason to be concerned about ethnodiversity loss moves from Eurocentrism into a genuinely universalistic respect for human culture. This reason is the intrinsic value of cultural difference. Each culture is an ensemble of accomplishments. As Lemkin writes:

The world represents only so much culture and intellectual vigor as are created by its component national groups ... 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 criminal killing of a human being: the crime in the one case as in the other is murder, though on a vastly greater scale.³²

In a similar vein, United Nations General Assembly Resolution 96(I) declares that genocide “results in great losses to humanity in the form of cultural and other contributions represented by these human groups”.³³ Hannah Arendt, in *Eichmann in Jerusalem*, echoes this sentiment, writing that genocide “is an attack on human diversity as such, that is, upon a characteristic of the ‘human status’ without with the very words ‘mankind’ or ‘humanity’ would be without meaning.”³⁴ What’s more, the value of cultural difference is implied in the legal right to the self-determination of peoples, as defined in Article 1 of the International Covenant on Economic, Social and Cultural Rights³⁵, inasmuch as the right of a culturally defined group to self-determination logically implies a right of that group to continue to engage in the collective cultural differentiation which defines its identity.

Appreciating the value of all cultures, especially including the cultures of indigenous and tribal peoples³⁶, requires a shift in thinking for many, because Western intellectuals have tended

²⁶ Lyndall Ryan, *The Aboriginal Tasmanians*, 2nd ed. (St. Leonards: Allen & Unwin, 1996), 9.

²⁷ John H. Bodley, *Victims of Progress*, 6th ed. (Lanham: Rowman & Littlefield, 2015), 9; see also Rosa Luxemburg, *The Accumulation of Capital* (London: Routledge, 2003).

²⁸ Erica-Irene A. Daes, *Indigenous Peoples: Keepers of Our Past – Custodians of Our Future* (Copenhagen: International Work Group for Indigenous Affairs, 2008); Wade Davis, K. David Harrison, and Catherine Herbert Howell, eds., *Book of Peoples of the World* (Washington D.C.: National Geographic Society, 2008); Joanna Eede, ed. *We Are One: A Celebration of Tribal Peoples* (London: Quadrille Publishing in association with Survival International, 2009); Piers Gibbon and Jane Houston, *Tribe: Endangered Peoples around the World* (Buffalo: Firefly Books, 2010).

²⁹ Davis, *Light at the Edge of the World*; Davis, *The Wayfinders*.

³⁰ Shepard Krech III, *The Ecological Indian: Myth and History* (New York: W.W. Norton and Company, 1999).

³¹ Vandana Shiva, *Biopiracy: The Plunder of Nature and Knowledge* (Cambridge: South End Press, 1997).

³² Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington: Carnegie Endowment for International Peace Division of International Law, 1944), 91.

³³ United Nations, *The Crime of Genocide*, Dec. 11, 1946 (UN General Assembly Res. A/RES/96(I)).

³⁴ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Viking Press, 1963), 268-69.

³⁵ United Nations, *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966 (UN Doc. A/6316 (1966)).

³⁶ Not all Indigenous peoples are tribal. Survival International defines a tribe as “a distinct people, dependent on their

to value cultures according to Eurocentric terms.³⁷ Those terms have privileged the cultural accomplishments of modern European societies and settler societies. The cultures of Indigenous peoples in Canada, for instance, have been treated as having no value, and this devaluation has helped legitimate cultural genocide.³⁸ Non-Western cultures in general and Indigenous cultures in particular, have often been stereotyped as archaic, atavistic, fossilized; as belonging to the past, when they actually are vibrant, dynamic, and have as much a claim to the present as does Western modernity.³⁹

Finally, the analogy between ethnodiversity and biodiversity suggests a possibility for which I have no direct evidence, but only because this evidence has never been sought. Biodiversity matters because no single species can survive on its own, that is, because of interspecies interdependence. This is the final, half reason why ethnodiversity loss should concern us. It is conceivable that cultures also require other cultures to survive. Certainly, cultures have usually, perhaps always, existed in relation to other cultures. Even before the advent of modern technologies for travel and communication there was more interaction between cultures, over longer distances, than is commonly assumed.⁴⁰ I propose as a purely speculative hypothesis that monocultures in the social realm are unstable and vulnerable to collapse in the same way that monocultures have been demonstrated to be in the biological realm. Ethnodiversity might be necessary for human survival and vitality independently of the specific contributions of particular cultures.

To sum up: (1) the ethnosphere is the totality of human culture; (2) this totality can be more differentiated or less differentiated; and (3) there are grounds for thinking that a loss of ethnodiversity is problematic for collective human wellbeing.

In light of these claims about the ethnosphere and ethnodiversity, the concept of genocide can be understood as taking on a particular significance that it does not otherwise have. Specifically, we can understand the prohibition of genocide as a means of protecting ethnodiversity. Indeed I think that, substantively speaking, this is precisely how Lemkin imagined the term when he formulated it, as the passage I quoted above indicates.⁴¹ Understanding the concept of genocide in these terms provides an elegant and compelling rationale for including both physical genocide and cultural genocide within the concept of genocide proper.

Genocide scholars are all familiar with the wide-ranging debate over the proper meaning(s) and usage(s) of the term genocide. While this debate has perhaps become tiresome, it has no easy resolution. Genocide is an inescapably contested concept.⁴² This means that the definitional debates surrounding the term cannot be resolved by purely rational argumentation because

land for their livelihood, largely self-sufficient, and not integrated into the national society" and estimates that there are "one hundred and fifty million tribal individuals worldwide, constituting around forty percent of indigenous individuals". "Terminology," *Survival International*, accessed May 15, 2016, <http://www.survivalinternational.org/info/terminology>.

³⁷ Samir Amin, *Eurocentrism* (New York: Monthly Review Press, 1989); John M. Hobson, *The Eurocentric Conception of World Politics: Western International Theory, 1760-2010* (Cambridge: Cambridge University Press, 2012); Edward Said, *Orientalism* (New York: Vintage Books, 1978); Ella Shohat and Robert Stam, "Chapter 1 – from Eurocentrism to Polycentrism," in *Unthinking Eurocentrism: Multiculturalism and the Media* (London: Routledge, 1994); Immanuel Wallerstein, *European Universalism: The Rhetoric of Power* (New York: New Press, 2006).

³⁸ Daniel N. Paul, *We Were Not the Savages: Collision between European and Native American Civilizations*, 3rd ed. (Halifax: Fernwood Publishing, 2006); Royal Commission on Aboriginal Peoples, "Report of the Royal Commission on Aboriginal Peoples," *Indian and Northern Affairs Canada*, accessed May 15, 2016, <http://hdl.handle.net/1974/6874>; Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Ottawa: Government of Canada, 2015); Isabelle Knockwood, *Out of the Depths: The Experiences of Mi'kmaq Children at the Indian Residential School at Schubencadie, Nova Scotia*, 2nd ed. (Lockeport: Roseway Publishing, 2001).

³⁹ Daes, *Indigenous Peoples*; Davis, Harrison, and Howell, *Book of Peoples*; Eede, *We Are One*; Gibbon and Houston, *Tribes: Endangered Peoples*; see also S.N. Eisenstadt, "Multiple Modernities," *Daedalus* 129, no. 1 (2000).

⁴⁰ Andre Gunder Frank and Barry K. Gills, eds., *The World System: Five Hundred Years or Five Thousand?* (London: Routledge, 1993).

⁴¹ Lemkin, *Axis Rule*, 91; see also Christopher Powell, "What Do Genocides Kill? A Relational Conception of Genocide," *Journal of Genocide Research* 9, no. 4 (2007).

⁴² See Powell, "What Do Genocides Kill?"; W.B. Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society* 56 (1956).

different definitions express different political values. As Max Weber observed, political values are ultimately subjective and beyond rationality in the strict sense of the term.⁴³ So if, for instance, the value of the concept of genocide is primarily in the protection it affords individuals from the irrationality of collective violence,⁴⁴ then it suffices to equate genocide with physical extermination, and to include cultural extermination within the concept of genocide can be viewed as counterproductive. However, we also have other concepts, including mass murder, atrocity, crimes against humanity, and human rights; all of which prohibit the negation of individual agency by collective violence. Alternatively, if the primary value of the concept of genocide is its usefulness in protecting ethnodiversity and to affirm the intrinsic value of all cultures, then it makes sense to include both physical and cultural extermination within the unqualified concept of genocide. Both interpretations are internally consistent and, in Weber's terms, value-rational.⁴⁵ The latter interpretation is often implicit in the growing body of scholarship on genocides of Indigenous peoples. The culture-inclusive interpretation certainly is capable of encompassing and giving meaning to the field of genocide scholarship as a whole, including work that focuses on physical genocide. I hope that it will become common among genocide scholars in general.

Genocide and Anti-Genocide in the World-System

We can understand the concept of genocide as aimed at protecting ethnodiversity. More ambitiously, we can understand the prohibition of genocide as a systemic response to the systemic destruction of ethnodiversity.

In framing this analysis, it is important to clarify what we mean by a systemic phenomenon. Broadly, a social system is a dynamic ensemble of interconnected social actions unfolding over time. Social systems do not exist apart from, or in opposition to, human agency, but rather are immanent to agential action.⁴⁶ Systems can, moreover, be comprised of multiple, competing, even mutually antagonistic institutions or movements.⁴⁷ What defines a system is the interdependence of action within its network: action in any part of the system is connected to action in any other part by chains of mutual ramification. To say that ethnodiversity loss is a systemic problem is to make three key claims. First, its causes are complex and broadly distributed rather than resulting from any one single coherent intention. Second, its effects apply potentially to all members of the social system in which it occurs. Third and consequently, addressing ethnodiversity loss requires collective effort, action on many institutional fronts, and a willingness to revise very deeply embedded or taken-for-granted social practices.

For this analysis we can draw on the world-systems theory of Immanuel Wallerstein.⁴⁸ Wallerstein defines a world-system as an integrated social totality that includes a single division of labour and a single dominant institution of political power. The modern world-system, which originated in Western Europe in the late 15th century, is characterized by the capitalist economy and the network of nominally sovereign nation-states (the latter of which collectively comprises a single, internally heterogeneous, social institution). Because the nation-state system is polycentric,

⁴³ Max Weber, "Science as a Vocation," in *From Max Weber: Essays in Sociology*, ed. H.H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946); "Objectivity in Social Science and Social Science Policy," in *The Methodology of the Social Sciences*, eds. Edward A. Shils and Henry A. Finch (Glencoe: The Free Press, 1949); "Value-Judgments in Social Science," in *Weber: Selections in Translation*, ed. W.G. Runciman (Cambridge: Cambridge University Press, 1978); "Politics as a Vocation," in *Weber: Selections in Translation*, ed. W.G. Runciman (Cambridge: Cambridge University Press, 1978).

⁴⁴ Christopher Powell and Julia Peristerakis, "Genocide in Canada: A Relational View," in *Colonial Genocide and Indigenous North America*, eds. Andrew Woolford, Jeff Benvenuto, and Alexander Laban Hinton (Durham: Duke University Press, 2014), 71.

⁴⁵ See Max Weber, *Economy and Society*, vol. 1 (Berkeley: University of California Press, 1978), 24.

⁴⁶ Christopher Powell, "Radical Relationism: A Proposal," in *Conceptualizing Relational Sociology: Ontological and Theoretical Issues*, eds. Christopher Powell and François Dépelteau (New York: Palgrave, 2014).

⁴⁷ Christopher Powell, "How Epistemology Matters: Five Reflexive Critiques of Public Sociology," *Critical Sociology* 39, no. 1 (2012).

⁴⁸ Immanuel Wallerstein, *The Modern World-System I: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (New York: Academic Press, 1981); Immanuel Wallerstein, *Historical Capitalism* (London: Verso, 1983); Immanuel Wallerstein, *World-Systems Analysis: An Introduction* (Durham: Duke University Press, 2012).

Wallerstein categorizes the modern world-system as a world-economy, to distinguish it from the multicultural but politically monocentric world-empires like the Roman or Aztec empires, and from the autarkic local cultures or mini-systems of non-state societies. The modern world-system is the first global world-system, and its globality has had important cultural consequences.

The universalistic ideals of European Enlightenment emerged early in the expansion of the modern world-system, as an ideological expression of that expansion.⁴⁹ European intellectuals observed the global expansion of their economic and political institutions and debated how best to further that expansion. The spectrum of debate regarding the fate of Indigenous peoples ran from arguing that they should be exterminated to arguing that they should be assimilated, forcibly if necessary, to Western culture—in other words, ranging from physical genocide to cultural genocide. The lopsidedness of this discourse was, of course, a function of the power imbalance between the core and periphery of the world system. European universalism, with its accompanying narratives of progress and Enlightenment, has therefore tended to be a false universalism, achieved through the universalizing imposition of one cultural pattern, a pseudo-universality achieved through the violent erasure of difference. At the same time, the rhetorical investment in ideals of universality has left openings for colonized peoples to assert themselves and demand to be included on their own terms within the cultural life of the modern world-system.⁵⁰

Eurocentric universalism is not the only ideological expression of the globalizing expansion of the modern world-system. Nationalism and racism emerged as convenient methods of organizing the relationships between ruling elites, their subjects, and colonized Others. Before the 18th century, it was not usual for rulers to claim cultural affinity with their subjects.⁵¹ The very concept of culture indicated precisely the elitist distinction between cultivated and uncultivated subjects.⁵² The partial democratization of state institutions, or even the threat thereof, gave tactical and strategic advantages to would-be sovereigns who claimed to share co-membership with their subjects in the nominally egalitarian and inclusive community of nationhood.⁵³ Racism, meanwhile, helped to legitimate colonialism, slavery, segregation, and other grossly inequitable relations between persons of European and non-European descent.⁵⁴ The formulation of biological conceptions of race, facilitated by the general growth in techniques for managing the biological life of populations,⁵⁵ helped integrate nationalism and racism into a primordialist account of political community. Every characteristic of a population—its particular cultural accomplishments, its inherited and acquired biological attributes, and most importantly its wealth and power—could be treated as expressions of a timeless and primordial essence distinctive to that group. Social hierarchies could be treated as expressions of a natural order.

Humanist universalism and ethno-racial particularism, therefore, flourish in a dialectical relationship to each other within the modern world-system, and within universalism a second dialectic operates between Eurocentrism and a universalism inclusive of different cultures. We can understand Lemkin's project to define and abolish genocide as an attempt to synthesize the antitheses of this double dialectic. Lemkin's conceptualization of genocide in *Axis Rule* appears to assume a primordialist account of nationality that bears an ironic resemblance to the scientific racism of Nazi ideology.⁵⁶ To a certain extent—it is important not to overstate this point—Lemkin and the Nazis shared a basic assumption, namely that nations are essential units of human social organization. One can characterize the opposition between Lemkin and the Nazis in terms of the

⁴⁹ Wallerstein, *European Universalism*.

⁵⁰ See e.g., United Nations, *Declaration on the Rights of Indigenous Peoples*; Plurinational State of Bolivia, "The Political Constitution"; Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Ottawa: Government of Canada, 2015).

⁵¹ Michel Foucault, *Society Must Be Defended: Lectures at the Collège De France, 1975-1976*, ed. Arnold I. Davidson, trans. David Macey (New York: Picador, 2003), 134.

⁵² Williams, *Keywords*, 77.

⁵³ Norbert Elias, *The Germans*, trans. Eric Dunning and Stephen Mennell (New York: Columbia University Press, 1996), 157.

⁵⁴ W.E.B. DuBois, "Prospect of a World without Race Conflict," *American Journal of Sociology* 49, no. 5 (1944).

⁵⁵ Foucault, *Society Must Be Defended*, 243.

⁵⁶ Powell, "What Do Genocides Kill?"

opposite conclusions they drew from this common premise. The Nazis, of course, believed that it was necessary for the Aryan nation to dominate and destroy all other nations. Lemkin, on the other hand, believed that peaceful coexistence between nations was possible and desirable, and advocated an “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.”⁵⁷

In summation, the concept of genocide emerges as a symptom of the contradiction between universalizing and particularizing tendencies of the modern world-system. Against the grain of Eurocentric universalism which consigns non-European cultures to an inevitable death of one kind or another, the Lemkinian concept of genocide aims idealistically at a genuine universalism which includes deep cultural difference within the global human community.

World Society: Ethnodiversity or Monoculture?

As commonly used by social scientists, the term “society” connotes a distinct, bounded, functionally integrated ensemble of social institutions which together organize most aspects of the lives of the individuals within them.⁵⁸ Although the modern capitalist economy has been global, or at least globalizing, from its inception,⁵⁹ in other respects it has been feasible to treat the modern world-system as comprising a multiplicity of societies, that is—until fairly recently. Globalization theorists argue that since the 1970s, social relations which formerly took place within the boundaries of states have increasingly also taken place across state boundaries, to the extent that the image of nation-states as self-contained societies has become obsolete.⁶⁰ Held, for example, argues that in the domains of economics, politics, military security, international law, and culture, states no longer function as containers and now appear more as nodes in a network.⁶¹ Other analysts postulate the emergence of a global civil society,⁶² or transnational ethnic communities.⁶³ Additionally, ecological issues, such as anthropogenic climate change, can create truly global problems that may require global solutions. The upshot of these developments is that the formation of a truly global society, long foreshadowed by sociologists,⁶⁴ may now be taking place.

The fate of cultural difference within this emerging global human society remains unclear. Analysts disagree over the extent to which contemporary globalization necessarily results in a homogenization of culture versus merely a global reorganization of culture.⁶⁵ The tendency to dissolve the territorial boundaries between national cultures has entailed the global dissemination of Western cultural elements (the “McDonaldization” of the world), but it has also enabled the globalization of non-Western cultures as well, along with uniquely modern forms of cultural synthesis and ethnogenesis.

Despite the ambiguity of these developments, the anthropological evidence on language loss points to a very drastic reduction in ethnodiversity as a byproduct of modernization.⁶⁶ Meanwhile, the persistent use of genocide both within and across nation-state boundaries,⁶⁷ and the mobilization

⁵⁷ Lemkin, *Axis Rule*, 91.

⁵⁸ Parsons, *The Social System*.

⁵⁹ Wallerstein, *Historical Capitalism*.

⁶⁰ Manfred Steger, *Globalization: A Very Short Introduction*, 3rd ed. (London: Oxford University Press, 2013).

⁶¹ David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford: Stanford University Press, 1995).

⁶² Mary Kaldor, *Global Civil Society: An Answer to War* (Cambridge: Polity, 2003).

⁶³ Linda Basch, Nina Glick Schiller, and Christina Szanton Blanc, *Nations Unbound: Transnational Projects, Postcolonial Predicaments and Deterritorialized Nation-States* (New York: Routledge, 1994).

⁶⁴ Henri Saint-Simon and Augustin Thierry, “The Reorganization of European Society,” in *Henri Saint-Simon: Selected Writings on Science, Industry and Social Organization*, ed. Keith Taylor (New York: Holmes and Meier, 1975).

⁶⁵ E.g. Eisenstadt, “Multiple Modernities.”

⁶⁶ Davis, *Light at the Edge of the World*, 6.

⁶⁷ For current examples see “Countries at Risk,” *Genocide Watch*, accessed May 15, 2016, <http://genocidewatch.net/alerts-2/new-alerts/>.

of cultural difference as an ideological justification for geopolitical conflict⁶⁸ are consistent with a systemic tendency towards monoculture.

Elsewhere,⁶⁹ I have theorized this tendency in terms of the relations of dominance and submission, which have historically constituted the institution of sovereignty. My analysis builds on Elias's examination⁷⁰ of the connection between state sovereignty and the subjective dispositions or habitus of individuals. Elias proposed that the humanistic culture of modern Europe results from an internalization of the power relation of sovereignty, a social constraint to self-constraint, which obliges subjects towards nonviolent forms of social interaction. I argue that a more complex and contradictory process is involved in the formation of sovereignty. What Elias calls "the civilizing process" emerges from the power struggles among autarkic feudal lords in Western Europe after the collapse of the Holy Roman Empire. When one lord is defeated militarily by another, he offers surrender and fealty in exchange for his life. This relation of deference fails to dissolve the social conditions for violence in the state that it helps establish. Rather, it defers violence, in two ways. Externally, the fealty which the knight offers his sovereign enables the sovereign to expand his own capacity for violence through the formation of larger armies, the extension of legal authority, disciplinary power, and so on. Internally, the subject absorbs the violence of the battlefield into his own self, and seeks perpetually to extract deference from others in compensation for the deference he pays the sovereign. In this way, physical contests of strength are sublimated into symbolic contests for social status, and the whole normative order of society becomes a reservoir of symbolic violence, held back by endless performances of deference. In the giving and taking of deference, both subjects identify, on unequal terms, with a shared symbolic conception of the sovereign, and when one party cannot or will not perform appropriately the performance fails and symbolic violence has the potential to become physical. Under the right conditions (interest and impunity), these performative failures can occasion genocidal violence.

This analysis suggests that the dominant political institution of the modern world-system, the sovereign state, continually reproduces the *potential* for genocide on an ever-expanding scale, and can accommodate deep cultural difference only uneasily. Hence Kuper's assertion that plural societies are structurally prone to genocide.⁷¹ This proneness results not from something existentially intrinsic to difference, but from the instability of the social institution which must accommodate those differences. It is the power relations and the interests at stake in the situation, not the cultural ideals of the dominant group, which determine whether genocide will take place. Thus, to take the Indigenous peoples of Canada as an example, the ability of minority groups to resist a long-term cultural genocide depends less on the ideological orientation of the ruling political party than on the power relations between those groups and the state. These relations vary complexly according to the former's access to various forms of capital, the latter's relations with its non-Indigenous subjects, Canada's fluctuating position in the world-system, and so on.

While the state system produces tendencies towards genocide, it also produces tendencies in the opposite direction. The sovereign state is not a monolith; it is an unstable and contradictory process:

social contradictions generate the conditions of their own overcoming. If the genocidal propensity of Western civilization seems to us an intolerable monstrosity, this reaction is also itself a product of the same civilization. [...] Eurocentric barbaric civilization has generated colonialism and slavery but also movements to abolish these institutions; it produces genocide but also global human rights movements and the very concept of 'genocide' as something criminal.⁷²

⁶⁸ E.g. Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

⁶⁹ *Barbaric Civilization: A Critical Sociology of Genocide* (Montréal: McGill-Queen's University Press, 2011).

⁷⁰ *The Civilizing Process: The History of Manners and State Formation and Civilization*, trans. Edmund Jephcott, Revised ed. (Oxford: Blackwell, 2000).

⁷¹ Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven: Yale University Press, 1981).

⁷² Powell, *Barbaric Civilization*, 301.

In the flux of the contradictions of sovereignty, individuals and groups can find ways to promote projects that run directly counter to the logic of genocide.

Promoting Ethnodiversity

A political system which tolerates cultural difference only uneasily and has a chronic tendency towards assimilation and genocide does not provide a favourable environment for the long-term promotion of ethnodiversity. Nevertheless, the deferentialism which favours cultural homogenization is not the only force at work in the modern world-system. Minority cultures have found ways to resist assimilation and even to reassert themselves in many instances. The (partial) success of these reassertions is reflected in political projects which, in effect, aim towards some form of ethnodiversity. These ethnodiverse alternatives to monoculturalism have been advocated under a number of labels: multiculturalism,⁷³ interculturalism,⁷⁴ polyculturalism,⁷⁵ and pluriculturalism.⁷⁶ Of these, multiculturalism is probably the most well known. It is the official policy of the government of Canada, for instance. In principle, multiculturalist politics promotes acceptance of multiple cultures within a single political jurisdiction. Critics of multiculturalism, however, argue that its protection of cultural difference is superficial and shallow, extending only to private consumption activities such as foods, dances, sports, and so on.⁷⁷ In Canada, for instance, official multiculturalism does not extend to recognition of Indigenous treaty rights, self-governance, or economic independence.

A more ambitious ideal appears in the Bolivian Constitution of 2009. This document defines Bolivia as a “plurinational” state. Article 2 spells out what this means for Indigenous peoples:

Given the pre-colonial existence of nations and rural native indigenous peoples and their ancestral control of their territories, their free determination, consisting of the right to autonomy, self-government, their culture, recognition of their institutions, and the consolidation of their territorial entities, is guaranteed within the framework of the unity of the State, in accordance with this Constitution and the law.⁷⁸

The Bolivian Constitution affirms the rights of Indigenous peoples to cultural identity and practice, including rights to self-determination and territoriality, respect for traditional knowledge, collective ownership of lands and territories and of intellectual property and knowledge, a healthy environment, protection of sacred spaces, inter- and intra-cultural education, and protection for peoples in danger of extinction, along with other rights. It also promises the right “to the practice of their political, juridical and economic systems in accord with their world view.”⁷⁹ These rights address the material practices in which the symbolic or communicative aspects of culture are necessarily rooted.

Of course, the Bolivian Constitution owes much, in spirit and in detail, to the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Notwithstanding the significant compromises involved in its drafting, this Declaration specifically guarantees that “Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.”⁸⁰ It also specifically mentions the

⁷³ E.g. Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995).

⁷⁴ UNESCO, “Investing in Cultural Diversity and Intercultural Dialogue,” (Paris: United Nations Educational, Scientific, and Cultural Organization, 2009).

⁷⁵ Richard Madsen, “Global Monoculture, Multiculture, and Polyculture,” *Social Research* 60, no. 3 (1993).

⁷⁶ Plurinational State of Bolivia, “The Political Constitution.”

⁷⁷ Himani Bannerji, *The Dark Side of the Nation: Essays on Multiculturalism, Nationalism, and Gender* (Toronto: Canadian Scholars’ Press, 2000); David Theo Goldberg, ed. *Multiculturalism: A Critical Reader* (Oxford: Blackwell Publishing, 1994); B. Singh Bolaria and Peter Li, *Racial Oppression in Canada*, 2nd ed. (Toronto: Garamond Press, 1988).

⁷⁸ Plurinational State of Bolivia, “The Political Constitution,” Article 2.

⁷⁹ *Ibid.*, Article 30.II.14.

⁸⁰ United Nations, *Convention on the Prevention and Punishment of the Crime of Genocide*, Dec. 9, 1948 (UN Doc. A/RES/3/260).

importance of lands, territories, and resources as a precondition and element of Indigenous rights, including “the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions” and “the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources”.⁸¹

It is on these kinds of issues that the project of preventing genocides of Indigenous peoples and the larger project of promoting human ethnodiversity may face their deepest challenges. The modern world-system is organized by one single division of labour, capitalism, and one single political institution, the sovereign state. It has expanded globally to include nearly all human beings on Earth through a mix of violence and exploitation that is primitive accumulation. We can understand past and present forms of genocidal settler colonialism in terms of this ceaseless systemic tendency to make all resources available for capitalist exploitation and all persons into subjects of the state. The kinds of practical rights specified in the UNDRIP and the Bolivian gesture towards a reversal of this incorporation, that is, towards the cultivation of economic and political institutions beyond capitalism and state sovereignty.

At this point, to theorize further the kinds of social changes entailed in the struggle to end genocide requires going beyond the limits of our current knowledge. The two dimensions of the modern world-system are not merely ideological formations; they are formations of practical social relations, that is, concrete processes through which people resolve various practical problems arising from our embodied life together. To supersede either or both of these institutions requires developing alternative practices. In the political domain, it requires developing alternative means of resolving social difference- that is, means of resolving difference without the need for deference to the monolithic figure of the singular sovereign. In the terms of the foundational paradigms of modern political theory⁸² this is a Utopian demand, even unthinkable. But turning the unthinkable into the thinkable is precisely the work of social theory.

In conclusion, to frame the struggle against genocide in terms of promoting diversity in the ethnosphere invites genocide scholars to engage in three important lines of social-scientific research. The first is simply to define and empirically measure global ethnodiversity and ethnodiversity loss. Language loss is only one, proxy indicator of the life and death of cultures. The second is to study and theorize the coherence and resilience of cultures, the conditions under which cultures live and die. What conditions are crucial for a culture to thrive? At what point and under what stresses, does a culture dissolve irreparably, and when may a culture be said to be damaged, but not destroyed? How can a culture damaged by genocide rebuild itself, and what outside interventions can promote revitalization? Finally, the most challenging questions concern the viability of ethnodiversity in a globalized human society. As human social relations become increasingly integrated over a global scale and local autonomy becomes less and less feasible, how can substantively different cultures exist and thrive within this single global society? This involves asking how social differences can be resolved without violence and without the need for cultural homogenization.

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⁸¹ United Nations, *Declaration on the Rights of Indigenous Peoples*, Articles 18, 32(1).

⁸² E.g. Jean-Jacques Rousseau, “The Social Contract or, Principles of Political Right,” in *The Social Contract and Discourses*, ed. J.H. Brumfitt, John C. Hall, and P.D. Jimack (London: J.M. Dent, 1993); Thomas Hobbes, *Leviathan, or, the Matter, Forme, & Power of a Common-Wealth Ecclesiasticall and Civill* (London: Penguin, 1985); John Locke, *Two Treatises of Government*, ed. Peter Laslett, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1988).

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A Year of Truth and the Possibilities for Reconciliation in Indonesia

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Abstract: Since the end of the New Order military regime in 1998, successive Indonesian administrations have yet to deal with crimes against humanity perpetrated by the old regime, particularly the 1965–1966 massacres. Attempts for reconciliation have mainly come from grass-roots organizations which employ oral historical methods to both document these crimes and to serve as the basis for claims of truth-telling about the past. In this paper, I examine the work of some of these grass-roots organizations and, in particular, the ‘Year of Truth’ initiative. I outline the ‘Hearing Testimony’ forum held in November 2013 and contrast this work with the failed attempts at the national level to deal with this past.

Keywords: Indonesia, 1965-66 massacres, truth-telling, reconciliation

Introduction

Truth-telling and reconciliation remain unsettled and troubled issues in Indonesia. In the nearly twenty years since the end of the military regime, General Suharto’s authoritarian “New Order” (1966–1998), dealing with the many atrocities committed by that regime has never been seriously attempted by the Indonesian government. Mass atrocities committed by the regime date from the beginning of the New Order (when an estimated half a million people were killed in the anti-Leftist massacres of 1965–1966), span the widespread violations committed during the twenty-four year occupation of Timor Leste (1975–1999), and include the years of military campaigns against communities in areas such as Aceh and Papua in which thousands of civilians died.¹ These state-sponsored atrocities also include the disappearing of activists and critics of the regime and the numerous “incidents” whereby local civilians were tortured and killed during army crackdowns.²

Not one of the five Presidents who has ruled since Suharto’s fall in 1998 has made dealing with the past a priority. During this time, there have been a few abortive attempts at official investigations into or redress of some of the state crimes committed under the New Order but all have failed.³ Overwhelmingly, amongst the many communities of survivors and their advocates, there is a feeling of justice delayed is justice denied. The regime’s many victims of gross human rights violations have seen the initial promises of democratic reform, justice for past crimes and reconciliation stumble and fail. As the years have passed, the older generation of survivors has almost all passed on without seeing any substantial measure of justice or reconciliation.⁴

The only sustained attempts to reconcile communities riven by past crimes have come from grassroots organizations which mostly employ oral historical methods to both document these crimes and to serve as the basis for claims of truth-telling about the past.⁵ In this paper, I examine the oral testimony work of some of these grass-roots organizations which have

¹ On these mass atrocities, see Robert Cribb, “Genocide in Indonesia,” *Journal of Genocide Studies* 3, no. 2 (2001), 219-239; Geoffrey Robinson, “*Rawan Is as Rawan Does: The Origins of Disorder in New Order Aceh*,” *Indonesia* 66 (1998), 127-157; Human Rights Watch, *Out of Sight: Endemic Abuse and Impunity in Papua’s Central Highlands* (New York: Human Rights Watch, 2007); and Richard Tanter, Gerry van Klinken and Dennis Ball, eds., *Masters of Terror: Indonesia’s Military and Violence in East Timor* (Lanham: Rowman and Littlefield, 2006).

² On some of these cases, see Elizabeth Fuller Collins, “Indonesia: A Violent Culture?” *Asian Survey* 42, no. 4 (2002), 582-604; and Freek Colombijn, “What is so Indonesian about Violence?” in *Violence in Indonesia*, ed. Ingrid Wessel and Georgia Wimböfer (Hamburg: Abera, 2001), 25-46.

³ International Centre for Transitional Justice (ICTJ) and the Commission for Disappeared Persons and Victims of Violence (KontraS), *Derailed: Transitional Justice in Indonesia since the Fall of Soeharto – A Joint Report by ICTJ and KontraS* (Jakarta: ICTJ and KontraS, 2011).

⁴ On these sentiments by survivor groups and communities, see, for example, ICTJ and KontraS, *Derailed*, 83-87; Kimura Ehito, “The Struggle for Justice and Reconciliation in Post-Suharto Indonesia,” *Southeast Asian Studies* 4, no. 1 (2015), 73-93.

⁵ See Sri Lestari Wahyuningroem, “Seducing for Truth and Justice: Civil Society Initiatives for the 1965 Mass Violence in Indonesia,” *Journal of Current Southeast Asian Affairs* 32, no. 3 (2013), 115-142.

investigated the 1965–1966 massacres. Specifically, I examine the oral-historical work of a large coalition of non-government and victim advocacy organizations, the KKP (the Coalition for Justice and the Disclosure of Truth, *Koalisi Keadilan dan Pengungkapan Kebenaran*), which organised the Year of Truth (*Tahun Kebenaran*) campaign in Indonesia. First, I briefly outline the state-sponsored atrocities committed during the 1965–1966 massacres and their lasting impact on Indonesian society. To examine the work of this campaign, I then outline the Hearing Testimony five-day forum held in Jakarta in November 2013 and some of the campaign's online testimonial artifacts. Lastly, I contrast this work with the failed attempts at the national level to deal with this past. These include the defunct truth and reconciliation commission legislation, the failed investigation into the massacres by the state's human rights body, and the non-apologies for the 1965–1966 massacres and other atrocities committed under the New Order regime by the former President, Susilo Bambang Yudhoyono (SBY), and the current President, Joko (Jokowi) Widodo.

This discussion examines the Year of Truth campaign within the context of stalled efforts for reconciliation in contemporary Indonesia. Scholars and activists alike in Indonesia have pointed to the utter failure of successive administrations since the end of the New Order “to deal with past human rights violations and to encourage the reconciliation process.”⁶ Many have also pointed to Indonesia's lack of investigation into or redress of past mass atrocities and human rights violations as sustaining an ingrained culture of impunity.⁷ Within broader understandings of restorative justice after the end of authoritarianism, Indonesia stands out as an example of how new regimes sacrifice any attempt at restoration or justice for the short-term goals of securing elite support for democratisation.⁸ This support, however, has come at a high price: a low-quality democracy, the capture of the newly built democratic institutions by oligarchic elites, and now swift back stepping on hard-won reforms to ensure human rights.⁹

The Year of Truth campaign was a collective effort by forty-seven of Indonesia's leading human rights non-governmental organisations (NGOs) and legal aid bodies to challenge the country's culture of impunity.¹⁰ Their aim was for the testimonies given by survivors as part of the campaign to “become a source of enlightenment for the nation in the long struggle towards truth and justice.”¹¹ For the NGOs involved in the KKP coalition, the Year of Truth campaign explicitly linked truth-telling to demands for action by the Indonesian government nationally. Specifically, those involved in the campaign held events and created online and other media which were intended primarily for a domestic Indonesian audience and which unequivocally posited survivors' testimonies about past atrocities as political claims of truth about Indonesia's past. In this paper, I highlight one of the survivor's stories used in this online media campaign (the testimony of Ibu Bendelina) and one of the national events held as part of the Year of Truth (the Hearing Testimony event in November 2013). These survivors' testimonies and witness forums, according to the KKP coalition, had a clear political purpose: by “providing a space for victims to speak truth... [they]

⁶ Priyambudi Sulistiyanto and Sentot Setyasiswanto, “Still Seeking Truth and Reconciliation for the 1965 Victims: Is It Possible?” in *Asia-Pacific Between Conflict and Reconciliation*, ed. Philip Tolliday, Maria Pame and Dong-Choon Kim (Göttingen: Vandenoek and Ruprecht, 2016), 69.

⁷ See, for example, Suzannah Linton, “Accounting for Atrocities in Indonesia,” *Singapore Year Book of International Law* 10 (2006), 199-231; and Martha Meijer, *The Scope of Impunity in Indonesia* (Utrecht: The Netherlands Humanist Committee of Human Rights, HOM, 2006).

⁸ See, for example, Jon Elster, ed., *Retribution and Reparation in the Transition to Democracy* (New York: Cambridge University Press, 2006); and Guillermo O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore: The Johns Hopkins University Press, 2013).

⁹ On this, see Edward Aspinall, “The Irony of Success,” *Journal of Democracy* 21, no. 2 (2010), 20-34; and Annie Pohlman, “Indonesia and Post-New Order Reforms: Challenges and Opportunities for Promoting the Responsibility to Protect,” *Asia-Pacific Centre for the Responsibility to Protect*, Research Report, July 2010.

¹⁰ For the full list of all forty-seven members of the KKP, go to their website, *Koalisi Keadilan dan Pengungkapan Kebenaran*, “Tentang KKP,” accessed February 12, 2016, <http://kkpk.org/tentang-kkpk/>.

¹¹ Putu Oka Sukanta, “Pengantar Editor [Editor's Introduction],” in *Menemukan Kembali Indonesia: Suara Korban Membebaskan Belenggu Kekerasan Masa Lalu [Redefining Indonesia: Survivors' Voices Breaking the Chains of the Violent Past]*, ed. Putu Oka Sukanta (Jakarta: *Koalisi Keadilan dan Pengungkapan Kebenaran*, 2014), vi (my translation).

demand that the [Indonesian] State take concrete steps to restore human rights [and investigate] abuses in the past."¹²

By juxtaposing the memory work of survivors and their advocates at the grassroots level with the willful amnesia of successive national level administrations, I argue that these local campaigns make significant contributions to dealing with the past but that they do so in the face of the almost insurmountable challenge of entrenched impunity in Indonesia for past atrocities.¹³ As Budi Hernawan and Pat Walsh have shown, this "impenetrable" climate of impunity means that the massacres of 1965–1966 are but one of many in "the silent history of [...] state-sponsored Indonesian atrocities that have been misrepresented or suppressed and rendered invisible."¹⁴ Given this ingrained culture of impunity and lack of redress by official means, campaigns such as the Year of Truth and others organized by Indonesia's many victim advocacy groups are likely to remain the only means available for survivors to speak their truths about historical traumas in Indonesia for the foreseeable future.

Background: The 30 September Coup and the 1965–1966 Massacres in Indonesia

An attempted coup on the night of 30 September 1965 began a series of violent events which affected the lives of tens of millions of Indonesians. They also forever changed the political and social landscape of Indonesia. On that night, six top-ranking generals and one general's aide were kidnapped and murdered by a group of middle-ranking Army officers proclaiming themselves "the 30 September Movement."¹⁵ Numerous conspiracy theories have spread over the years as to who carried out the coup, for what purpose and who was ultimately responsible.¹⁶ Whoever may have been ultimately responsible for the coup, the Indonesian Army leadership seized the opportunity presented by the upheaval to wipe out its long-standing political rivals, the supporters of the Indonesian Communist Party (PKI, *Partai Komunis Indonesia*).¹⁷

Within days of putting down the 30 September Movement, the upper echelons of the remaining army leadership had blamed the coup on the PKI and claimed that members of Communist organizations, including the Communist-aligned People's Youth (*Pemuda Rakyat*) and women's movement (*Gerwani*), had played key roles in the kidnapping and murder of the generals.¹⁸ The military then embarked upon a propaganda campaign which was designed to incite anti-Communist hatred and violence throughout the Indonesian population. The propaganda created the image of the PKI and Communism in general as being a dangerous enemy. This, in turn, encouraged those who would eliminate the PKI to see themselves as defenders of the nation, purging the Communist pollutant from Indonesia in order to save it.¹⁹

These massacres were carried out principally in the closing months of 1965 and the early months of 1966 by the Indonesian military with the active participation of various militia groups drawn mostly from the ranks of religious and nationalist organizations. In each region of Indonesia, the local militia groups which participated were different. They included, for example, *Banser*, a

¹² Putu Oka Sukanta, "Penjelasan Metode [Explanation of Methods]", in *Menemukan Kembali Indonesia: Suara Korban Membebaskan Belenggu Kekerasan Masa Lalu [Redefining Indonesia: Survivors' Voices Breaking the Chains of the Violent Past]*, ed. Putu Oka Sukanta (Jakarta: Koalisi Keadilan dan Pengungkapan Kebenaran, 2014), ix-x (my translation).

¹³ See Jiwon Suh, "The Politics of Transitional Justice in Post-Suharto Indonesia" (PhD diss., Ohio State University, 2012).

¹⁴ Budi Hernawan and Pat Walsh, *Inconvenient Truths: The Fate of the Chega! And Per Memoriam Ad Spem Reports on Timor-Leste* (Jakarta: Asia Justice and Rights, August 2015), 3.

¹⁵ John Roosa, "The September 30th Movement: The Aporias of the Official Narrative," in *The Contours of Mass Violence in Indonesia, 1965–68*, eds. Douglas Kammen and Katharine McGregor (Singapore: NUS Press, 2012), 25-49.

¹⁶ Benedict Anderson and Ruth McVey, *A Preliminary Analysis of the October 1, 1965, Coup in Indonesia* (Ithaca: Cornell University, 1971); and John Roosa, *Pretext for Mass Murder: The September 30th Movement and Suharto's Coup d'Etat in Indonesia* (Madison: University of Wisconsin Press, 2006).

¹⁷ Cribb, "Genocide in Indonesia," 219-225.

¹⁸ Saskia Wieringa, "The Birth of the New Order State in Indonesia: Sexual Politics and Nationalism," *Journal of Women's History* 15, no. 1 (2003), 70-91.

¹⁹ Stephen Drakeley, "Lubang Buaya: Myth, Misogyny and Massacre," *Nebula* 4, no. 4 (2007), 11-35; Cribb, "Genocide in Indonesia"; and Annie Pohlman, "Incitement to Genocide against a Political Group: The Anti-Communist Killings in Indonesia," *PORTAL Journal of Multidisciplinary International Studies* 11, no. 1 (2014), 1-22.

paramilitary brigade set up by one of Indonesia's largest Muslim organizations, *Nahdlatul Ulama*, which began hunting down Communists by the second week of October in parts of East Java.²⁰ Another militia was the *Tameng* mobile killing squad made up primarily of youths and thugs associated with the Indonesian Nationalist Party (PNI, *Partai Nasionalis Indonesia*) in Bali.²¹ Other militias were made up of the various Protestant and Catholic student groups who participated in the killings across the south-eastern island province of East Nusa Tenggara (NTT).²²

While the massacre of an estimated 500,000 men, women and children for their association with the PKI was being carried out, the military – by then under the command of General Suharto – conducted continuous waves of arrests against an estimated million more who were rounded up and put into political detention.²³ The majority of those arrested, known as *tapols* (an abbreviation of *tahanan politik* or political prisoner), were detained without trial and imprisoned. Many were subjected to interrogation, torture, starvation and forced labor in overcrowded and substandard prisons and labor camps.²⁴

Most of those killed during the 1965–1966 massacres were murdered in executions, rather than in general or localized killings of civilians, with the often secretive nature of the executions limiting the number of witnesses. For many of the victims of the killings, death was preceded by capture. Once in detention, the outcome for many detainees was torture and mistreatment followed either by removal and execution in some remote place or else by months if not years of imprisonment. Most victims were rounded up from a particular area, spend a short time in detention, then were taken to a nearby site that was convenient for the disposal of many bodies, and executed en masse.²⁵

The stigma of being related to political prisoners or those killed during the massacres later developed into institutionalized policies in the 1980s, whereby those tainted by association with the PKI were marked as “unclean” with family members said to be from an “unclean environment”. For unclean people and their relatives, the government imposed numerous restraints on their rights, supposedly to help protect the wider community from the latent danger of communism.²⁶

The killings, arrests and stigmatization of all those connected with the Left created the foundation for Suharto's long-lasting authoritarian New Order. Anti-Communism was, as Ariel Heryanto has argued, the basis for the regime, for “Indonesia's New Order authoritarianism would not have existed nor survived so well without the magic power of the discursive phantom of the ‘Communist threat’.”²⁷ As other researchers have shown, the regime's efforts to maintain legitimacy were, in part, based both upon its success at having eradicated the Communist scourge and upon perpetuating the fantasy of a Communist resurgence.²⁸ When the New Order ended in 1998, however, the spectre of anti-Communism did not die with the regime, but rather remained a powerful tool to discredit political opponents and evoke fear. As numerous scholars have highlighted, despite a period of initial liberalization and challenges to the New Order's hegemonic

²⁰ See Greg Fealy and Katharine McGregor, “East Java and the Role of Nahdlatul Ulama in the 1965–66 Anti-Communist Violence,” in *The Contours of Mass Violence in Indonesia, 1965–68*, eds. Douglas Kammen and Katharine McGregor (Singapore: NUS Press, 2012), 104–130.

²¹ On the *Tameng* groups, see Geoffrey Robinson, *The Dark Side of Paradise: Political Violence in Bali* (Ithaca: Cornell University Press, 1995).

²² Steven Farram, “The PKI in West Timor and Nusa Tenggara Timur: 1965 and Beyond,” *Bijdragen tot de Taal-, Land- en Volkenkunde* 166, no. 4 (2010), 381–403.

²³ Robert Cribb, “Introduction: Problems in the Historiography of the Killings in Indonesia”, in *The Indonesian Killings 1965–1966: Studies from Java and Bali*, ed. Robert Cribb (Clayton, Victoria: Centre of Southeast Asian Studies, Monash University, 1990), 1–44.

²⁴ Julie Southwood and Patrick Flanagan, *Indonesia: Law, Propaganda and Terror* (London: Zed Books, 1983).

²⁵ Douglas Kammen and Katharine E McGregor, ed., *The Contours of Mass Violence in Indonesia, 1965–68* (Singapore: National University of Singapore Press, 2012).

²⁶ *Tapol, Indonesia: The Prison State* (London: Tapol, 1976); and Amnesty International, *Indonesia: An Amnesty International Report* (London: Amnesty International, 1977).

²⁷ Ariel Heryanto, “Where Communism Never Dies: Violence, Trauma and Narration in the Last Cold War Capitalist Authoritarian State,” *International Journal of Cultural Studies* 2, no. 2 (1999), 151.

²⁸ On this, see, for example, Robert Goodfellow, *Api Dalam Sekam: The New Order and the Ideology of Anti-Communism* (Clayton: Monash University Centre of Southeast Asian Studies, 1995).

narration of history, the discourse of anti-Communism remains strong in contemporary Indonesia, and is invoked with alarming regularity in political debates and campaigns.²⁹ Despite this, after 1998, survivors of the 1965–1966 killings and political imprisonment, often with the encouragement and support of emerging human rights and victim advocacy organizations, began speaking out about their experiences.

The Year of Truth Initiative: Testimony as Truth-Telling

When the New Order finally fell in May 1998, the prospects of democratic reform and redress for the abuses committed by the regime initially opened a space for victims and their advocates to speak out about their experiences. As Ann Laura Stoler has noted, there was, at least in the first few years after 1998, an unprecedented “explosion of interest” in talking about the 1965–1966 events and other state-sponsored crimes.³⁰ This initial opening of space for talking about these events soon gave way to the re-silencing, or purposeful amnesia, which has characterised Indonesian public discourse about the former regime’s crimes over the last decade and which has been in itself a product of the stagnation of democracy in contemporary Indonesian politics.³¹ As various scholars have noted, whatever initial space for open debate about past events there was in the immediate post-Suharto period, this ended by approximately 2004 with the election of SBY, a former military commander with little interest in pursuing the early reform period’s agenda for redressing past crimes under, in particular, former Presidents B.J. Habibie and Abdurrahman Wahid.³²

It is within this climate of amnesia and impunity for past atrocities that survivors, their advocates and civil society groups in Indonesia conduct the task of speaking their own truths about the past. Many survivor organizations were set up in the early-to-mid 2000s with the explicit goal of collecting the testimonies of people who had experienced state-sponsored atrocities so that these truths would either counter-act the New Order’s blanket denial of responsibility for these acts of violence or else deny the regime’s hegemonic version of the history of these events.³³ This has certainly been the case for the survivor groups and advocacy organizations set up over the past two decades which deal with the 1965–1966 mass violence. Some of these organisations which were set up in the early 2000s with the specific aim of documenting the histories of survivors and victims of the killings include Syarikat (the Islamic Society for People’s Advocacy, based in Yogyakarta) and the YPKP65 (Foundation for Research into Victims of the 1965-1966 Killings, based in Jakarta). These and many other organizations have collected thousands of survivor testimonies in the last two decades.³⁴ In addition, these organizations carried out other projects, most aimed at collecting surviving historical documentation of past atrocities, including by conducting a small number of exhumations of mass graves in Java.³⁵

Ten years after the end of the New Order, a large group of these organizations began to work together, and the Year of Truth campaign grew out of this collaboration. This group of

²⁹ On the discourse of anti-Communism in contemporary Indonesian political debates, see, for example, Ariel Heryanto, *State Terrorism and Political Identity in Indonesia: Fatally Belonging* (New York: Routledge, 2006); Katharine E. McGregor, *History in Uniform: Military Ideology and the Construction of Indonesia’s Past* (Honolulu: University of Hawai’i Press, 2007).

³⁰ Ann Laura Stoler, “On the Uses and Abuses of the Past in Indonesia,” *Asian Survey* 42, no. 4 (2002), 642.

³¹ On this topic, see, Budiawan and Walsh, *Inconvenient Truths*, 10-12; ICTJ and KontraS, *Derailed*.

³² See, for example, ICTJ and KontraS, *Derailed*, 11-17; and Suh, “The Politics of Transitional Justice,” 90-103.

³³ Annie Pohlman, “Documentation: Reports by Human Rights and Victim Advocacy Organizations in Indonesia: Reconciling the Violence of 1965,” *Journal of Current Southeast Asian Affairs* 32, no. 3 (2013), 143-165; and Wahyuningroem, “Seducing for Truth and Justice,” 122-125.

³⁴ On some of these groups, see Pohlman, “Documentation,” 143-165. Some of the outputs from these various projects include KontraS, *Menyusun Puzzle Pelanggaran HAM 1965: Sebuah Upaya Pendokumentasian [Figuring out the Puzzle of Human Rights Violations in 1965: An Effort at Documentation]* (Jakarta: KontraS, 2012); John Roosa, Ayu Ratih and Hilmar Farid, ed., *Tahun yang Tak Pernah Berakhir: Memahami Pengalaman Korban ‘65 [The Year that Never Ended: Understanding the Experiences of the Victims of ‘65]* (Jakarta: ELSAM, TRuK and ISSI, 2004); and Haryo Sasongko and Melani Budianta, ed., *Menembus Tirai Asap: Kesaksian Tahanan Politik 1965 [Piercing the Smoke Screen: Testimonies by Political Prisoners from 1965]* (Jakarta: Amanah Foundation, 2003).

³⁵ See Katharine McGregor, “Mass Graves and Memories of the 1965 Indonesian Killings,” in *The Contours of Mass Violence in Indonesia, 1965–68*, ed. Douglas Kammen and Katharine McGregor (Singapore: NUS Press, 2012), 234–262.

organizations formed a coordinating body in 2008, which was an alliance of individuals and forty-seven non-government and victim advocacy groups, and was named the KKP (Koalisi Keadilan dan Pengungkapan Kebenaran), or the Coalition for Justice and Disclosure of Truth. The slogan of the Year of Truth initiative was “truth is the future” (*kebenaran adalah masa depan*).³⁶ Amongst these forty-seven groups which make up the KKP are many of Indonesia’s foremost human rights organizations, including ELSAM (the Institute for Policy Research and Advocacy), KontraS (the Commission for the Disappeared and Victims of Violence) and Imparsial (the Indonesian Human Rights Monitor), in addition to several of the leading Legal Aid Foundations across Indonesia, and a range of groups which advocate on specific human rights issues, such as IKOHI (Association for the Families of the Disappeared). Furthermore, individual survivors and victim advocacy groups which campaign for an official investigation into, and redress of, the massacres of 1965–1966 also form part of the KKP coalition, including SKP-HAM of Central Sulawesi (Solidarity with Victims of Human Rights Violations), SekBer’65 (Joint Secretariat for 1965) from Solo in Central Java, and Syarikat (the Islamic Society for People’s Advocacy), based in Yogyakarta.³⁷

In the first few years after forming in 2008, the KKP’s member organizations sought to bring coherence and structure to the numerous efforts being carried out across various parts of Indonesia to collect survivors’ testimonies. Individually, these organizations had amassed large numbers of oral histories by survivors, as well as compiled volumes of historical documentation data, such as surveys with survivors and their family members.³⁸ One of the aims of setting up the KKP as a coordinating body for these numerous organizations, therefore, was to pool the resources and strengths of these various groups to build a national campaign for truth and reconciliation. After some years of negotiation, the Year of Truth campaign was announced. The campaign was structured so that it drew on the testimonial work of the KKP’s constituent member organizations and their mostly oral historical accounts by survivors which formed the core of the Year of Truth.³⁹

The Year of Truth campaign itself was held between December 2012 and December 2013, overlapping the fifteen-year anniversary of the 1998 end of the New Order. While the campaign focused on hearing and disseminating the oral testimonies of survivors of serious human rights violations committed under the New Order regime, such as the 1965–1966 massacres, the organizing committee also highlighted more recent violations, such as in Papua and West Papua provinces, and the 2004 assassination of human rights defender, Munir.⁴⁰ A variety of events was held before, during and after the twelve-month campaign across several regions of Indonesia, including forums for hearing testimony by survivors of human rights abuses from Aceh in the northwest to the easternmost province, Papua. These events had the clearly stated aim of supporting survivors through providing them with a forum to give testimony about their experiences and through counselling and other forms of financial and educational support.⁴¹ Attendance and participation in these events varied from less than one hundred to approximately one thousand people.⁴²

³⁶ Information on the Year of Truth campaign can be found, in Indonesian, on the KKP’s main website. For information on the Year of Truth, see *Koalisi Keadilan dan Pengungkapan Kebenaran (KKP)*, “Tahun Kebenaran [The Year of Truth],” KKP, accessed January 28, 2016, <http://kkp.org/tahun-kebenaran>.

³⁷ The Coalition recently published a book with highlights and individuals’ stories from the Year of Truth campaign: *Koalisi Keadilan dan Pengungkapan Kebenaran (KKP)*, *Menemukan Kembali Indonesia: Suara Korban Membebaskan Belenggu Kekerasan Masa Lalu [Redefining Indonesia: The Voices of Survivors Freeing the Chains of Past Violence]* (Jakarta: KKP, 2014).

³⁸ Organizations such as Syarikat, the YPKP’65 and Sekber’65 (amongst others) have compiled thousands of such histories, most of which remain uncatalogued and in accessible to those outside these organisations.

³⁹ See Sukanta, “Pengantar Editor,” vi (author’s translation).

⁴⁰ Sayed, “Culture of Impunity in Indonesia Lives on Nine Years after the Assassination of Munir,” *Human Rights First*, September 9, 2013, accessed May 10, 2014, www.humanrightsfirst.org/2013/09/09/culture-of-impunity-in-indonesia-lives-on-nine-years-after-the-assassination-of-munir.

⁴¹ The KKP’s website (www.kkp.org) provides descriptions of their events, aims of their work, and information about the coalition. See “Tentang KKP [About the KKP],” *Koalisi Keadilan dan Pengungkapan Kebenaran*, accessed June 12, 2015, <http://kkp.org/tentang-kkp/>.

⁴² The exact numbers of participants and those who attended the forums across Indonesia is unknown, though these forums are discussed in the KKP’s report on the Year of Truth campaign. This includes discussions on the individual events. See Putu Oka Sukanta, ed., *Menemukan Kembali Indonesia: Suara Korban Membebaskan Belenggu Kekerasan*

Testimony as Artefact: Ibu Bendelina's Story

For the organizations which make up the KKP, truth-telling and the right to truth are central to the campaign.⁴³ In the various promotional media created by the KKP, such as YouTube clips and a wide range of products for social media, these claims to truth-telling are evident. The Twitter hashtag #bicarabenaar (#speaktruth) tags and connects the many media on display. Visitors to the KKP website or Facebook page can view numerous video files, some are promotional materials created for awareness-raising while others are video testimonies by survivors filmed at the various forums across Indonesia.⁴⁴

These video testimonies are edited and stylized, most lasting between five and six minutes. Each begins with soft piano music, played in a minor key, and the testimony is introduced with a map of Indonesia, locating where the testimony was recorded, and a title given for the testimony. In one of these videos, the testimony by Ibu Bendelina, the title is "A teacher, a member of Gerwani." In the information given beneath the YouTube clip, it states that Ibu Bendelina "gave testimony about the 1965 Tragedy as part of the Hearing Testimony forum in Eastern Nusa Tenggara province, held in Kupang city on 27 April 2013."⁴⁵ The opening sequence fades into scenes of Ibu Bendelina's village on Sabu (Sawu) Island, then shows her caring for her grandchildren. She states where and when she was born, and talks briefly about her family growing up, her marriage and children. The recording of her testimony plays while the video moves between close-ups on Ibu Bendelina's face as she speaks and images which show her cleaning in her home and moving about the village.

As a member of the Communist Party-aligned mass women's organization, *Gerwani*, Ibu Bendelina was one of hundreds of thousands arrested and detained following the coup across Indonesia. During her video testimony, two locations connected to these events are highlighted. The first is Jariwala, a local women's detention camp. In the film, Ibu Bendelina stands looking across at a large, old hut, its grass roof damaged and neglected. As the observer, we stand behind Ibu Bendelina, and watch her as she looks at the old camp building. While watching, we hear as Ibu Bendelina describes her time in the camp; about how she was interrogated, beaten, and how her hair was shaved off, likely as a method of humiliation.⁴⁶

Halfway through the video, a second location is introduced: Ibu Bendelina is shown squatting in an open field, crying. A brief section of text appears on the screen, naming the location: Hanga Loko Pedae, beneath that, *Tempat Pembantaian dan Keburan Massal*, meaning "Site of Massacre and Mass Grave." At the end of Ibu Bendelina's testimony, the screen fades to black, the music falls silent and the following text offered in Indonesian:

"According to the results of the research undertaken by JPIT [Eastern Indonesian Women's Network, one of the organizations involved in the KKP], more than sixty teachers were arrested and detained on Sabu Island because they were accused of being PKI [members]. Twenty-six amongst them were executed, including Bendelina's husband, Kola Raga. The victims who were executed were buried in a mass grave in a field at Hanga Loko Pedae."⁴⁷

The audience for Ibu Bendelina's video testimony, as with the other media produced for the KKP campaign, is clearly a domestic one. All media files and accompanying texts are produced in Indonesian; the only non-Indonesian materials are from newspaper stories printed in

Masa Lalu [Redefining Indonesia: Survivors' Voices Breaking the Chains of the Violent Past], (Jakarta: Koalisi Keadilan dan Pengungkapan Kebenaran, 2014).

⁴³ For a statement on the aims of the campaign by one of the main organizers of the KKP, see Sukanta, "Pengantar Editor," v-vi (my translation).

⁴⁴ KKP Kebenaran Facebook page, accessed June 12, 2015, <https://www.facebook.com/kkp.kebenaran?ref=ts&fref=ts>.

⁴⁵ To view Ibu Bendelina's testimony, go to: "Dengar Kesaksian Kupang, NTT: 'Guru Anggota Gerwani' [Hear the Testimony from Kupang, NTT: 'A Teacher and Member of Gerwani']," YouTube video, 5:30, posted by "Koalisi Keadilan dan Pengungkapan Kebenaran," April 29, 2013, <http://www.youtube.com/watch?v=AyWaqfhUx94>.

⁴⁶ See Annie Pohlman, *Women, Sexual Violence and the Indonesian Killings of 1965–1966* (London: Routledge, 2015), 130-152.

⁴⁷ "Dengar Kesaksian Kupang, NTT: 'Guru Anggota Gerwani' [Hear the Testimony from Kupang, NTT: 'A Teacher and Member of Gerwani']," YouTube video, 5:30, posted by "Koalisi Keadilan dan Pengungkapan Kebenaran," April 29, 2013, <http://www.youtube.com/watch?v=AyWaqfhUx94>.

English-language Indonesian outlets (e.g. *The Jakarta Post*) which have been scrap-booked into the collection of news stories, and the section of the KKP website which lists expressions of international support, including from former directors and commissioners of Truth and Reconciliation Commissions in other parts of the world.⁴⁸ For a non-Indonesian watching any of these video testimonies, while it may be clear that the older man or woman on the screen is telling a story of some kind, and there are emotive cues to be drawn from the sombre music and images shown, nothing more can be discerned. In Ibu Bendelina's video testimony, her words are soft and difficult to discern; there are no sub-titles and very few textual aids given to help the viewer aside from the one or two pieces of text which give location names. The appeal to an Indonesian domestic audience is also evident in that she speaks in Indonesian, not her local language (*Bahasa Sabu* or *Bahasa Hawu*) on her island, Sabu (often written as Savu or Sawu) to the west of Timor island in Savu-Raijua regency, Eastern Nusa Tenggara province.

Ibu Bendelina and the other men and women survivors who gave oral testimony as part of the KKP's initiative perform testimony as acts of witnessing. Within broader understandings of testimonial witnessing of atrocity, the oral testimonies given by Ibu Bendelina and others lie at the heart of social and cultural projects for social change. The survivor's role as witness is a complex one, not least of all because acts of performative witnessing to past atrocities demand, though may never attain, an ethical engagement and response from those who hear testimony.⁴⁹ As Anne Cubilié has argued, "survivors of atrocity become deeply uncomfortable signifiers for the post-atrocity societies within which they live, excessive to structures of normality that privilege forgetting, getting over and getting on with things through the denial of the terror of death."⁵⁰

The testimonies given by Ibu Bendelina and the many other survivors who took part in the Year of Truth campaign are stories of individual and community suffering. These stories become testimonial artefacts and are consciously and emotively stylized and reproduced for an imagined national audience, one which has compassion for and the will to support their truth-telling claims. This testimonial artefact created from the oral history of Ibu Bendelina was one of many similar media productions by the KKP for the Year of Truth campaign. These online testimonies were taken primarily, as in the case of Ibu Bendelina's testimony, from the oral histories of those who participated in the regional testimony-hearing forums held throughout the 2012–2013 campaign in various cities across Indonesia. Yet in the production and circulation of texts and testimonial objects, which clearly seek an emotional and empathetic engagement, how do these objects of testimony and claims to truth-telling operate in present-day Indonesia? To what effect does the KKP's Year of Truth campaign create and use these social forms of testimony to elicit a compassionate, and politically engaged, response thereby constituting Indonesians as a witnessing public? And, perhaps the most pressing question, can such campaigns have any impact on Indonesia's impenetrable impunity for past atrocities?

Hearing Testimony: "Speaking the Truth, Breaking the Cycle"

One of the main events during the Year of Truth campaign was the national Hearing Testimony forum, held 25–29 November 2013 at the national library in central Jakarta. This forum was the

⁴⁸ To view these messages of support, go to KKP, "Dukung Internasional [International Support]," *Koalisi Keadilan dan Pengungkapan Kebenaran*, accessed August 10, 2015, <http://kkpk.org/dukungan-internasional/> (viewed on 10 August 2015). It should also be noted that on the websites of some of the organizations which form part of the KKP coalition, there is information available in languages other than Indonesian. See, for example, the Asia Justice and Rights' page (AJAR), which has programs across the Asia-Pacific and publishes mostly in English. See Asia Justice and Rights (AJAR), "The Year of Truth," *AJAR*, accessed August 10, 2105, <http://asia-ajar.org/ajar-work-year-of-truth.html>.

⁴⁹ For works on testimonial acts of witnessing and their demands for ethical response, see, for example, Dominick LaCapra, *Writing History, Writing Trauma* (Baltimore: Johns Hopkins University Press, 2001); Kay Schaffer and Sidonie Smith, "Conjunctions: Life Narratives in the Field of Human Rights," *Biography* 27, no. 1 (2004), 1-24; Yvonne S. Unnold, *Representing the Unrepresentable: Literature of Trauma under Pinochet in Chile* (New York: Peter Lang, 2002).

⁵⁰ Anne Cubilié, *Women Witnessing Terror: Testimony and the Cultural Politics of Human Rights* (New York: Fordham University Press, 2005), xii.

culmination of the Year of Truth campaign and came at the end of the series of regional testimony forums held across Indonesia. Each of the five days had a specific theme. On day one, after the opening address, the theme for the hearing testimony was violence against women. The second day was devoted to hearing testimony about violence during military operations (such as in Aceh, Timor Leste and Papua), and the third to violence connected to freedom of religion and belief (including against religious minorities). The final two days explored violence associated with natural resource extraction and violence against human rights defenders. Organized thematically rather than chronologically (that is, by incident of serious human rights violation), each theme incorporated personal testimonies from survivors of human rights abuses over the past fifty years and from across Indonesia.⁵¹

The format for the five-day Hearing Testimony forum was a familiar one for the survivors who took part and for the organizations and individuals making up the KKPCK coalition. This oral testimony and truth-speaking forum, like that of the regional forums that had taken place earlier across Indonesia as part of the Year of Truth campaign, followed and built upon a strong history of oral historical practices amongst survivor and human rights groups in Indonesia over the past two decades. Many amongst these organizations, most of them members of the KKPCK, have conducted extensive oral history research with survivors of and eyewitnesses to human rights violations (for example, ELSAM, Syarikat, SKP-HAM and Sekber'65).⁵² The primacy of individual testimony about experiences of traumatic suffering is foregrounded in the KKPCK's forums and in the testimony-giving oral history projects of the coalition's constituent organizations. In these testimonial and oral historical formats, an individual survivor gives testimony as both a personal story of survival and as a witness account for the suffering of others for whom s/he may claim (explicitly or implicitly) to represent.⁵³

At the various KKPCK forums across Indonesia and at the Hearing Testimony national forum in November 2013, the format for testimony tends to involve a solitary survivor with a microphone delivering his or her testimony as a long narrative, uninterrupted by questions or prompts. These individual testimonies vary in length, most lasting between twenty minutes and one hour.⁵⁴ These testimonies themselves are performative events with very clear political purposes. This genre of testimonial performance has a tradition in Indonesia, certainly amongst civil society and political groups: the survivor comes to speak truth as testimony, endowing that speech act with political function, in many cases as the unmediated representation of both personal and community historical experiences of suffering. Often told in a more chronological or life-history format, these testimonies also foreground harm in particular events, emphasizing the experience of individual and communal violence, leaving out broader structural concerns that shaped those events.⁵⁵

As in other cross-cultural contexts, giving testimony through these truth-telling forums, such as the Hearing Testimony five-day forum, explicitly links performed acts of witnessing to

⁵¹ A description of this five-day event, and the topics for each day, can be found on the KKPCK's website, see Koalisi Keadilan dan Pengungkapan Kebenaran (KKPCK), "Tahun Kebenaran [The Year of Truth]," KKPCK, accessed January 28, 2016, <http://kkpk.org/tahun-kebenaran>.

⁵² On the oral-historical work of these organizations, see Pohlman, "Documentation," 143-165.

⁵³ *Ibid.*, 143-147. See also Mery Kolimon and Lilya Wetangterah, ed., *Memori-memori Terlarang Perempuan Korban dan Penyintas Tragedi '65 di Nusa Tenggara Timur [Forbidden Memories of Women Victims and the '65 Tragedy in East Nusa Tenggara]* (Kupang: Yayasan Bonet Pinggupir, 2012).

⁵⁴ To see an example of this from the national Hearing Testimony forum in November 2013, view the testimonies given by Ibu Muji and Bapak Mudjayen, in relation to their experiences following the 1965 coup. All testimonies given, in addition to other events, at the national Hearing Testimony forum were recorded and are available on YouTube. To see these testimonies, go to: "Kesaksian Ibu Muji dan Bapak Mudjayen, Terkait Kasus 1965 [Testimonies of Ibu Muji and Bapak Mudjayen, in Relation to the Case of 1965]," YouTube video, 49:09, posted by "Koalisi Keadilan dan Pengungkapan Kebenaran," November 26, 2013, www.youtube.com/watch?v=OBOZpAG_xaA.

⁵⁵ See Alison Crosby and M. Brinton Lykes, "Mayan Women Survivors Speak: The Gendered Relations of Truth Telling in Postwar Guatemala," *The International Journal of Transitional Justice* 5, no. 3 (2011), 456-476.

atrocities with calls for political action.⁵⁶ As Kay Schaffer and Sidonie Smith explain, life narratives become central to the political goals of social justice and human rights movements because they are critical for “seeding local acts of remembering ‘otherwise,’ offering members new or newly valued subject positions from which to speak and to address members of their own community in acts of solidarity.”⁵⁷ In the case of the Year of Truth campaign, the Hearing Testimony forum and other platforms for testimonial performance are central to the KKPK’s political aims in calling for redress and reconciliation in Indonesia. The KKPK, as with its constituent organizations, position survivor testimonies at the centre of their campaigns to perform specific political functions, that of “denouncing and challenging an official representation of history, while [serving] as a socio-political agent in promoting a (trans)formation of a socio-political conscious and continuing their call for truth and justice.”⁵⁸

The goal of this testimonial genre of truth-telling at the KKPK forums, and in the work of that coalition’s many survivor organizations, is therefore one of redemptive politics.⁵⁹ The stated aim of the Hearing Testimony forum and, indeed, of the activities of the Year of Truth more generally, was “speaking the truth, breaking the cycle.”⁶⁰ As reified accounts of survivors’ lived experiences of trauma, these narratives, as testimonial artefacts, are consciously positioned as the means for claiming truth and thereby displacing and negating the Indonesian state’s official narrative. Listening to these testimonies by survivors of serious human rights violations committed predominantly during the thirty-three years of the New Order regime, survivors often explicitly speak their truths in noted opposition to the regime’s discourse. For example, women who were members of Gerwani articulate clearly that they were not and are not the treacherous whores who were depicted in the military government’s propaganda about the 1965 coup.⁶¹ Almost fifty years after these events, survivors spoke their truths about their pasts to reject New Order discourses of history.⁶² The men and women who gave testimony at the KKPK forums also spoke their truths with purpose: to evoke a compassionate, and politically engaged, response from a domestic Indonesian audience.

The Many Failures of Restorative Justice in Jakarta

While human rights and survivor advocacy organizations have been very active in collecting evidence about serious violations of human rights in the Indonesian past, attempts at reconciliation and restorative justice for historical injustices have failed repeatedly at the national level in Indonesia over the past decade and a half. As Sri Lestari Wahyuningroem has argued, the weakness of democratic political institutions in Indonesia means that political leaders in Jakarta are unwilling to pursue issues of historical injustice, particularly given the power of conservative factions which are a legacy of the military government.⁶³ As she writes, stability is “a condition for political figures to maintain their power by avoiding any opposition among different factions, including the majority factions that oppose the seeking out of truth and justice in the cases from 1965 and 1966.”⁶⁴ In this section, I discuss three vexatious issues related to achieving some measure of recognition of and justice for the victims of the 1965 massacres, all of which demonstrate the

⁵⁶ A clear cross-cultural comparison can be made with the genre of *testimonio* in Latin America. On this “resistance” genre of testimony and its specific links to political claims see, for example, John Beverley, “The Margin at the Centre: On *Testimonio*,” *Modern Fiction Studies* 35, no. 1 (1989), 11-28; Barbara Harlow, *Resistance Literature* (New York: Methuen, 1987); Georg M. Gugelberger, ed., *The Real Thing: Testimonial Discourse and Latin America* (Durham: Duke University Press, 1996).

⁵⁷ Schaffer and Smith, “Conjunctions,” 4.

⁵⁸ Unnold, *Representing the Unrepresentable*, 13.

⁵⁹ Anne Cubilié and Carl Good, “Introduction: The Future of Testimony,” *Discourse* 25, nos.1 and 2 (2003), 4-18.

⁶⁰ Sukanta, “Pengantar Editor,” vi (my translation).

⁶¹ On this state mythology around Gerwani and its members, see Drakeley, “*Lubang Buaya*,” 11-35; Wieringa, “The Birth of the New Order State in Indonesia” 70-91.

⁶² Annie Pohlman, “*Testimonio* and Telling Women’s Narratives of Genocide, Torture and Political Imprisonment in Post-Suharto Indonesia,” *Life Writing* 5, no. 1 (2008), 47-60.

⁶³ Wahyuningroem, “Seducing for Truth and Justice,” 125-130.

⁶⁴ Wahyuningroem, “Seducing for Truth and Justice,” 131.

challenges for transitional justice in Indonesia. It is in the face of this continuing political turpitude at the national level that human rights organizations and victim advocates work to seek and disseminate the truths of survivors.

Attempts to Establish a Truth and Reconciliation Commission

One way to deal with the issue of redress for serious violations which was debated earlier in the *Reformasi* period was the creation of the KKR (*Komisi Kebenaran dan Rekonsiliasi*, Truth and Reconciliation Commission). More than fifteen years on, hope that these past injustices would be redressed through a KKR has faded. This loss of hope comes after numerous attempts for successive early *Reformasi* governments to deal with the issue of impunity for past gross human rights abuses. Indonesia's fourth President, Abdurrahman Wahid, called for a Truth and Reconciliation Commission to be mandated in a decree of the People's Consultative Assembly (MPR, one of the parliamentary houses) in 2000.⁶⁵ In 2001, the MPR passed a resolution that the President and the parliament should create the KKR.⁶⁶ During the administration of Wahid's successor, President Megawati Sukarnoputri, a draft of the KKR was again submitted in 2002 and, subsequent to significant delays in voting on the legislation, finally passed through the parliament in 2004 (Law no. 27/2004).⁶⁷ After further significant delays in implementation, less than two years later the newly established Constitutional Court annulled the KKR law, ruling vaguely that it was "contrary to the Constitution", due to its provisions for amnesty. One of the Court justices, Jimly Asshidiqie, further added that, "we thought we should just scrap the whole law."⁶⁸

Since then, there have been a number of events which give cause for hope that a Truth and Reconciliation Commission for Indonesia is not entirely out of the question. In 2009, the United Nations Development Programme (UNDP) worked together with the Indonesian Ministry of Law and Human Rights and the Director-General Office regarding a draft for a new national law to establish the KKR.⁶⁹ The new TRC draft law was submitted to the Parliament by the Ministry of Law and Human Rights for discussion sometime during the 2010-2014 parliamentary period. This draft, however, was withdrawn from the parliamentary legislation agenda and was returned for "further consideration" by the Coordinating Ministry for Legal, Political and Security Affairs.⁷⁰ At the time that this article was completed, the draft had again been returned to the parliamentary legislation agenda for 2015-2016.⁷¹ How long the new draft law will remain on the agenda, or even if it will make it to parliamentary consideration and discussion during this first term of President Joko Widodo's administration, is uncertain. The significant delays in dealing with this legislation in the past mean that most civil society groups do not hold high hopes for a swift resolution. Thus,

⁶⁵ See McGregor, *History in Uniform*, 212-213.

⁶⁶ Philip Eldridge, "Human Rights in Post-Suharto Indonesia," *Journal of World Affairs* 9, no. 1 (2002): 131; Jiwon Suh, "Pre-emptive Transitional Justice Policies in Aceh, Indonesia," *Southeast Asian Studies* 4, no. 1 (2015): 99.

⁶⁷ For a critique of the 2004 Truth and Reconciliation Commission law, see Dedy Ardian Prasetyo, "Indonesia's Truth and Reconciliation Commission as a Mechanism for Dealing with Gross Violations of Human Rights," (LLM Diss., University of Hong Kong, 2006).

⁶⁸ Constitutional Court ruling no. 006/PUU-IV/2006. Tony Hotland, "Law Annulment Raises Questions about Aceh," *The Jakarta Post*, December 9, 2006, accessed September 9, 2014, www.thejakartapost.com/news/2006/12/09/law-annulment-raises-questions-about-aceh.html. See also Paul van Zyl, "Dealing with the Past: Reflections on South Africa, East Timor and Indonesia," in *Beginning to Remember: The Past in the Indonesian Present*, ed. Mary S. Zurbuchen (Seattle: University of Washington Press, 2005), 324-342.

⁶⁹ United Nations Development Program, "Dealing with the Past: UNDP Indonesia Supports Multi-stakeholder Consultations on the Draft National Law to Establish a Truth and Reconciliation Commission (TRC) in Indonesia," *UNDP Press Release*, December 22, 2009, accessed January 8, 2014, <http://www.undp.or.id/press/view.asp?FileID=20091222-1&lang=en>.

⁷⁰ Wahyuningroem, "Seducing for Truth," 128.

⁷¹ The most recent draft, it should be noted, also has significant weaknesses, as discussed by KontraS (the Commission for Disappeared Persons and Victims of Violence), "Siaran Pers: Delapan Kelemahan Rancangan Undang-Undang Komisi Kebenaran dan Rekonsiliasi 2015 – Sebuah Catatan Kritis Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (KontraS) [Press Release: Eight Weaknesses in the Planned Law on a Truth and Reconciliation Commission in 2015 – A Critical Appraisal by KontraS]," *KontraS*, Press Release, March 23, 2015, accessed June 10, 2015, <http://kontras.org/home/index.php?module=pers&id=2018>.

how this new proposal will fare once it does eventually reach the Parliament is unknown, but the fact that it exists means that the possibility of a Commission has not been entirely discounted.

Komnas HAM's 1965 Investigation

One of the most significant, though ultimately failing, official attempts to investigate the mass atrocities committed by the Indonesian state during 1965 – 1966 was conducted by the Indonesian National Commission on Human Rights (Komnas HAM) between 2008 and 2012. This body is an independent commission of the Indonesian state enabled to investigate and monitor human rights. If an initial investigation finds that a gross violation has occurred (e.g. crimes against humanity), Komnas HAM have the power to carry out a further, more extensive *pro-justicia* enquiry into the matter. In carrying out these inquiries, Komnas HAM has only limited enforcement powers; for example, it only has limited subpoena powers and has been unable to compel some witnesses, particularly those from the military, to give evidence for previous investigations.⁷² Yet these are not the most significant challenges facing these investigations into past abuses. If Komnas HAM's *pro-justicia* enquiry finds that gross human rights abuses have in fact occurred, the next step for further investigation is referral of the case by the Commission to the Attorney-General's Office (AGO), which is the only body that can seek prosecutions of these cases. Once the Attorney-General receives the case, his office is then supposed to carry out its own inquiry. The next step, enacted by the President after a recommendation from the parliament (DPR), should then be the creation of an Ad Hoc Human Rights Court to try alleged perpetrators.⁷³ So far, out of the numerous cases investigated and referred to the AGO, only two have been continued by the Attorney-General, namely the East Timor 1999 and Tanjung Priok 1984 cases.⁷⁴

The East Timor trials became a farce and have been criticized by a great many human rights' advocates, international monitors and civil society organizations.⁷⁵ The Tanjung Priok Ad Hoc Court was held to try those connected to an incident in 1984 in which a crowd of mostly Muslim protestors were fired upon by police. The Tanjung Priok Ad Hoc Court began shortly after the East Timor Ad Hoc Court, and was also farcical.⁷⁶ Senior military officials identified for prosecution by the two Komnas HAM reports were never put on trial; in both courts, all defendants were acquitted either at the original trials or on appeal.⁷⁷

Since the East Timor and Tanjung Priok Ad Hoc trials, the Attorney-General's Office has failed to pursue any of the cases of grave human rights abuses investigated and recommended by Komnas HAM. To date, the Attorney-General has failed to follow the recommendations made by Komnas HAM to pursue investigations into the cases of Trisakti 1998, Semanggi 1998, Semanggi 1999, the May riots of 1998, the enforced disappearances of persons during 1997-1998, Wasior 2001-2002; Wamena 2003; the "Petrus" killings of the early 1980s and, more recently, the 1965-1966 killings and mass political detentions.⁷⁸ The Komnas HAM report into the 1965-1966 killings which took four years to complete and which drew upon hundreds of testimonies was given to the AGO in July 2012. The report detailed substantial evidence of crimes against humanity. The AGO rejected the report, stating that it was "insufficient" and that it had failed to "satisfy the requirements" for a legal inquiry.⁷⁹ To date, the AGO has resisted all calls by human rights and legal aid bodies

⁷² Jeffery Herbert, "The Legal Framework of Human Rights in Indonesia," in *Indonesia: Law and Society*, ed. Tim Lindsey (Sydney: The Federation Press, 2008), 454-467.

⁷³ Herbert, "The Legal Framework of Human Rights," 461-469.

⁷⁴ See ICTJ and KontraS, *Derailed*, 48-49.

⁷⁵ Suzannah Linton, "Unravelling the First Three Trails at Jakarta's Ad Hoc Court for Human Rights Violations in East Timor," *Leiden Journal of International Law* 17, no. 2 (2004), 303-361.

⁷⁶ ICTJ and KontraS, *Derailed*, 37-49.

⁷⁷ Tapol, "Tanjung Priok Acquittals a Travesty of Justice," *Tapol*, Press release, July 14, 2005, accessed on September 19, 2014, <http://tapol.gn.apc.org/press/files/pr050714.htm>; and David Cohen, "Intended to Fail: The Trials before the Ad Hoc Human Rights Court in Jakarta," *International Center for Transitional Justice*, Occasional Paper Series, August 2003, accessed on September 9, 2014, <http://www.ictj.org/images/content/0/9/098.pdf>.

⁷⁸ See Suh, "Pre-emptive Transitional Justice," 105-108.

⁷⁹ Ranga Prakoso, Ezra Sihite, Bayu Marhaenjati and Firdha Novialita, "AGO Rejects Komnas HAM Report on 1965 Massacres," *The Jakarta Globe*, November 10, 2012, accessed on December 12, 2014, www.thejakartaglobe.com/archive/

in Indonesia, including by the forty-seven organizations which make up the KKPK, to accept the Komnas HAM's report on 1965–1966 (and the other rejected reports) and conduct further inquiries for criminal prosecutions. The lack of political will and intimidation by the military shown in the only two cases to be brought to trial as a result of Komnas HAM's investigations are evidence of the very high level of dysfunction between what has been promised by human rights' reforms and their implementation.

The Non-Apologies for Victims of Human Rights Abuses

During a national television talk-show programme in March 2000, the late President Abdurrahman Wahid, who was both a long-time leader of Indonesia's largest Islamic organization, Nahdlatul Ulama, and an advocate of human rights and religious plurality, apologized to the victims of the 1965-1966 massacres.⁸⁰ This seemingly impromptu personal apology, though it caused great controversy at the time, was by no means an official apology.⁸¹ It was, however, the only apology made by a President of Indonesia to date.

During the two terms of former President SBY (2004–2014), there was little political will, or leadership from the executive, to deal with the past in Indonesia. After approximately eighteen months of ad hoc meetings with members of Komnas HAM, in 2011 SBY tasked one of the members of his Advisory Council with setting up a program to organize a national apology to victims of past human rights abuses. Various stakeholders, including victims' groups, were invited to discuss the national apology plan.⁸² The reaction against the planned apology from conservative and Islamic organizations in Indonesia was fierce. Prominent members of parliament, such as the deputy head of the legislative assembly, Priyo Budi Santoso, came out against the plan, saying that it was better to forget the past and to focus on the future.⁸³ While the national apology was never officially ruled out by SBY, the president finished his second term in 2014: no apology was ever offered.

SBY's successor, Joko (Jokowi) Widodo, who came to office in late 2014 with high levels of popular support, has also shown little readiness to offer any such apology.⁸⁴ In early 2015, there were reports that Jokowi would make an apology at the annual state of the nation address in August to the victims of the 1965–1966 massacres. In the lead-up to the speech, hard-line conservative and Islamic groups again protested loudly.⁸⁵ During his address, Jokowi made no mention of an apology.⁸⁶

In May 2015, there was a further concerning development. The Attorney General, HM Prasetyo, announced that the government would form a "Team for Uncovering the Truth" about past human rights abuses (*Tim Penungkap Kebenaran*). As more details about the Team have come to light, it has become clear that it is not being set up to achieve any measure of justice for survivors of past state-sponsored atrocities. The team members include high level officials from many of the state bodies seen as most responsible for perpetrating these atrocities: the police, the National Intelligence

[ago-rejects-komnas-ham-report-on-1965-massacres/](#).

⁸⁰ Douglas Kammen, "Counterrevolutionary Violence in Indonesia," in *State Violence in East Asia*, ed. N. Ganesan and Sung Chull Kim (Lexington: University Press of Kentucky, 2013), 178.

⁸¹ Adrian Vickers and Katharine McGregor, "Public Debates about History: Comparative Notes from Indonesia," *History Australia* 2, no. 2 (2005), 1-13.

⁸² Wahyuningroem, "Seducing for Truth," 128-129.

⁸³ Anwar Siswadi, "SBY Diminta Tak Minta Maaf pada Korban 1965 [SBY Asked to Say Sorry to the Victims of 1965]," *Tempo*, August 5, 2012, accessed on December 12, 2014, www.tempo.co/read/news/2012/08/05/078421412/SBY-Diminta-Tak-Minta-Maaf-pada-Korban-1965.

⁸⁴ See, for example, the results of a workshop on reconciliation held shortly after Widodo took office, Andyala Waluyo, "Pemerintahan Jokowi-JK Siap Jajaki Pembentukan Pengadilan HAM Ad Hoc [Jokowi-JK Government Reading to Set Up an Ad Hoc Human Rights Court]," *VOA Indonesia*, December 10, 2014, accessed on January 12, 2015, www.voaindonesia.com/content/pemerintahan-jokowi-jk-siap-jajaki-pembentukan-pengadilan-ham-ad-hoc/2552957.html.

⁸⁵ See, for example, Ronald, "FPI Minta Jokowi Tak Minta Maaf ke PKI [The FPI Askes Jokowi not to Say Sorry to the PKI]," *Merdeka*, August 12, 2015, accessed August 25, 2015, www.merdeka.com/peristiwa/fpi-minta-jokowi-tak-minta-maaf-ke-pki.html.

⁸⁶ See Sri Lestari Wahyuningroem, "'Apology for PKI': Sorry is Not the Point," *The Jakarta Post*, August 28, 2015, accessed August 30, 2015, www.thejakartapost.com/news/2015/08/28/apology-pki-sorry-not-point.html.

Body (BIN) and the military.⁸⁷ Survivor advocacy and civil society groups across Indonesia in July combined to criticize the government's team, issuing a joint statement which denounced both its aims and make-up, and urged Jokowi to take leadership in the issue of justice for past atrocities.⁸⁸ Thus far, Jokowi has remained silent on what role this Team might play in determining any future forms of justice or reconciliation for the crimes of the New Order.

Conclusion: Truth-telling and an Indonesian Witnessing Public

The Year of Truth testimony-hearing forums held in 2012 and 2013 across Indonesia and in the national forum in November 2013 built upon the oral historical formats of many of the KKPK's coalition member organizations. In these forums, as in the oral history work of these many NGOs and survivor advocate organizations, it is clear that these testimonies are given to an imagined Indonesian (and, in some cases, international) audience, but that they also demand an active, empathetic response and affirmation from that audience. The narrative exchange, between the survivor giving testimony and the witness receiving that testimony (both individually and as a community of witnesses, be they Indonesians or an international community) is a relational, even transactional one.

In the absence of access to any kind of formal judicial mechanisms or forms of transitional justice, survivors of human rights abuses, supported by organizations and coalitions such as the KKPK, attempt through events and campaigns such as the Year of Truth initiative and the Hearing Testimony forums, to appeal to a community of witnesses. Their appeal for social recognition and validation of their truths, however, also demands a political response; they want, and demand, an official acknowledgement of the harm done to them and their communities, as well as some form of restorative justice from the state which persecuted them.

The Year of Truth campaign, the KKPK's broader work, and indeed, the work of many of the forty-seven organizations that make up this coalition, is premised on this political agenda which explicitly links claims of truth-telling by survivors to a demand for the investigation into, and redress of, historical traumas by the Indonesian state. In their appeal to a wide, though mostly domestic audience, through online campaigns and staged hearing testimony events, the organizers and participants are clearly seeking to harness the support of Indonesians to their cause.

The KKPK is by no means the only group in Indonesia using these strategies to appeal to wider audiences for support. Indeed, a more recent example would be the International People's Tribunal for 1965 (IPT'65). This people's tribunal brought together academics, prosecutors, activists and survivors from Indonesia and from several other countries to charge the Indonesian state with crimes against humanity committed during 1965–1966.⁸⁹ The Tribunal's public hearings were held at The Hague on 10–13 November 2015, with the live stream broadcast and recorded. In the year leading up to the hearings in The Hague, however, the organisers also harnessed individual testimonies by survivors to create online-based media packages and held a number of events mainly in Jakarta.⁹⁰ Again, the intended audience of the Tribunal's materials was primarily a domestic one, though as an international people's court, there was also a focus on raising awareness about the IPT'65 and the killings of 1965–1966 in several other countries, particularly the Netherlands, the UK, the US and Australia.

⁸⁷ Agnes Theodora Wolkh Wagunu, "Penyelesaian Pelanggaran Hak Asasi Manusia Harus Komprehensif [The Resolution of Past Human Rights Abuses Must be Comprehensive]," *Kompas*, August 21, 2015, accessed September 1, 2015, <http://print.kompas.com/baca/2015/08/21/Penyelesaian-Pelanggaran-Hak-Asasi-Manusia-Harus-K>.

⁸⁸ Dedy Istanto, "Deklarasi Keadilan Hakiki Bukan Rekonsiliasi Penyelesaian Kasus HAM [A Declaration of Real Justice is Not Reconciliation for Human Rights Cases]," *Satu Harapan*, July 9, 2015, accessed August 30, 2015, www.satuharapan.com/read-detail/read/deklarasi-keadilan-hakiki-bukan-rekonsiliasi-penyelesaian-kasus-ham.

⁸⁹ The final report of the IPT'65 committee was not yet published at the time of writing, and the judgement by the panels of judges is not expected until the end of 2016. For information about the Tribunal, including their associated media outputs, go to: International People's Tribunal for 1965, "The International People's Tribunal," accessed on February 28, 2016, <http://1965tribunal.org>.

⁹⁰ Via the IPT'65's website (<http://1965tribunal.org>), there is a range of downloadable content. There is also a link on this page to the recordings of the Tribunal hearings held on 10–13 November 2015.

Media productions such as these and the appeals which they make are familiar in Indonesia and elsewhere around the world. In the twenty-first century “era of the witness,” testimony-based media initiatives created and used by individuals and organisations for political goals are part of a globalising discourse which attempts to bring testifiers and witnesses together through an ever-growing range of audio-visual interfaces.⁹¹ In the era of the witness, testimonial artefacts, like those made for the Year of Truth campaign, are produced, disseminated and circulated rapidly, and with little knowable or measurable effects.

A few years after the end of the KKP’s Year of Truth campaign, can we say that the truth is any clearer, or that the cycle of violence has broken? If the intended audience of the testimony-hearing forums, and the associated media produced by the KKP, was a witnessing Indonesian public, has that audience heard this truth, and will they act upon it? The Year of Truth events were performed, as intended, for a national Indonesian audience and received high levels of social, online, and print media coverage. Yet, as is perhaps borne out here in the Indonesian case, rarely is speaking truth enough to ensure empathic engagement and compassionate support.

Thus far, none of the campaigns organized by the KKP or any of its constituent member organizations, nor indeed any international activist campaign such as the International People’s Tribunal for 1965, has succeeded in garnering enough social support, domestically or internationally, to pressure the Indonesian national government to act on past atrocities, least of all the 1965–1966 mass killings. With the current President seemingly unwilling to show leadership for reconciliation, as the survivors grow older and the past recedes further into the background, both socially and politically, is there space in Indonesia today for truth-speaking about past atrocities and, indeed, for social witnessing in response to the truth-speakers? Perhaps what can best be hoped for is a cumulative effect; that the combined efforts of survivors and activists over time, including through the Year of Truth campaign and other programs, will lead to an eventual acknowledgement of the harm done, as well as to the first steps for reconciliation in Indonesia. The alternative is far worse; to do nothing, to remain silent, and to give up the possibility of political support through social witnessing. Thus, the work of survivors and activists in Indonesia and elsewhere will continue.

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⁹¹ See Annette Wieviorka, *The Era of the Witness* (Ithaca: Cornell University Press, 2006). On remembering genocide and witnessing through produced testimony, see, for example, Frank Möller, “Rwanda Revisualized: Genocide, Photography, and the Era of the Witness,” *Alternatives: Global, Local, Political* 35, no. 2 (2010), 113–136; and Bhaskar Sarkar and Janet Walker, ed., *Documentary Testimonies: Global Archives of Suffering* (New York: Routledge, 2010).

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Imagined Identities: Defining the Racial Group in the Crime of Genocide

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Abstract: The provisions on genocide protect four exclusive, amongst others the racial, groups. Yet, international criminal tribunals are manifestly uncomfortable with collective groupings and interpret 'race' rather inconsistently. Nevertheless, there is a tendency to a subjective approach based upon the perpetrator's perception of the targeted group. The victim's membership is accordingly not determined objectively, but by the perception of differentness. This article incorporates the theory of imagined identities into law, thereby providing tribunals with a tool to define 'race'. Its essence is that even if the group does not exist, it must be granted protection because of its perceived and thereby socially relevant differentness. This partially socio-anthropological approach will have to be brought into conformity with the principle of strict legality. It will be demonstrated that the theory of imagined identities has been applied in case law, thereby enhancing not only its theoretical, but also its practical relevance.

Keywords: imagined identity, genocide, racial group, subjective approach, Darfur Commission

"Everything you can imagine is real."
Pablo Picasso

Introduction

This quote by the famous painter Pablo Picasso summarizes the findings of this article: "Everything you can imagine is real" can be translated into international criminal law and the crime of genocide, in that even an imagined group membership can become real, despite originating in the imagination of the perpetrator. The social relevance of a group becomes legally relevant, if the group is treated as real and acquires an identity of its own. Identity is at the heart of every genocide and crucial to explain the crime.¹ Individuals are targeted on the basis of their actual or perceived association to a group, even if the perpetrator's perception of the victim group is "wildly inaccurate".²

The Rome Statute of the International Criminal Court (ICC) defines the crime of genocide as follows: "'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..."³ This article will primarily focus on the racial group, yet in the context of the overall group membership of the victims of genocide. Where it appears appropriate and legally correct, the general analysis of the group membership will be applied to the racial group.

In the crime of genocide, the perpetrator selects and targets his victims because of their membership to a certain group. In order to convict a perpetrator for the crime of genocide, the courts have to prove that the victims belonged to one of the four protected groups. David Nersessian correctly recognizes that "[i]f an individual lacks membership in a protected group, genocide cannot occur with respect to that victim".⁴ The case studies of Cambodia and Rwanda will subsequently demonstrate the difficulties of determining the victims of genocide as members of a national, ethnical, racial or religious group. International criminal tribunals have largely tried to avoid defining group membership and in particular race. While sociology and anthropology, together with other disciplines, successfully adopted a contemporary approach to race as the perception of differentness,⁵ international criminal law is showing great discomfort with collective identities.

¹ David Moshman, "Us and Them: Identity and Genocide," *Identity: An International Journal of Theory and Research* 7, No. 2 (2007), 116.

² Moshman, "Us and Them", 116.

³ Art. 6 of the Rome Statute of the ICC, UN Doc. A/CONF.183/9 of 17 July 1998.

⁴ David Nersessian, *Genocide and Political Groups* (Oxford: Oxford University Press, 2010), 21.

⁵ Lawrence Bobo, Foreword to *Revisiting Race in a Genomic Age*, by Barbara Koenig, Sandra Soo-Jin Lee and Sarah S. Richardson (New Brunswick: Rutgers University Press, 2008), x. David Berreby, *Us and Them: The Science of Identity* (Chicago: The University of Chicago Press, 2008). Rogers Brubaker, "The Dolezal Affair: Race, Gender, and the Micropolitics of Identity," *Ethnic and Racial Studies* 39 (2016), 414-448. Rogers Brubaker, "Ethnicity, Race,

The theory of imagined identities originates from Benedict Anderson's acclaimed book *Imagined Communities*⁶ and is an innovative method for determining the victim groups of genocide. The theory builds on a subjective approach based on the involved persons' perception, particularly the perpetrator's perception of the victim group. Such subjective approaches are commonplace in socio-anthropology for the definition of group membership in general and for the definition of a racial group in particular.⁷ The application of this approach by the international judiciary is, however, a recent development. One of its greatest benefits is the avoidance of objective parameters such as skin color, thus finally breaking with contentious means of objectively defining race.⁸ The assessment and clarification of the subjective approach, with help of the theory of imagined identity, is the objective of this paper. It will furthermore show how the theory of imagined identities applies to cases of genocide.

Nonetheless, a subjective approach to defining the racial victim group has to be brought into conformity with the principle of legality, particularly its elements of specificity and foreseeability, which will be examined in the next section. Following the review of the principle of legality, this article will look at how legal scholarship deals with race. Thereafter the theory of imagined identities is presented, as well as its application to genocidal cases. The jurisprudence by the *ad hoc* international criminal tribunals, namely the International Criminal Tribunal for the Former Yugoslavia (ICTY)⁹ and the International Criminal Tribunal for Rwanda (ICTR),¹⁰ on the victim groups of genocide is then analyzed. The definition of genocide by the Commission of Inquiry on Violations of International Humanitarian Law and Human Rights Law in Darfur (Darfur Commission) is also scrutinized.¹¹ The Darfur Commission made a major contribution to defining the group membership in the crime of genocide by applying the theory of imagined identities. As such, it opened up for the application of this theory to future cases before the ICC, which still is in its infancy with regard to prosecutions of the crime of genocide.¹²

The Implications of the Principle of Legality

The principle of legality requires that an accused is not held guilty unless his act or omission constituted a crime under law at the time and location of its commission.¹³ The principle is construed to prevent the punishment for acts, which were reasonably believed not to be criminal when committed.¹⁴

Already in 1946, the Nuremberg Tribunal observed in its judgment against the major war criminals that a fundamental principle of all law, international as well as domestic, was that there

and Nationalism," *Annual Review of Sociology* 35 (2009), 21–42. Kurt Glaser and Stefan Possony, *Victims of Politics: The State of Human Rights* (New York, Columbia University Press, 1979), 67. In 2000, the US census introduced self-identification, thus perception, regarding racial categorization in asking "What is this person's race? Mark one or more races to indicate what this person considers himself/herself to be". Cited in Michael Banton, *What We Know about Race and Ethnicity* (New York: Berghahn Books, 2015), 2.

⁶ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 2006).

⁷ For example race scholar Paul Gilroy talks about "the imagined community of a racialized group", Paul Gilroy, *Against Race: Imagining Political Culture Beyond the Color Line* (Cambridge: Harvard University Press, 2000), 38.

⁸ Caroline Fournet, *The Crime of Destruction and the Law of Genocide: Their Impact on Collective Memory* (Aldershot: Ashgate, 2007), 59. Gilroy, *Against Race*, 37 asks "if 'race' is a useful way of classifying people, then how many 'races' are there?"

⁹ Established by Security Council Resolution S/RES/827 (25 May 1993). Official title: International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

¹⁰ Established by Security Council Resolution S/RES/955 (8 November 1994). Official title: International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States between 1 January and 31 December 1994.

¹¹ UN Security Council Resolution, UN Doc. S/RES/1564 (2004) of 18 September 2004.

¹² The ICC has to date not dealt with the protected groups of genocide.

¹³ Theodor Meron, *War Crimes Law Comes of Age: Essays* (Oxford: Clarendon Press, 1998), 244–245.

¹⁴ Meron, *War Crimes Law*, 245; *The Prosecutor v. Stanislav Galić*, Trial Chamber Judgment, December 5, 2003, IT-98-29-T, para. 93.

could be no punishment for a crime without a pre-existing law, and furthermore that “the maxim *nullum crimen sine lege* is not a limitation of sovereignty, but is in general a principle of justice”.¹⁵ Nowadays the maxim is more than just a principle of justice; it is an internationally recognized human right, embedded in the right to a fair trial.¹⁶ The principle of legality, whereby individuals may not be punished if their conduct had not been previously criminalized by law,

has been so extensively proclaimed in international human rights treaties with regard to domestic legal systems and so frequently upheld by international criminal courts with regard to international prosecution of crimes, that it is warranted to hold that by now it has the status of a peremptory norm (*jus cogens*).¹⁷

Nullum crimen sine lege has transformed into a rule of law that fundamentally influenced international criminal law.¹⁸ While the principle is not explicitly enshrined in the Statutes of the *ad hoc* international criminal tribunals, it is contained in Arts. 22-24 of the Rome Statute of the ICC. Under the heading “General Principles of Criminal Law”, the Statute specifically lists *nullum crimen sine lege* (Art. 22), *nulla poena sine lege* (Art. 23), according to which no punishment may be imposed except as provided by law and, lastly, *nulla poena sine praevia lege* (Art. 24) or, no penalty without previous law.¹⁹ The Rome Statute makes clear that the principle of legality consists of several elements, namely the strict construction of the definition of a crime, the prohibition of extension by analogy and *in dubio pro reo*, whereby in case of ambiguity the definition shall be interpreted in favor of the person under investigation or prosecution (Art. 22 (2)).

The principle of legality restricts any excessive interpretative activity in that the judges must respect its most important corollaries: the principle of strict construction and *in dubio pro reo* (when in doubt, for the accused).²⁰ Due to the principle of strict construction, the judges may not adopt a method of interpretation that unduly broadens the definition of the crimes. In other words: the respective provision may only be applied to conduct that the drafters expressly intended to criminalize.²¹

The principle of legality is twofold: first, a criminal law provision needs to be sufficiently clear and specific for the perpetrator to foresee that he could become criminally liable, thereby giving him the opportunity to adjust his behavior in order to avoid sanctions.²² Secondly, the law has to be unambiguous and accessible for judges to render uniform and coherent judgments, without expansively interpreting the respective provisions. The latter also serves the purpose of protecting citizens from arbitrary judicial actions.²³ There remain therefore two opposites: on the one hand, the principle of legality imposes interpretative boundaries. On the other hand, a broad interpretation may protect more victims. Thus, while the judges may interpret and apply the law on the crime of genocide, they are not permitted to create new law by means of expansive judicial interpretation. The interpretation of race is therefore limited to what the drafters intended to criminalize and cannot go beyond what is understood to be a racial group.

The theory of imagined identities challenges the principle of legality in several ways. The narrow definition of the crime of genocide will inevitably be broadened if the group membership is

¹⁵ Nuremberg International Military Tribunal (IMT), Trial of the Major War Criminals Before the IMT, Judgment (November 14, 1945 - October 1, 1946), Official Text in the English Language (1947), 219.

¹⁶ Kenneth Gallant, *The Principle of Legality in International and Comparative Criminal Law* (Cambridge: Cambridge University Press, 2009), 3. Beth Van Schaack, “*Crimen Sine Lege*: Judicial Lawmaking at the Intersection of Law and Morals”, *Georgetown Law Journal* 97 (2008), 124.

¹⁷ *The Prosecutor v. Ayyash et al.*, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, February 16, 2011, STL-11-01/I/AC/R176bis, para. 76.

¹⁸ Gallant, *Principle of Legality*, 3.

¹⁹ *Ibid.*, 12.

²⁰ *The Prosecutor v. Katanga*, Judgment pursuant to Article 74 of the Statute, March 7, 2014, ICC-01/04-01/07, para. 51.

²¹ *Ibid.*

²² Van Schaack, ‘*Crimen Sine Lege*’, 121.

²³ *Ibid.*,

defined by the perpetrator's perception. From initially protecting four exclusive groups, the ambit of the provision would be expanded to cover any victim perceived as belonging to one of the four groups. Richard Ashby Wilson points to the challenges that a perception-based approach might entail: "If a group's existence is not a fact but a changeable chimera dependent on a subjective state of mind, then the whole edifice of the [ICTR]'s mandate to prosecute the crime of genocide is potentially undermined".²⁴ By basing a legal definition on the perpetrator's perception, the principle of strict construction and the related element of specificity are challenged. The principle of foreseeability is also affected, since the application of the criminal provision cannot possibly be foreseen if its content is fully dependent on a person's perception or imagination. This article will demonstrate that the theory of imagined identities nevertheless is compatible with the principle of legality, despite pushing its boundaries. It is an innovative, yet legitimate legal tool for the identification of the victim groups in the crime of genocide. The next section will give an insight into the historical development of race and its protection by the Convention on the Prevention and Punishment of Genocide (Genocide Convention),²⁵ before further discussing the theory of imagined identities.

The Authoritative Source: The Genocide Convention

The proponents of different social studies often employ the term genocide more broadly as the intended mass killing of a group of people.²⁶ International criminal law - bound by the principle of strict legality - limits its protection against genocide to the racial, ethnical, religious and national groups. In order to convict a perpetrator of the crime of genocide, all the legal elements of the crime have to be fulfilled, including the protected victim group.²⁷ The narrow definition of genocide and the four protected groups is definitive for legal purposes, although it is seen as seriously flawed by non-legal genocide scholars.²⁸

During the drafting of the Rome Statute of the ICC, the state delegates made clear that the 1948 Genocide Convention contained a generally acceptable definition of the crime of genocide that could and should be used in the Statute.²⁹ Indeed, genocide was the only crime that received a quick and unanimous consensus without any further discussion on what defines a racial group.³⁰ Not only Art. 6 Rome Statute, but also the respective provisions in the ICTY and ICTR Statute are verbatim to Art. II Genocide Convention. The International Court of Justice (ICJ) has furthermore declared that Art. II Genocide Convention is customary international law and *jus cogens*,³¹ making

²⁴ Richard Ashby Wilson, "Crimes against Humanity and the Conundrum of Race and Ethnicity at the International Criminal Tribunal for Rwanda," in *In the Name of Humanity: The Government of Threat and Care*, ed. Ilana Feldman and Miriam Ticktin (Durham: Duke University Press, 2010), 52.

²⁵ Adopted by Resolution 260 (III)A of the UN General Assembly on December 9, 1948.

²⁶ Examples include: Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analyses and Case Studies* (New Haven: Yale University Press, 1990), 23. Alexander Laban Hinton, "The Dark Side of Modernity," in *Annihilating Difference: the Anthropology of Genocide*, ed. Alexander Laban Hinton (Berkeley: University of California Press, 2002), 4. See also David Lissou, "Defining 'National Group' in the Genocide Convention: a Case Study of Timor-Leste," *Stanford Law Review* (2008), 1463, providing a brief summary of different approaches to the definition of genocide that have no legal force.

²⁷ There are diverging views as to whether the victim group is an objective or subjective element. Some include the victim groups into the *mens rea*, while others see the victim group as an element of the *actus reus*. The wording of Art. II Genocide Convention suggests the latter, since the element of a 'group' is part of each genocidal act. For example, Art. II(a) reads: "Killing members of the group". The group is therefore part of the objective elements of the crime. See for further discussion: Antonio Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2008), 138.

²⁸ Moshman, "Us and Them", 116.

²⁹ M. Cherif Bassiouni, *The Legislative History of the International Criminal Court, Summary Records of the 1998 Diplomatic Conference* (New York: Transnational Publishers, 2005), 92, note 20.

³⁰ Hermann Von Hebel and Darryl Robinson, "Crimes Within the Jurisdiction of the Court," in *The International Criminal Court: The Making of the Rome Statute - Issues, Negotiations, Results*, ed. Roy Lee (The Hague: Kluwer Law International, 1999), 89.

³¹ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ Advisory Opinion (1951) 23. *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)*, New Application: 2002, ICJ Judgment (February 3, 2006), para. 64 with reference to *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*. ICJ Judgment on Preliminary

its content definitive for any legal analysis of the crime. The following discussion of the crime of genocide and the protected victim groups is therefore based on Art. II Genocide Convention as the authoritative definition.

The *travaux préparatoires* to the Genocide Convention reveal that the four protected groups - the national, ethnical, racial and religious group - were intended to be an exhaustive list. The drafters considered them to be cohesive, stable and permanent.³² Therefore these groups merited more protection than loose groups to which membership could be easily gained or renounced, such as political groups.³³ While there undoubtedly were political reasons to exclude political groups from the protection of the Genocide Convention, the International Law Commission in 1996 restated that the exclusion occurred because "this type of group was not considered to be sufficiently stable".³⁴

Historical research shows that the idea of race always carried more meanings than mere physical differences. In fact, physical variations in the human species have no meaning except the social values that humans apply to them.³⁵ David Davis concludes that "[l]ike serfdom, social castes, and royal or noble 'blood', concepts of race influence perception, including self-perception, and can above all represent a shared historical experience, such as the African Americans in the United States".³⁶ Perception is of paramount importance for the legal definition of a racial group in the crime of genocide, as this article will demonstrate.

The so-called races of humankind are recognized to be incidental and arbitrary social mechanisms invented during the eighteenth century; they helped organize the populations encountered and conquered during European colonialism.³⁷ Thus, race became a by-product of Europe's religious, economic and imperial expansion during colonialism.³⁸ However, Benedict Anderson, the author of *Imagined Communities*, disagrees that race originates in colonialism; and instead finds its origin in ideologies of class, for example, the claim of contamination of "white" or "blue" (aristocratic) blood by inferior (racial) classes.³⁹ The idea of blood purity has transgressed many societies, for instance, during the Jim Crow legislation in the United States, when most Southern states adopted the "one-drop rule", according to which an individual with any black ancestry was deemed black.⁴⁰

When the Genocide Convention was drafted, the contemporary understanding of race heavily influenced its legal correlative. The reference to races was not uncommon at the time. Indeed, race was perceived as a combination of two concepts. The first concept embraces the notion of nation states as well as sub-groups of people.⁴¹ The second concept contains the idea of biologically distinct races, determined by their bloodline.⁴² The Polish-Jewish lawyer, Raphael Lemkin, created the term

Objections (1996), para. 31.

³² UN Doc. A/C.6/SR.74 (October 15, 1948).

³³ Ibid. William Schabas, *Genocide in International Law*, 2nd ed. (Cambridge: Cambridge University Press, 2009), 117, 151, 153-160.

³⁴ International Law Commission (ILC), Report of the ILC on the work of its forty-eighth session, UN Doc. A/51/10, 45 (1996).

³⁵ American Anthropological Association (AAA). *Statement on 'Race'* (1998), accessed April 7, 2016, <http://www.aaanet.org/stmts/racepp.htm>.

³⁶ David Davis, "Constructing Race: A Reflection", *The William and Mary Quarterly* (1997), 7.

³⁷ Richard Cooper, Jay Kaufman and Ryk Ward, "Race and Genomics," *New England Journal of Medicine* (2003), 1166; AAA, *Statement on 'Race'*.

³⁸ Davis, "Constructing Race", 7.

³⁹ Anderson, *Imagined Communities*, 149.

⁴⁰ Ian Haney López, *White by Law: The Legal Construction of Race* (New York: New York University Press, 2006), 83. Banton, *Race and Ethnicity*, 2. Sharona Hoffman, "Is There a Place for 'Race' as a Legal Concept?," *Arizona State Law Journal* (2004), 1129-1130.

⁴¹ Diane Amann confirms that race was used in the then-current fashion to describe European subgroups, like the Germans, Poles and the Jews (Diane Amann, "Group Mentality, Expressivism, and Genocide," *International Criminal Law Review* (2002), 98). William Schabas, "Groups Protected by the Genocide Convention," *ILSA Journal for International and Comparative Law* (2000), 381.

⁴² This can be inferred from the fact that the Genocide Convention was drafted in reaction to the Holocaust, and as such was influenced by historical facts (Machteld Boot, *Genocide, Crimes Against Humanity, War Crimes: Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court* (Antwerpen, Intersentia (2002)), 417).

genocide by combining two words *genos* (ancient Greek for race or tribe) and *cide* (from the Latin word *caedere* for to kill).⁴³ Lemkin's study *Axis Rule in Occupied Europe*, which first formulated the proposed crime of genocide, illustrates that the different European nations or subgroups like the Germans, Poles and Jews were seen as different races.⁴⁴

Yet the concept of race was also shaped by the Nazi racial ideology. The Holocaust was still ongoing when Lemkin published his book, and undoubtedly the Nazi propaganda terminology influenced his use of the term race. The Nazi racial ideology demanded the purity of the Aryan blood. Adolf Hitler created the concept a homogenous German people as the Aryan master race (the so-called *Herrenrasse*) in an attempt to justify genocide as a sacred purpose of the biologically superior German people.⁴⁵ Differences between the Aryan and Jewish race were "biologized into an immutable physiological essence that could not be changed".⁴⁶ As such, the Jewish race was portrayed as unhuman, a threat to the Aryan race and had therefore to be completely destroyed.⁴⁷ The Nazi racial legislation in the Nuremberg laws⁴⁸ determined Jewry according to blood relationship and in particular as far back as grandparental inheritance.⁴⁹ Races were accordingly defined by biology and heredity.

In the past fifty years, the concept of race has changed considerably. In particular, the conflation of race with nationality has ceased. Nowadays it would be rather surprising if anyone referred to the Poles, Dutch or Jews as a separate race. The scientific progress in genetics and biology of the past decades determined that there is no gene for race and that it is scientifically incorrect to speak of different human races.⁵⁰ In its final report, the Commission of Experts on Rwanda emphasized that "to recognize that there exists discrimination on racial or ethnic grounds, it is not necessary to presume or posit the existence of race or ethnicity itself as a scientifically objective fact".⁵¹ Colloquially, however, the meaning of race is still very much linked to the outer appearance of people, particularly skin color. In conclusion it can be noted that there are no biologically different human races.⁵² Yet people's features are still commonly used to determine their race. The next section reveals the limitations of the Genocide Convention, especially when the victim group is not easily defined as a national, racial, ethnical or religious group.

Practical Significance: Rwanda and Cambodia

The designation of a genocidal victim to one of the four protected groups is not only of theoretical importance; the group membership of the victim is an element of the crime of genocide.⁵³ If the victim cannot be classified as a member of a racial, ethnical, national or religious group, the crime

⁴³ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington: Carnegie Endowment for International Peace, Division of International Law, 1944), 79.

⁴⁴ Lemkin, *Axis Rule in Europe*, 87-88.

⁴⁵ Henry Jr. King, "Genocide and Nuremberg," in *The Criminal Law of Genocide*, ed. Ralph Henham and Paul Behrens (Aldershot: Ashgate, 2007), 30.

⁴⁶ Hinton, "Dark Side of Modernity", 14.

⁴⁷ Lemkin, *Axis Rule in Europe*, 81, 86-87. Scott Straus affirms that Lemkin grounded his work in the Nazis' commission of genocide based on their preoccupation with biology (Scott Straus, "Contested Meanings and Conflicting Imperatives: a Conceptual Analysis of Genocide," *Journal of Genocide Research* (2001), 365.

⁴⁸ The Nuremberg laws consisted of two distinct laws, resulting in a direct order from Hitler: the Reich citizenship law (*Reichsbürgergesetz*) and The Law for the Protection of German Blood and German Honor (*Gesetz zum Schutz des deutschen Blutes und der deutschen Ehre*).

⁴⁹ The definition of a German Reich citizen is contained in Art. 2(1) of the *Reichsbürgergesetz* Reichsgesetzblatt (September 16, 1935), 1146, accessed April 1, 2016, published by the Austrian National Library: <http://alex.onb.ac.at/cgi-content/alex?apm=0&aid=dra&datum=19350004&seite=00001146&zoom=2>.

⁵⁰ No genes have been identified that are shared by all members of one "race" (and hence could explain a common racial appearance) that are not also present at substantial levels in other races (thereby failing to sort individuals into races), see: Leda Cosmides, John Tooby and Robert Kurzban, "Perceptions of Race," *Trends in Cognitive Sciences* (2003), 173. For more insight into the discussion: Hoffman, "'Race' as a Legal Concept?", 1093-1159.

⁵¹ United Nations, *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935* (1994), December 9, 1994 (UN Doc. S/1995/1405, Annex, para. 159).

⁵² Michael Banton, *Racial Theories* (Cambridge: Cambridge University Press, 1998), 196, 212.

⁵³ See footnote 27.

is legally not genocide. Two examples illustrate the practical significance of the narrow protection awarded by the Genocide Convention: Cambodia under the Khmer Rouge from 1975-1979 and Rwanda during the 1994 genocide. These examples will not specifically deal with the racial group. Instead, they intend to show the difficulties to determine the groups protected by the Genocide Convention.

The atrocities committed in Cambodia by the Khmer Rouge regime have occasionally been labelled auto-genocide since the Khmer Rouge regime targeted parts of its own citizens.⁵⁴ Most victims were intellectuals, bourgeoisie, other political or social class enemies, as well as urban residents, and belonged to the Khmer majority group.⁵⁵ A 1985 UN report concluded that the definition of genocide did not exclude cases, in which the victims were part of the violator's own group.⁵⁶ Indeed, the perpetrators and the majority of the victims were members of the same nationality, religion, ethnicity and race: they were all Khmer. The crimes committed were possibly not genocidal acts, because they targeted primarily political, economic or social groups.⁵⁷ But the Khmer Rouge regime also targeted ethnic Vietnamese and the Cham Muslim minority group.⁵⁸ The charges in the trial at the UN-backed Extraordinary Chambers in the Courts of Cambodia (ECCC) against Nuon Chea and Khieu Samphan (Case 002/02) include genocide against these two minority groups only, precisely because of the limitations of the Genocide Convention to protect four exhaustive categories of groups.⁵⁹ In 1999, a UN report by a Group of Experts classified "the Muslim Cham as an ethnic and religious group; the Vietnamese communities as an ethnic and, perhaps, a racial group; and the Buddhist monkhood as a religious group".⁶⁰ The report reads furthermore: "whether the Khmer Rouge committed genocide with respect to part of the Khmer national group turns on complex interpretative issues, especially concerning the Khmer Rouge's intent with respect to its non-minority-group victims".⁶¹ The Group of Experts did not further qualify the crimes committed. The trial in the case 002/02 before the ECCC will have to reach a verdict whether the Khmer Rouge committed genocide and whether the victims fall under one of the four protected groups. The indictment did not include genocide against the Khmer national group. Thus, the likely outcome is a conviction of the accused for genocide against the Muslim Cham and the Vietnamese minority groups.

The other example that shows the narrow protection of the Genocide Convention is Rwanda. There was a risk that the perpetrators of the Rwandan genocide would be acquitted because their victims could not be qualified as members of an ethnical, racial, national or religious group. Indeed, one of the main challenges for the ICTR was the classification of the Hutu and Tutsi as two distinct groups, as subsequent sections of this paper will discuss. Technically speaking, the Tutsi and Hutu did not belong to different ethnicities.⁶² According to Katy Grady "it is virtually impossible, on an objective, factual level, to distinguish between Tutsi and Hutu".⁶³ Other scholars suggest that the

⁵⁴ Fournet, *Crime of Destruction*, 48. Payam Akhavan, *Reducing Genocide to Law: Definition, Meaning, and the Ultimate Crime* (Cambridge: Cambridge University Press, 2012), 133.

⁵⁵ Ben Kiernan, *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur* (New Haven: Yale University Press, 2007), 546-547.

⁵⁶ Benjamin Whitaker, *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide*, July 2, 1985 (UN Doc. E/CN.4/Sub.2/1985/6, para. 31).

⁵⁷ Steven Ratner and Jason Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (New York: Oxford University Press, 1997), 306-312; Akhavan, *Reducing Genocide to Law*, 134.

⁵⁸ Schabas, *Genocide in International Law*, 149-150. Nersessian, *Genocide and Political Groups*, 90.

⁵⁹ "Case 002/02," Extraordinary Chambers in the Courts of Cambodia, accessed May 18, 2016, <http://www.eccc.gov.kh/en/case/topic/1299>.

⁶⁰ United Nations, *Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution 52/135*, March 15, 1999 (UN Doc. A/53/850 and S/1999/231, Annex, para. 63).

⁶¹ *Ibid.*, para. 65.

⁶² *The Prosecutor v. Akayesu*, Trial Chamber Judgment, September 2, 1998, ICTR-96-4-T, para. 516. William Schabas, "The Crime of Genocide in the Jurisprudence of the International Criminal Tribunals for the Former Yugoslavia and Rwanda," in *International and National Prosecution of Crimes Under International Law*, ed. Horst Fischer, Claus Kress and Sascha Rolf Lüder (Berlin: Berlin Verlag, 2001, 450). Amann, "Group Mentality", 94.

⁶³ Katy Grady, "The Genocide Convention's Protected Groups: A Place for Gender?" in *Protecting Humanity: Essays in*

Hutu and Tutsi might be two distinct races: William Schabas notes that the category of racial group “might have seemed the best choice, but some of the judges were probably uncomfortable with the notion itself and its whiff of racism”⁶⁴ or, in other words, “general discomfort with the term ‘racial group’ may explain why the ICTR was reluctant to classify the Tutsi as a racial group”.⁶⁵ Van den Herik agrees that “[the Tutsi] would probably have fitted the description of a racial group better”,⁶⁶ as do Nagan and Rodin who assert that “perhaps race was a defining element in the tardy commitment to the Rwandan tribunal”.⁶⁷ Subsequent sections will discuss how the ICTR categorized the Tutsi victims of the Rwandan genocide. But not only Tutsi became victims of the atrocities. Hutu moderates, who sympathized with the Tutsi, were also targeted. Since the Hutu were not targeted for reasons of group membership, but rather for taking a political stance, these crimes could not be legally qualified as genocide.⁶⁸

Four Corner Posts

There is an ongoing scholarly debate as to the usefulness of distinguishing the four protected groups.⁶⁹ William Schabas suggests using the four terms - national, ethnical, racial and religious - as “four corner posts that delimit an area within which a [sic] myriad of groups covered by the Convention find protection”,⁷⁰ whereby the groups are in a dynamic and synergistic relationship, each contributing to the construction of the other.⁷¹ This approach, which sees no need to definitively assign the victim to one particular group, because of multiple group characteristics, has also been called ensemble or holistic approach.⁷² There is undoubtedly a risk of an overlap between the four categories. However, the creation of a generic, undefined group contradicts the internationally recognized maxim *ut res magis valeat quam pereat*, where each word in a legal text carries its distinct meaning.⁷³ Difficulties in defining the protected groups should not lead to creating an undefined area, in which myriad of groups are contained within the four corner posts of nationality, ethnicity, race and religion. The intention of the Genocide Convention’s drafters was to limit the protection to racial, ethnical, national and religious groups. The expansion of the Convention to an undefined number of groups would contradict its objective of a restrictive application.⁷⁴ Lars Berster considers such a *de facto* dissolution of a key element of the crime not to be reconcilable with the principle of legality.⁷⁵

International Law and Policy in Honour of Navanethem Pillay, ed. Chile Eboe-Osuji (Leiden: Martinus Nijhoff Publishers, 2010), 177.

⁶⁴ William Schabas, “Judicial Activism and the Crime of Genocide,” in *Judicial Creativity at the International Criminal Tribunals*, ed. Shane Darcy and Joseph Powderly (Oxford: Oxford University Press, 2010), 71.

⁶⁵ Schabas, “Groups Protected”, 380.

⁶⁶ Larissa Van den Herik, *The Contribution of the Rwanda Tribunal to the Development of International Law* (Leiden: Martinus Nijhoff, 2005), 129.

⁶⁷ Winston Nagan and Vivile Rodin, “Racism, Genocide, and Mass Murder: Towards a Legal Theory about Group Deprivations,” *National Black Law Journal* (2002-2004), 216.

⁶⁸ *The Prosecutor v. Akayesu*, Trial Chamber Judgment, September 2, 1998, ICTR-96-4-T, para. 721. Nersessian, *Genocide and Political Groups*, 21.

⁶⁹ Schabas, *Genocide in International Law*, 129. Amann, “Group Mentality”, 109-113. Peter Quayle, “Unimaginable Evil: The Legislative Limitations of the Genocide Convention,” *International Criminal Law Review* (2005), 370. Gerhard Werle, *Principles of International Criminal Law* (The Hague: T.M.C. Asser Press, 2005), 194. Allard K. Lowenstein International Human Rights Clinic, Yale Law School, *Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar’s Rakhine State? A Legal Analysis* (2015), 41. Claus, Kress, “The Crime of Genocide Under International Law,” *International Criminal Law Review* (2006), 475.

⁷⁰ Schabas, *Genocide in International Law*, 129.

⁷¹ Ibid.

⁷² Amann, “Group Mentality”, 109-113. Lars Berster, “Article II,” in *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary*, ed. Christian Tams, Lars Berster and Björn Schiffbauer (Munich: C.H. Beck, 2014), 102. Werle, *Principles of International Criminal Law*, 194.

⁷³ Kress, “The Crime of Genocide”, 475. Berster, “Article II”, 102. John Quigley, *The Genocide Convention: An International Law Analysis* (Aldershot: Ashgate, 2006), 149.

⁷⁴ Matthew Lippman, “Genocide: The Crime of the Century,” *Houston Journal of International Law* 23 (2000), 476.

⁷⁵ Berster, “Article II”, 102.

Another argument against an ensemble approach is the fact that the genocidal perpetrator defines his victims by reducing their identity to what he perceives to be specific group identity markers. The victims are reduced to one aspect of their identity and stigmatized because of that particular dimension, thereby rendering other dimensions of their identity marginal.⁷⁶ Such process occurred, for example, in Germany prior to the Holocaust. The Nazi ideology determined that the Jews were a distinct group and could no longer be part of the racially defined German nation. Their Jewishness became the defining identity marker.⁷⁷ It is, in other words, the perpetrator's perception of the victims that determines whether or not they are covered by the protection of Art. II Genocide Convention. Helen Klann and Phillipa KcKenzie note that "in cases where it is unclear whether a victim belonged to a protected group, the perception of the perpetrator is most relevant. Where the perpetrator perceived the victim as belonging to a group, the victim should be considered to belong to that group".⁷⁸ Caroline Fournet emphasizes that the Genocide Convention "wrongly affords protection to 'racial' groups, in spite of the fact that there are no such groups except in the minds of the perpetrators".⁷⁹ The perpetrator identifies his victims by what he perceives to be their decisive characteristic.

According to the Darfur Commission, the principle of effectiveness dictated that international rules were to be given maximum effect – or in its Latin terms *ut res magis valeat quam pereat*, thereby suggesting that Art. II Genocide Convention should be construed as effectively as possible, in light of its object and purpose.⁸⁰ The ICJ recognized the principle of effectiveness as "one of the fundamental principles of interpretation of treaties, consistently upheld by international jurisprudence".⁸¹ According to this principle, the terms of a treaty are ensured effectiveness in consideration of its object and purpose together with good faith, the so-called *effet utile*.⁸² Hence, Art. II Genocide Convention has to be interpreted effectively, giving maximum effect to all the protected groups, including the racial group. In sum, an ensemble approach that delimits a broader area of protection is inconsistent with the principle of legality, the principle of effectiveness, and the perpetrator's perception of the victim group. The four corner post-approach is flawed and therefore not ideal.

The following section gives an overview on how legal scholarship and the jurisprudence of the *ad hoc* ICTY and ICTR have defined the protected groups of genocide. It will reveal the great legal uncertainty that exists about the nature of human differences.

Race and Legal Scholarship

What Is Race?

There is no gene for race. There exist no genes that are shared by all members of one race and that could explain a common racial appearance; no DNA has been identified that is not also present at substantial levels in other races, thereby failing to sort individuals into different racial groups.⁸³ Instead, it has become accepted that races are social constructs rather than a biological given.⁸⁴ At

⁷⁶ Nersessian, *Genocide and Political Groups*, 29. Moshman, "Us and Them", 118-119.

⁷⁷ Moshman, "Us and Them", 120.

⁷⁸ Helen Klann and Phillipa McKenzie, "Judge Laity Kama: Five Cases to Develop International Criminal Law," in *From Human Rights to International Criminal Law: Studies in Honour of an African Jurist, the Late Judge Laity Kama*, ed. Emmanuel Decaux, Adama Dieng and Malick Sow (Leiden: Martinus Nijhoff Publishers, 2007), 28.

⁷⁹ Fournet, *Crime of Destruction*, 59.

⁸⁰ United Nations, *Report of the International Commission of Inquiry on Darfur*, January 25, 2005 (UN Doc. S/2005/60), para. 494.

⁸¹ *Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya v. Chad)*, ICJ Judgment (1994), 25. Similarly, a Separate Opinion to the *Jelisić* judgment claimed it was "a general rule of interpretation that the law must be interpreted in such a way that it has useful effect (the principle of effectiveness, or *ut res magis valeat quam pereat*)", *The Prosecutor v. Jelisić*, Appeals Chamber Judgment, Separate Opinion of Judge Nieto-Navia, December 14, 1999, IT-95-10-A, para. 12.

⁸² Mark Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Leiden: Martinus Nijhoff Publishers, 2009), 428.

⁸³ Cosmides, Tooby and Kurzban, "Perceptions of Race", 173. Bobo, "Foreword", x. Hoffman, "'Race' as a Legal Concept?", 1093-1159.

⁸⁴ United Nations Educational, Scientific and Cultural Organization (UNESCO), "Statement on Race" (1950) "For all

a White House ceremony, even genome sequencer Craig Venter said: "The concept of race has no genetic or scientific basis".⁸⁵ His colleague, Francis Collins further emphasized that "[t]hose who wish to draw precise racial boundaries around certain groups will not be able to use science as a legitimate justification".⁸⁶

The differing physical appearance of people may be biologically heritable, yet the practical importance of what we understand as race derives from the human capacity to create and assign meanings.⁸⁷ For international criminal law and the crime of genocide, the practical importance of race lies in why the victim group is targeted and whether the perpetrator believed that the victims were members of a group racially distinct from his own.

Despite the non-existence of different biologically defined human races, surprisingly many legal scholars define racial groups by means of hereditary external features, as the following examples will show. By relying on complexion, the victims of the crime of genocide are classified objectively. However, do all people with dark skin belong to the same race? Is it correct to objectively group the victims according to their appearance?

The concept of race causes difficulties to international criminal law because of the legal necessity of an objective determination of the victim's group membership. In order to achieve a conviction for the crime of genocide, the prosecution has to prove that the perpetrator targeted a national, religious, ethnical or racial group. This requirement leads courts to objectively defining race based on the victim's complexion. As long as the racial group is considered a material element of a crime, it has to be objectively determinable. As a result, international criminal courts resort to outdated ways of classifying human beings.

Instead of reverting to controversial ways of defining different human races by means externally perceptible attributes, race should be defined as the perception of a person's differentness. This subjective approach, according to which perception rather than objectively discernable characteristics are decisive, is precisely what the theory of imagined identities relies upon. Before discussing the theory of imagined identities, the next section will show how race is understood by legal scholarship.

Legal Scholarship on race

The following examples illustrate the current legal scholarship on race in international criminal law. Hans Vest refers to physical characteristics or biological ancestry when defining race,⁸⁸ while Lawrence LeBlanc defines race as "associated with physical characteristics of a people such as color of skin".⁸⁹ Daniel Ntanda Nsereko classifies different "racial groups (...) according to genetically transmitted differences"⁹⁰ and "[e]ach group has physical features that are hereditary [including]

practical social purposes, 'race' is not so much a biological phenomenon as social myth", in *Four Statements on the Race Question*, ed. UNESCO (1969), 33. The 1967 UNESCO statement confirms that "racist doctrines lack any scientific basis whatsoever" (UNESCO, "Statement on Race and Racial Prejudice of 1967," in *Four Statements on the Race Question*, ed. UNESCO (1969).

Even the International Haplotype Map Project, which is a multi-country effort to identify and catalogue genetic similarities and differences in human beings, states on its webpage that race was "an imprecise and mostly socially constructed category," accessed April 1, 2016. <http://hapmap.ncbi.nlm.nih.gov/citinghapmap.html>.

See also Banton, *Racial Theories*, 196. López, *White by Law*, 78. Schabas, *Genocide in International Law*, 129. Thomas Hylland Eriksen, *Ethnicity and Nationalism* (London: Pluto Press, 2010), 5. Erica Howard, "Race and Racism: Why does European Law have Difficulties with Definitions?" *The International Journal of Comparative Labour Law and Industrial Relations* (2008), 10. Davis, "Constructing Race", 7.

⁸⁵ Quoted in Michael Yudell, *Race Unmasked: Biology and Race in the Twentieth Century* (New York: Columbia University Press, 2014), 204.

⁸⁶ Ibid.

⁸⁷ Bobo, "Foreword", x. Banton, *Racial Theories*, 197, 212.

⁸⁸ Hans Vest favors a determination by means of physical characteristics or biological descent over an expansive interpretation (Hans Vest, *Genozid durch organisatorische Machtapparate* (Baden-Baden: Nomos, 2002), 120).

⁸⁹ Lawrence LeBlanc, "The United Nations Genocide Convention and political groups: should the United States propose an amendment?," *Yale Journal of International Law* (1998), 273.

⁹⁰ Daniel Ntanda Nsereko, "Genocide: a crime against mankind," in *Substantive and Procedural Aspects of International Criminal Law*, ed. Gabrielle Kirk McDonald and Olivia Swaak-Goldman (The Hague: Kluwer Law, 2000), 131.

skin colour, hair, eyes and stature".⁹¹ He too refers to the genetic composition of people and relies on hereditary physical traits. Implying that race is genetically transmittable is scientifically baseless and furthermore incoherent with the current understanding of race as a social construct rather than a biological fact.⁹² Matthew Lippman claims that "[t]he concept of racial groups is self-evident"⁹³ and Francis Boyle, agent of the state applicant in the *Case on the Application of the Genocide Convention* before the ICJ argues that "[t]he concepts of racial and religious groups are self-evident".⁹⁴ Finally, Gerhard Werle and Florian Jessberger define a racial group as a social group whose members exhibited the same inherited, visible physical traits, such as skin colour or physical stature.⁹⁵ They too rely on an objective approach, whereby people can be categorized on the basis of their features and inherited characteristics. As shown above, there is no gene for race. Race can therefore not be inherited. A reliance on heredity should consequently be avoided in defining race. This is confirmed by Michael Banton, former Chair of the Committee for the Elimination of Racial Discrimination and an authority in the studies on racial discrimination, who considers race in some cases to have no real basis in heredity whatsoever.⁹⁶

The above mentioned scholarly definitions either avoid defining a racial group or relate to outdated conceptions of race, based on the wrongful understanding that there exist clearly distinguishable racial groups with distinct physical appearances and qualities.⁹⁷ There is no biological foundation for race. Any kind of categorization of people by means of their features is scientifically incorrect and offensive. This raises the question of how race should be correctly defined.

Different Approaches to Defining the Victim Groups of Genocide

Art. II Genocide Convention protects four specific groups. The subjective and objective approaches to defining these protected groups rival each other.⁹⁸ An objective approach relies on verifiable, hard facts. Neither the views of the victim, the perpetrator nor any third party can influence the definition of the group and the membership criteria.⁹⁹ A subjective approach is based on perception, personal opinions and interpretations. The subjective test accepts the group as defined by the perpetrator. His view becomes dispositive of the group-defining criteria.¹⁰⁰

To objectively define a person by his or her complexion, anatomy or other physical markers, assumes that there exist different racial groups, which can be distinguished from each other by means of their appearance.¹⁰¹ David Nersessian rightfully concludes that there was a practical impossibility of defining groups in any way other than subjectively, namely by utilizing the perpetrator's perception. He notes that the "efforts to define protected groups objectively have

⁹¹ Ibid.

⁹² See above footnote 84.

⁹³ Matthew Lippman, "Genocide," in *International Criminal Law: Sources, Subjects, and Contents*, ed. M. Cherif Bassiouni (Leiden: Martinus Nijhoff Publishers, 2008), 412.

⁹⁴ *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Supplement to the Application and to the Second Request for the Indication of Provisional Measures of Protection submitted by the Government of the Republic of Bosnia and Herzegovina, ICJ (August 22, 1993), 18.

⁹⁵ Gerhard Werle and Florian Jessberger, *Principles of International Criminal Law* (Oxford: Oxford University Press, 2014), 299. The authors do note that the concept of race was "not unproblematic given its abusive usage" (ibid.).

⁹⁶ Michael Banton, *International Action against Racial Discrimination* (Oxford: Clarendon Press, 1996), 76-82.

⁹⁷ The domestic US genocide legislation defines a racial group as "a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent", thereby apparently relying on a purely objective approach (The Genocide Convention Implementation Act of 1987 [Proxmire Act], US Code § 1093, Title 18, Part 1, Chapter 50A). Michael Banton points out that the US is the only country that holds on to the practice of identifying blacks by the one-drop rule, a classification that was not applied to any other social category and unknown outside the US (Banton, *Race and Ethnicity*, 2). He also establishes a difference in the European and the US perspective on race (ibid., viii).

⁹⁸ Quayle, "Unimaginable Evil", 368.

⁹⁹ Nersessian, *Genocide and Political Groups*, 27.

¹⁰⁰ Ibid.

¹⁰¹ Banton, *Racial Theories*, 198.

proved largely artificial, suffer from serious analytical flaws, and in any case bear no relation to the group ultimately targeted".¹⁰²

In the subjective approach, the perpetrator identifies the victim's group membership. Nevertheless, the identification of the group membership cannot completely be left to the perpetrator's imagination, because this would inevitably lead to a broadening of the exclusive victim groups of genocide.¹⁰³ If the perpetrator alone defines the racial group, he could possibly perceive blue-eyed men – or women, for the sake of the argument – as a distinct race. This would conflict with the object and purpose of the Genocide Convention, which offers narrow protection to a limited number of enumerated groups.

Instead, the subjective approach has to be sufficiently specific and foreseeable in order to cohere with the principle of legality. The subsequent section outlines the theory of imagined identity, which builds on a subjective approach, and shows its relevance for the crime of genocide. Thereafter, the jurisprudence by the *ad hoc* international criminal tribunals on the protected groups of genocide is analyzed. The legal analysis ends with the Darfur Commission's report as well as the jurisprudence by the ICC.

Imagined Identities

Benedict Anderson (1936-2015) was a professor in political science and author of one of the most important concepts in political geography, namely that nations are "imagined communities".¹⁰⁴ Anderson is recognized as one of the most influential scholars of his generation and his book from 1986 (revised edition 2006), *Imagined Communities*, is a standard work with worldwide impact across academic disciplines.¹⁰⁵ He asserts that nationalism was created by a feeling of togetherness in a nation state, despite not knowing its other members.¹⁰⁶ This feeling was so strong that its members were willing to die for their – imagined – nation by serving the nation's army and participating in armed conflicts.¹⁰⁷ Other scholars acknowledge that nationalism is commonly viewed as inherently irrational in the sense that it transcends considerations of self-interest.¹⁰⁸ According to Anderson, the nation is a social construct that ties together strangers and creates a sense of togetherness, which manifests itself in language, tradition, music, literature and pride of being part of that respective nation. Importantly, nationalism is created by beliefs and felt kinship ties. The emphasis is on felt – or imagined – subjective claims.¹⁰⁹

By applying this concept to a group of people connected to each other not by a nation, but by race, ethnicity or religion, a similar construct is created: people perceive likewise persons as similar and form groups of like-minded. Simultaneously they perceive others, outside their own group, as different.¹¹⁰ Although not necessarily grounded in a real, objective differentiation between the groups, this distinction is nevertheless solidified over time, thereby creating two distinct groups: "us" and "them". Ultimately, the groups are not real, but socially constructed and therefore imagined.

For the crime of genocide it is essential to pinpoint the perceptions of different identities, the "us" versus "them". This so-called othering occurs in genocide for racial groups as much as for the other protected groups. The dichotomies between us and them are emphasized, whereby the

¹⁰² Ibid., 31-32.

¹⁰³ Ibid., 31.

¹⁰⁴ Euan Hague, "Benedict Anderson," in *Key Thinkers on Space and Place*, ed. Phil Hubbard and Rob Kitchin (London: Sage Publications, 2011), 16.

¹⁰⁵ Ibid., 17-19.

¹⁰⁶ Anderson, *Imagined Communities*, 6 and 26.

¹⁰⁷ Anderson, *Imagined Communities*, 7. Also recognized by Russell Hardin, *One for All: The Logic of Group Conflict* (Princeton: Princeton University Press, 1995), 150.

¹⁰⁸ Hardin, *One for All*, 46.

¹⁰⁹ Ibid., 147.

¹¹⁰ Guglielmo Verdirame, "The Genocide Definition in the Jurisprudence of the *ad hoc* Tribunals," *International and Comparative Law Quarterly* (2000), 592.

image of the “others” is created, often parallel to creating a new sense of “self”.¹¹¹ Of significance to any genocidal process is the stigmatization of the others as the out-group: they are seen as inferior, but simultaneously present a threat to the in-group.¹¹² Any genocide is preceded by a process of creation of identities, with the aim of destroying the identity and ultimately the existence of the others.¹¹³ Gradually, the othering and stigmatization becomes a socially accepted way of perceiving outsiders to one’s own group. This process is demonstrated in the following examples.

The case of Rwanda exemplarily shows that the Hutu and Tutsi were very similar groups, largely sharing the same nationality, religion, language and traditions.¹¹⁴ The German and later the Belgian colonizers perceived the Tutsi to be more like them in height and color and established the Tutsi as the indigenous elite.¹¹⁵ A Belgian law of 1931 determined that whoever owned more than ten cows was a Tutsi and thereby created a wealth-based system of division.¹¹⁶ The introduction of identity cards during Belgian colonialism consolidated the membership to the Tutsi, Hutu or Twa group and simultaneously implanted the vision of Tutsi superiority; the membership to one of the three groups was therefore primarily a result of a social attribution process.¹¹⁷ Jan Pronk names Rwanda as an example of imagined communities due to the imagined physical and mental superiority of the Tutsi and the inferiority of the Hutu.¹¹⁸ Payam Akhavan furthermore emphasizes that the distinction of Hutu and Tutsi “was born of racialist mythology, gradually assumed a socially constructed reality, and ultimately defined the population slated for extermination”.¹¹⁹ The different groups were constructed as a collective imaginary, as social constructs rather than objectively defined groups.¹²⁰

The propaganda preceding the genocide in Rwanda was based on the Hutu’s feeling of inferiority and found its valve in a reversing of positions: the Tutsi, who were imagined as superior to the Hutu, were inferiorated by means of hate speech, termed “cockroaches” and ultimately targeted for extermination.¹²¹ The Tutsi were portrayed as the enemy from within that needed to be stopped before it swallowed the suppressed Hutu culture.¹²² This imagined fear of the other manifested itself in the official propaganda and

¹¹¹ Anthonie Holslag, “The Process of Othering from the ‘Social Imaginaire’ to Physical Acts: An Anthropological Approach,” *Genocide Studies and Prevention: An International Journal* 9 (2015), 96. Chalk and Jonassohn, *History and Sociology of Genocide*, 28.

¹¹² Laban Hinton, “Dark Side of Modernity”, 6 and 13.

¹¹³ Chalk and Jonassohn, *History and Sociology of Genocide*, 28, 30. Mark Kielsingard, *Responding to Modern Genocide: At the Confluence of Law and Politics* (Abingdon: Routledge, 2016), 77-79.

¹¹⁴ In the words of anthropologist Alex de Wall: “[I]t is rarely possible to tell whether an *individual* is a Twa, Hutu, or Tutsi (...) from his or her height. Speaking the same language, sharing the same culture and religion, living in the same places, they are in no sense ‘tribes’, nor even distinct ‘ethnic groups’”, Alex De Waal, “Genocide in Rwanda,” *Anthropology* (1994), 1-2 (emphasis in original). Gregory Stanton also notes that the Hutu and Tutsi shared the same language, culture and religion (Gregory Stanton, “Could the Rwandan Genocide Have Been Prevented?,” *Journal of Genocide Research* (2004), 213).

¹¹⁵ *The Prosecutor v. Akayesu*, Trial Chamber Judgment, September 2, 1998, ICTR-96-4-T, para. 82. Payam Akhavan, “The Crime of Genocide in the ICTR Jurisprudence”, *Journal of International Criminal Justice* (2005), 1000. Beth Van Schaack, “Darfur and the Rhetoric of Genocide,” *Whittier Law Review* 26 (2005), 1120. Amann, “Group Mentality”, 103.

¹¹⁶ Agnieszka Szpak, “National, Ethnic, Racial, and Religious Groups Protected against Genocide in the Jurisprudence of the Ad Hoc International Criminal Tribunals,” *European Journal of International Law* 23 (2012), 160.

¹¹⁷ Laban Hinton, “Dark Side of Modernity”, 16. Amann, Diane, “Prosecutor v. Akayesu,” *American Journal of International Law* 93 (1999), 195. Alex De Waal, “Group Identity, Rationality, and the State,” *Critical Review* 11 (1997), 287. De Waal notes that the Twa as hunter-gatherers and potters remained outside the Hutu-Tutsi dynamic, given the lowest social position of all, namely as ‘remnants of an earlier stage of human evolution’ (*ibid.*, 286).

¹¹⁸ Jan Pronk, “The United Nations After 50 Years,” in *Contemporary Genocides: Causes, Cases, Consequences*, ed. Albert Jongman (Leiden: PLOOM, 1996), xi.

¹¹⁹ Akhavan, “The Crime of Genocide”, 1000.

¹²⁰ David Deutsch and Niza Yanay, “The Politics of Intimacy: Nazi and Hutu Propaganda as Case Studies,” *Journal of Genocide Research* 18 (2016), 31.

¹²¹ Mark Drumbl, *Atrocity, Punishment, and International Law* (Cambridge: Cambridge University Press, 2007), 41. *The Prosecutor v. Ruggiu*, Amended Indictment, December 18, 1998, ICTR-97-32, 6-7.

¹²² Holslag, “Process of Othering”, 102. Laban Hinton, “Dark Side of Modernity”, 16 and 20.

eventually also the personal rhetoric, often reverting to diminutive and dehumanizing language.¹²³

A reverse development happened in the Balkans in the early 1990s. The collapse of the League of Communists in 1990 and the interconnected disintegration of Yugoslavia into its warring factions marked the end of a common Yugoslav national identity. The imagined community of Yugoslavia became unimaginable from 1991-1992 onwards.¹²⁴ For example, the Serbs in Croatia identified themselves for decades as Yugoslavs. Due to the events in the early 1990s, however, they started perceiving themselves as Serbs in Croatia instead of under the former common denominator of Yugoslavs.¹²⁵ Socially relevant groups were created that perceived each other as distinct. Similarly to Rwanda, the dichotomization led to an identification of us versus them.

The theory of imagined identities was for the first time applied to international criminal law in the 2005 Report by the Darfur Commission. The Darfur report will be analyzed more in depth in the following section. With reference to a scholarly article by Guglielmo Verdirame, the Commission emphasized that “collective identities (...) are by their very nature social constructs, ‘imagined’ identities entirely dependent on variable and contingent perceptions, and *not* social facts”.¹²⁶ While the idea of imagined, as opposed to factual or real, identities is appealing because it avoids any objective definition of the protected group, it nevertheless has to be coherent with the principle of strict legality. The theory of imagined identities, which builds on a subjective approach to group membership, cannot go beyond the narrow definition of Art. II Genocide Convention and cannot render invalid the principle of foreseeability and specificity. The imagination of the perpetrator can, in other words, not exceed the Genocide Convention’s understanding of the protected victim groups.

The current understanding of race as a subjective and social concept, with the perception of the perpetrator as the key element, points to the application of the theory of imagined identities in praxis. The perpetrator perceives a victim as belonging to a different group, which he imagines having different and inferior attributes and qualities. This imagined inferiority then gives the perpetrator, in his eyes, a justification to discriminate and ultimately to exterminate this imaginary group. The identity of the others and their differences to us is passed on from one generation to the next by means of narratives. These accounts formulate and solidify the conception of the others’ personhood and thereby their identity.¹²⁷

Such historical and sociological narratives harden prejudices about the victims: the others have “always” been different, they have “never” been part of the society at large, but have “persistently” chosen to remain in their own community. The imagined social construct of two different groups becomes a reality as soon as it is effective. This effectiveness is demonstrated in that the in-group treats the out-group (the others) as real. In doing so, the creation of a social reality is revealed that eventually entails social and/or legal consequences. This formation of an imagined identity is in itself not further disquieting. However, if the effectiveness results in stigmatization, inferiorization, dehumanization and ultimately the aim of destruction, the risk of genocide is imminent.¹²⁸

The example of Rwanda shows this development clearly: prior to the colonialization, the Hutu and Tutsi group membership was fluid and unsettled: wealth enabled ascension of the social

¹²³ Deutsch and Yanay, “Politics of Intimacy”, 22.

¹²⁴ Robert Hayden, “Imagined Communities and Real Victims: Self-Determination and Ethnic Cleansing in Yugoslavia,” in *Genocide: An Anthropological Reader*, ed. Alexander Laban Hinton (Malden: Blackwell Publishers, 2002), 236-237. Hardin, *One for All*, 156-163.

¹²⁵ Hayden, “Imagined Communities”, 233. Banton, *Racial Theories*, 210.

¹²⁶ United Nations, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General* (hereafter: Darfur Report), January 25, 2005 (UN Doc. S/2005/60), para. 499 (emphasis in original) with reference to Verdirame, “The Genocide Definition”, 592.

¹²⁷ Anderson, *Imagined Communities*, 204-205.

¹²⁸ Gregory Stanton, *Countries at Risk Report 2012* (Washington: Genocide Watch, 2012). The report includes a list of eight stages of genocide, which was based on a 1996-model. In 2013, Stanton presented a ten stage model, describing amongst others the stages of stigmatization (“classification” and “symbolization”), inferiorization (“discrimination”), dehumanization and destruction (“extermination”), accessed April 11, 2016. <http://www.genocidewatch.org/genocide/tenstagesofgenocide.html>.

ladder from being a (poor) Hutu to being a (wealthy) Tutsi. Inter-marriage between the groups was common.¹²⁹ The introduction of identity cards by the Belgium colonizers changed the picture drastically: group membership became more or less permanent and immutable. A person's identity was defined in one of the three categories (Hutu, Tutsi and Twa) and considered innate by means of patrilineal heredity of ethnicity.¹³⁰ The colonial masters created and imposed a largely imaginary system of group membership. This system of identification became unalterable, operational and therefore also effective once the Hutu, Tutsi and Twa started using their ID-cards.

Race, ethnicity, nationality and religion become operational concepts of group membership once an effective system has been put into place. Whether imagined systems are founded on fictional or real grounds is irrelevant: distinct groups are created and thereby objectified. Thus, effectiveness and operationability determine the membership to a racial, ethnical, national or religious group. Or in other words: once a group membership is operational, it becomes effective and real.

The next section will analyze selected examples of case law by the *ad hoc* international criminal tribunals as well as the Darfur Commission's report. It will reveal that jurisprudence has gradually shifted from defining the victim groups objectively to defining them subjectively, based primarily upon the perception of the perpetrator. It will in particular show that the Darfur Commission applied the theory of imagined identity. The jurisprudence of the ICC on the situation of Darfur, which largely builds upon the Darfur Commission's report, will also be analyzed. The ICC's initial steps in dealing with the crime of genocide in the situation of Darfur will provide an outlook on future developments in the definition of the protected groups.

Race in International Criminal Jurisprudence

The interpretation by the international criminal tribunals of the crime of genocide and the protected groups are far from specific or foreseeable. While this is true for all of the four protected groups, it is particularly significant for the racial group. As such, the tribunals' judgments might challenge the principle of legality. For future cases it is important that the tribunals fully recognize and respect legal certainty and predictability in their interpretation of the protected groups of genocide.¹³¹

The jurisprudence of the ICTR and the ICTY on the group definition is incoherent because it varies in its approach to defining the protected groups. Early cases took a primarily objective approach, while later cases increasingly relied on the perpetrator's perception of the victim group, thus applying a subjective approach. The following examples reveal the inconsistency of the judicial approaches.

ICTR Jurisprudence

The ICTR produced the first case law on the crime of genocide and in particular the racial group. In the first ever genocide trial in history, *The Prosecutor v. Akayesu*, the Trial Chamber defined a racial group as follows: "The conventional definition of racial group is based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors".¹³² The Trial Chamber did not cite any authority for its definition. This primarily objective approach to a racial group is ambiguous since it refers to heredity and implies an identification of group members by means of their genetically defined physical traits. As shown earlier, a reference to heredity preserves an outdated and contentious method of classifying people. The Trial Chamber, however, weakened its statement by referring to "the conventional definition",

¹²⁹ Lyal Sunga, *The Emerging System of International Criminal Law: Developments in Codification and Implementation* (The Hague, Kluwer Law International, 2010), 112. Scott Straus, *The Order of Genocide* (Ithaca: Cornell University Press, 2006), 20-21.

¹³⁰ *The Prosecutor v. Akayesu*, Trial Chamber Judgment, September 2, 1998, ICTR-96-4-T, para. 171. *The Prosecutor v. Kayishema and Ruzindana*, Trial Chamber Judgment, May 21, 1999, ICTR-95-1-T, para. 523. United Nations, *Preliminary Report of the Independent Commission of Experts Established in Accordance with Security Council Resolution 935 (1994)*, October 4, 1994 (UN Doc. S/1994/1125 (1994), Annex), para. 45.

¹³¹ Caroline Fournet, "The Actus Reus of Genocide," in *Elements of Genocide*, ed. Paul Behrens and Ralph Henham (Abingdon: Routledge, 2013), 57-58.

¹³² *The Prosecutor v. Akayesu*, Trial Chamber Judgment, September 2, 1998, ICTR-96-4-T, paras. 514 and 516.

yet without determining its accuracy. The judges remained silent on what is considered a non-conventional definition of race.

Furthermore, the judgment mentions the identification of these traits with a geographical region. The Trial Chamber thereby partially resorts to a subjective approach, whereby the term “identified” points to the perpetrator’s perception of the victim group’s racial affiliation to its geographical location or origin. In *Akayesu*, the ICTR defined race foremost by heredity. Hereditary physical traits are objective, factual elements. The approach taken by the Trial Chamber is therefore foremost an objective one.¹³³ However, it also noted that these hereditary traits were often identified with a geographical region. The word “often” indicates an ordinary, but not exclusive approach to defining race. The word “identity” clearly connects to a person’s perception, thus a subjective act. The overall approach taken by the ICTR is therefore a primarily objective approach with certain subjective elements.¹³⁴

Only one year after the *Akayesu* trial judgment, the same bench of judges rendered the trial judgment against Georges Anderson Nderubumwe Rutaganda. It pronounced a more balanced definition of the victim group by stating that the membership was a subjective rather than an objective concept.¹³⁵ The Tribunal in case further held that the “victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction. In some instances, the victim may perceive himself/ herself as belonging to the said group”.¹³⁶ By emphasizing perception, *Rutaganda* took a subjective approach and shifted away from the primarily objective approach taken in *Akayesu*.¹³⁷

The ICTR *Bagilishema* trial judgment of 2001 demonstrated the difficulties of an objective group definition. It held that, although indicative definitions of these four terms have been provided,

the concepts of national, ethnical, racial, and religious groups enjoy no generally or internationally accepted definition. Each of these concepts must be assessed in the light of a particular political, social, historical, and cultural context. Although membership of the targeted group must be an objective feature of the society in question, there is also a subjective dimension.¹³⁸

Here, in a footnote, the Trial Chamber refers to the above-mentioned report by the Commission of Experts on Rwanda and its statement that “to recognise that there exists discrimination on racial or ethnic grounds, it is not necessary to presume or posit the existence of race or ethnicity itself as a scientifically objective fact”.¹³⁹ The judgment further reads:

A group may not have precisely defined boundaries (...). Moreover, the perpetrators of genocide may characterize the targeted group in ways that do not fully correspond to conceptions of the group shared generally, or by other segments of society. In such a case (...) if a victim was perceived by a perpetrator as belonging to a protected group, the victim could be considered by the Chamber as a member of the protected group, for the purposes of genocide.¹⁴⁰

¹³³ Matthias Schuster, “The Crime of Genocide Applied in Practice: Selected Aspects of the Jurisprudence of the Ad Hoc Tribunals’ Appeals Chambers,” in *The Genocide Convention Sixty Years After its Adoption*, ed. Christoph Safferling and Eckart Conze (The Hague: TMC Asser Press, 2010), 216.

¹³⁴ *Ibid.*, 217.

¹³⁵ *The Prosecutor v. Rutaganda*, Trial Chamber Judgment, December 6, 1999, ICTR-96-3-T, , para. 56.

¹³⁶ *Ibid.* The *Kamuhanda* and *Kajelijeli* judgments contain a similar wording, however, they base their subjective approach on the perpetrator’s perception only (*The Prosecutor v. Kamuhanda*, Trial Chamber Judgment, January 22, 2004, ICTR-99-54A-T, para. 630; *The Prosecutor v. Kajelijeli*, Appeals Chamber Judgment, December 1, 2003, ICTR-98-44A, para. 811).

¹³⁷ Verdirame, “The Genocide Definition”, 592 and 594.

¹³⁸ *The Prosecutor v. Bagilishema*, Trial Chamber Judgment, June 7, 2001, ICTR-95-1A-T, para. 65.

¹³⁹ *Ibid.*, para. 65 with reference to United Nations, *Final Report of the Commission of Experts*, para. 159.

¹⁴⁰ *The Prosecutor v. Bagilishema*, Trial Chamber Judgment, June 7, 2001, ICTR-95-1A-T, para. 65.

In the *Bagilishema* trial judgment, the ICTR took a purely subjective approach to defining all the victim groups of genocide, including the racial group. The perpetrator's perception of the victims' group membership was crucial: he intended to destroy them because of their perceived or real group membership, irrespective of how the group is conceived by other segments of society. In sum, the *Bagilishema* trial judgment took a primarily subjective approach with some objective elements and as such further consolidated the innovative, subjective definition of group membership.¹⁴¹ According to Barbara Lüders, *Bagilishema* was the turning point in the ICTR's jurisprudence from an objective to a subjective approach.¹⁴² The fact that the *Kayishema and Ruzindana* trial judgment of 1999 laid the groundwork for a subjective approach challenges this opinion.¹⁴³ The *Kayishema and Ruzindana* judgment defined an ethnic group as one "whose members share a common language and culture; or, a group which distinguishes itself, as such (self identification); or, a group identified as such by others, including perpetrators of the crimes (identification of others)".¹⁴⁴ Apparently inspired by the *Akayesu* trial judgment, it defined the racial group as follows: "a racial group is based on hereditary physical traits often identified with geography".¹⁴⁵ While the Trial Chamber subjectively defined the ethnic group by means of self-identification or identification of others, it defined the racial group objectively.

The ICTR Appeals Chamber has not often dealt with the definition of the protected groups of genocide. On one rare occasion, the Appeals Chamber in *Nahimana et al.* recognized the application of a subjective approach: "[T]he jurisprudence of the *ad hoc* Tribunals acknowledges that the perception of the perpetrators of the crimes may in some circumstance be taken into account for the purposes of determining membership of a protected group".¹⁴⁶ It decided that the attacks on Hutu political opponents were not acts of genocide because the victims were acknowledged as such and not perceived as Tutsi.¹⁴⁷

In 2000, the ICTR in *Semanza* declared the division of the Rwandan population into three ethnic groups a fact of common knowledge.¹⁴⁸ Declaring a fact common knowledge removes it from being a subject to dispute and includes it into a list of common or universally known historical, geographical facts, or the laws of nature, such as the days of the week.¹⁴⁹ According to the Tribunal, common knowledge also covered those facts that were generally known within a tribunal's territorial jurisdiction.¹⁵⁰ The consequence of declaring the ethnic grouping as a fact of common knowledge is that no further proof is necessary, since the existence of the Tutsi group as a protected ethnic group is determined.¹⁵¹ Although the Trial Chamber emphasized that it could not "take judicial notice of matters, which are unadorned legal conclusions",¹⁵² it in effect evaded

¹⁴¹ Interestingly, in the ICJ *Case Concerning Application of Genocide Convention (Bosnia and Herzegovina v. Serbia and Montenegro)*, the legal representative of Serbia and Montenegro claimed that the ICTR in *Bagilishema* had adopted an exclusively objective approach. According to the representative, the ICTR concluded that the group membership should be an objective element of society in question. The legal counsel thereby disregarded that *Bagilishema* dealt with the perpetrator's perception of the protected group, hence taking into account the subjective elements in defining a group membership (*Case Concerning Application of Genocide Convention*, Document No. CR 2006/43, Public Sitting (May 8, 2006), 36-37).

¹⁴² Barbara Lüders, *Die Strafbarkeit von Völkermord nach dem Römischen Statut für den Internationalen Strafgerichtshof* (Berlin: Berliner Wissenschafts-Verlag, 2004), 57.

¹⁴³ *The Prosecutor v. Kayishema and Ruzindana*, Trial Chamber Judgment, May, 21, 1999, ICTR-95-1-T, para. 98.

¹⁴⁴ *Ibid.*, para. 98.

¹⁴⁵ *Ibid.*

¹⁴⁶ *The Prosecutor v. Nahimana et al.*, Appeals Chamber Judgment, November 28, 2007, ICTR-99-52-A, para. 496.

¹⁴⁷ *Ibid.*

¹⁴⁸ *The Prosecutor v. Semanza*, Decision on the Prosecutor's Motion for Judicial Notice and Presumption of Facts Pursuant to Rules 94 and 54, November 3, 2000, ICTR-97-20-T, paras. 23, 29, 48(b) and Annex A.

¹⁴⁹ Mark Klamburg, *Evidence in International Criminal Trials: Confronting Legal Gaps and the Reconstruction of Disputed Events* (Leiden: Martinus Nijhoff Publishers, 2013), 472.

¹⁵⁰ *The Prosecutor v. Semanza*, Decision on the Prosecutor's Motion for Judicial Notice and Presumption of Facts Pursuant to Rules 94 and 54, November 3, 2000, ICTR-97-20-T, para. 23.

¹⁵¹ Schuster, "The Crime of Genocide", 220.

¹⁵² *The Prosecutor v. Semanza*, Decision on the Prosecutor's Motion for Judicial Notice and Presumption of Facts Pursuant to Rules 94 and 54, November 3, 2000, ICTR-97-20-T, para. 35. This decision was confirmed by the Appeals Chamber: *The*

any further discussion on the ethnicity of the involved groups and hindered further elaboration on the victim groups of the Rwandan genocide. The ICTR Appeals Chamber also took notice of the genocide in Rwanda against the Tutsi ethnic group, thereby accepting as common knowledge the existence of the Tutsi as a protected group.¹⁵³ Matthias Schuster laments that the appellate bodies of the *ad hoc* tribunals did not clarify “the law on such a central element of the definition of the crime of genocide”.¹⁵⁴

ICTY Jurisprudence

In May 1993, acting under Chapter VII of UN Charter, the UN established the ICTY in response to mass atrocities then taking place in Croatia and Bosnia and Herzegovina.¹⁵⁵ The ICTY was the first international war crimes tribunal since the Nuremberg and Tokyo Tribunals following the Second World War. In one of the Tribunal’s most important cases, the *Jelisić* judgment, the Trial Chamber acknowledged that an objective approach to defining the victim group of genocide was a risky undertaking:

to define a... racial group today using objective and scientifically irreproachable criteria would be a perilous exercise whose result would not necessarily correspond to the perception of the persons concerned by such categorisation. Therefore, it is more appropriate to evaluate the status of a... racial group from the point of view of those persons who wish to single that group out from the rest of the community. The Trial Chamber consequently elects to evaluate membership in a... racial group using a subjective criterion.¹⁵⁶

At first sight the *Jelisić* judgment seemed to allow a victim- as well as a perpetrator-based approach (“perception of the persons concerned by such categorization”). However, the consecutive sentence makes clear that the perpetrator alone defines the victim group (“point of view of those persons who wish to single that group out”). The judgment correctly recognized that it was applying a subjective approach.

The Trial Chamber in the judgment against Radoslav Brđanin took a slightly different subjective approach by holding that the victim group “may be identified by means of the subjective criterion of the stigmatization of the group, notably by the perpetrators of the crime, on the basis of its perceived... racial... characteristics. In some instances, the victim may perceive himself or herself to belong to the aforesaid group”.¹⁵⁷ This judgment provided two possibilities to defining the protected groups, namely either a perpetrator- or a victim-based approach. The wording “notably by the perpetrators” reveals a primacy of a perpetrator-based approach, which is further confirmed in that “in some instances, the victim may perceive himself or herself to belong to the aforesaid group”. As a rule, the tribunal seemed to rely on the perpetrator’s perception. Occasionally, however, also the victim’s perception could influence the group definition. The judges nevertheless demanded objective criteria, without indicating their scope, in holding that “the correct determination of the relevant protected group has to be made on a case-by-case basis, consulting both objective and subjective criteria. This is so because subjective criteria alone may not be sufficient to determine the group targeted for destruction and protected by the Genocide Convention”.¹⁵⁸ The Trial Chamber acknowledged that a subjective approach alone could cause an inadmissible broadening of the protected groups, which would conflict with the principle of strict legality and foreseeability. However, the judges did not recognize the possibility of relying on a subjective approach that builds on the theory of imagined identities. According to that theory,

Prosecutor v. Semanza, Appeals Chamber Judgment, May 20, 2005, ICTR-97-20-A, para. 192.

¹⁵³ *The Prosecutor v. Karemera et al.*, Decision on the Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, June 16, 2006, ICTR-98-44-AR73, paras. 33-38.

¹⁵⁴ Schuster, “The Crime of Genocide”, 220.

¹⁵⁵ Established by Security Council Resolution S/RES/827 (25 May 1993).

¹⁵⁶ *The Prosecutor v. Jelisić*, Appeals Chamber Judgment, December 14, 1999, IT-95-10-A, para. 70.

¹⁵⁷ *The Prosecutor v. Brđanin*, Trial Chamber Judgment, September 1, 2004, IT-99-36-T, para. 683.

¹⁵⁸ *Ibid.*, para. 684.

the prosecutor would have to prove that the perpetrator perceived the victim group as belonging to a group racially distinct from his own and therefore targets its members with the intention of destroying them.

The ICTY jurisprudence, similarly to that of the ICTR, reveals a gradual shift from an objective to a more subjective approach in defining the protected groups of genocide. Nevertheless, neither *ad hoc* tribunal ever took a purely subjective approach and always required some objectively definable components, however without sketching out their contours.

Apart from the jurisprudence by the two trial chambers of the *ad hoc* tribunals, there has been limited case law on the international level defining the protected groups of genocide. This article will not examine the jurisprudence of the Nuremberg or Tokyo Tribunals, the ECCC, the Special Panels of the Dili District Court, the Special Tribunal for Lebanon or the Special Court for Sierra Leone, some of which do not even have subject-matter jurisdiction over the crime of genocide. However, the Commission of Inquiry on Darfur comprehensively dealt with the definition of the protected groups and referred to imagined identities. Its report is therefore of particular interest for the further analysis.

Report by the Darfur Commission

In 2004, a UN Security Council resolution requested the establishment of the Darfur Commission. Its tasks were to immediately investigate reports of violations of international law in Darfur, to determine whether acts of genocide had occurred, and to identify the perpetrators of such violations.¹⁵⁹ As a Commission of Inquiry, the Darfur Commission was not a judicial organ. However, it was headed by renowned ICTY Judge and Professor of Law Antonio Cassese and was mandated to make a legal assessment of the situation in Darfur. The Commission produced a comprehensive quasi-legal report that resembles a trial judgment, but was not legally binding.¹⁶⁰ The report notes that although “it is not a judicial body... the Commission adopted an approach proper to a judicial body”.¹⁶¹ The methods applied and the analysis performed were undoubtedly of a legal character.

The Commission was challenged by the fact that crimes were committed against different tribal groups (chiefly the Fur, Masalit and Zaghawa tribes) that did not appear to make up ethnic groups distinct from the ethnic group to which the attackers belonged.¹⁶² The Commission found that the tribes who supported the insurgents were increasingly perceived as African, while those supporting the government were perceived as Arabs, even though there were no objective grounds for such distinctions, since both groups shared the same faith and spoke the same language.¹⁶³ The rift between the tribes, and the political polarization around the rebel opposition to the central authorities, coupled with the growing insistence of some circles and the media on such an Arab-African divide, contributed to “the consolidation of the contrast and gradually created a marked polarization in the perception and self-perception of the groups concerned”.¹⁶⁴

The Darfur Commission determined that the formation process of perceiving another group as distinct usually originated in historical and social grounds. The others were perceived as making up a different and opposed group. The process “gradually hardens and crystallizes into a real and factual opposition. It thus leads to an objective contrast”.¹⁶⁵ Despite originating in perception, the groups eventually became objectively distinguishable groups.¹⁶⁶ Thereby the Darfur Commission seemingly added an additional category to the existing objective and subjective approaches in

¹⁵⁹ UN Doc. S/RES/1564 (September 18, 2004), para. 12.

¹⁶⁰ Darfur Report, UN Doc. S/2005/60 (January 25, 2005).

¹⁶¹ Darfur Report, para. 14.

¹⁶² *Ibid.*, para. 508.

¹⁶³ *Ibid.*, paras. 508 and 509. While there might be other markers, the Commission explicitly mentions religion and language.

¹⁶⁴ *Ibid.*, para. 509.

¹⁶⁵ *Ibid.*, para. 500.

¹⁶⁶ *Ibid.*, para. 500.

defining the victim groups of genocide, namely an objectified subjective approach.¹⁶⁷ According to that approach, an initially subjective view of a group's differentness becomes objective in the course of time if it is passed on from one generation to the next. It is, however, unclear how much time would have to pass in order for an objectified approach to occur. The Darfur Report does not answer this question. It could be assumed that a subjective perception could become objectified in the course of a generation, perhaps an even shorter period of time.

Not only did the Darfur Commission construct a new approach to defining the protected groups of genocide, it also mentioned imagined identities:

the approach taken to determine whether a group is a (fully) protected one has evolved from an objective to a subjective standard to take into account that collective identities... are by their very nature social constructs, 'imagined' identities entirely dependent on variable and contingent perceptions, and *not* social facts, which are verifiable in the same manner as natural phenomena or physical facts.¹⁶⁸

The Darfur Commission finds that the protected groups of genocide are social constructs rather than social facts. Essentially, the victim groups are imagined identities based on the perception of their differentness. In its essence, the Darfur Report describes the phenomenon of othering, which has been mentioned above. In the case of Darfur, the process of othering was revealed by the creation of the binaries of Arab and African tribes, the latter being portrayed as inferior. The Commission found that a growing polarization of identities increasingly led to a consolidation of the contrasts between the tribes.¹⁶⁹ Eventually, the concerned tribes perceived themselves as either African or Arab and began making up distinct groups. Derogatory epithets with the intention of stigmatizing, inferiorating and ultimately dehumanizing the others further intensified the othering.¹⁷⁰ John Hagan and Wenona Rymond-Richmond recognized that "[i]t was when the *imposed meaning of race* by others became more starkly binary and stigmatic, separating 'us' from 'them', that genocide could begin. When President al-Bashir [of Sudan] *collectively identified* the selected groups as 'Zourga', he opened a door to stigmatization and violence."¹⁷¹

In sum, the Darfur Commission applied an objectified subjective approach and considered the process of othering. Most importantly, the Commission acknowledged the concept of imagined identities as a basis to define the protected groups of genocide. It thereby took a giant leap in defining the victim groups and translated the process of othering into a valid legal consideration. In doing so, the Commission recognized the importance of social processes, irrespective of their objective recognition. Genocide is precisely about the creation of identities, the stigmatization and dehumanization of the victim group, defined by the perpetrator only. In acknowledging the legal importance of social constructs, the Darfur Commission provided for a legally sound definition of, amongst others, the racial group. Whether the racial group has an objective existence is, according to this innovative approach, not important, as long as the perpetrator perceives the group as racially distinct from his own and treats it inferiorly, with the ultimate aim of destroying it.

ICC Jurisprudence

In March 2005, the UN Security Council referred the situation in Darfur to the ICC Prosecutor because it continued to constitute a threat to international peace and security.¹⁷² The referral was to a large extent based on the findings of the Darfur Commission. Subsequently, the Prosecutor opened an investigation against the sitting President of Sudan and Commander-in-Chief of the Sudanese Armed Forces, Omar Hassan Ahmad al-Bashir, and issued two arrest warrants in 2009

¹⁶⁷ Nersessian, *Genocide and Political Groups*, 32.

¹⁶⁸ Darfur Report, para. 499 (emphasis in original).

¹⁶⁹ *Ibid.*, para. 510.

¹⁷⁰ *Ibid.*, para. 511.

¹⁷¹ John Hagan and Wenona Rymond-Richmond, *Darfur and the Crime of Genocide* (Cambridge: Cambridge University Press, 2009), xxii (emphasis added).

¹⁷² UN Doc. S/RES/1593 (2005) of 31 March 2005.

and 2010, respectively, listing ten counts of crimes against humanity, war crimes and genocide.¹⁷³ With regard to the crime of genocide, the judges of the Pre-Trial Chamber found that the three targeted tribes of the Fur, Masalit and Zaghawa, appeared all to have “Sudanese nationality, similar racial features, and a shared Muslim religion”.¹⁷⁴ They could therefore not be classified as different national, racial or religious groups. The judges discussed whether the three tribes were distinct ethnicities, which was answered affirmatively “as there are reasonable grounds to believe that each of the groups... has its own language, its own tribal customs and its own traditional links to its lands”.¹⁷⁵ With reference to the ICJ judgment on the *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* of 26 February 2007, the majority judges refrained from further exploring the issue of “whether a wholly objective (based on anthropological considerations), a wholly subjective (based only upon the perception of the perpetrators), or a combined objective/subjective approach”¹⁷⁶ should be adopted, because they considered it unnecessary to further explore this issue for the purpose of the decision.¹⁷⁷

Despite the lack of clarification by the majority, the dissenting opinion by Judge Ušacka promises further debate about the concept and contours of protected groups.¹⁷⁸ Referring to the jurisprudence by the *ad hoc* tribunals, she noted that subjective criteria, like the stigmatization of the group by the perpetrators, as well as objective criteria, like the particulars of a given social or historical context, had to be considered in the definition of the protected groups of genocide.¹⁷⁹ Judge Ušacka dissented in the classification of the targeted groups as three distinct ethnicities. Instead, she suggested to define the protected group as a single ethnic group of the “African tribes”, since all three groups were a “perceived unitary entity, which is in turn comprised of smaller groups, including the Fur, Masalit and Zaghawa”.¹⁸⁰ It is interesting that Judge Ušacka defines the victim groups as tribes, while the Darfur Commission determined that tribes were not a protected group of the crime of genocide, unless they also constituted a distinct racial, national, ethnical or religious group.¹⁸¹ However, Judge Ušacka’s classification coheres with the International Law Commission (ILC) and its Draft Code of Crimes of 1996, according to which genocide covered acts committed against members of a tribal group.¹⁸² Of significance to the discussion on imagined identities is the fact that the majority in the *Omar Al-Bashir* decision recognized the different approaches of defining the protected groups of genocide, but did not want to position itself, whereas Judge Ušacka clearly relied on perception and thereby a wholly subjective approach.

Recent jurisdiction by the ICC reveals a continued trend of relying on perception rather than objective, factual realities. In the *Bosco Ntaganda* case, which dealt with war crimes rather than genocide, the ICC repeatedly mentioned the notion of perception. For example, it referred to victims “perceived to be non-Itema”,¹⁸³ “those perceived to be *non-originaires*”¹⁸⁴ or an attack

¹⁷³ Following an appeal by the Prosecutor against the decision by the Pre-Trial Chamber I not to include genocide into the first warrant of arrest, genocide was included into the counts and a second arrest warrant issued. Accessed May 26, 2016, <http://www.icc-cpi.int/iccdocs/PIDS/publications/AlBashirEng.pdf>.

¹⁷⁴ *The Prosecutor v. Al-Bashir*, Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Al-Bashir, March 4, 2009, ICC-02/05-01/09, para. 136.

¹⁷⁵ *Ibid.*, para. 137.

¹⁷⁶ *Ibid.*, p. 48, footnote 152.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*, Separate and Partly Dissenting Opinion of Judge Anita Ušacka, paras. 24-26. Fanny Martin, “The Notion of ‘Protected Group’ in the Genocide Convention and its Application,” in *The UN Genocide Convention: A Commentary*, ed. Paola Gaeta (Oxford: Oxford University Press, 2009), 127.

¹⁷⁹ *The Prosecutor v. Al-Bashir*, Separate and Partly Dissenting Opinion of Judge Anita Ušacka, para. 23.

¹⁸⁰ *Ibid.*, paras. 25-26.

¹⁸¹ Darfur Report, para. 496.

¹⁸² ILC, *Report on the work of its forty-eighth session* (UN Doc. A/51/10, 45), commentary 9.

¹⁸³ *The Prosecutor v. Bosco Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, June 9, 2014, ICC-01/04-02/06, para. 19.

¹⁸⁴ *Ibid.*

on “those perceived to belong to ethnic groups”.¹⁸⁵ Whether or not the victims objectively were members of these groups appears irrelevant, as long as the perpetrator treats them as such.

Summary of Judicial Approaches to Race

Apart from a purely objective approach to defining the protected groups of genocide, there are three possible subjective approaches: First, a perpetrator-based approach, where the perpetrator perceives the victim as belonging to a different group.¹⁸⁶ Secondly, a victim-based approach, in which the victim perceives him- or herself as belonging to a group distinct from the perpetrator’s.¹⁸⁷ Lastly, an approach, which considers the perpetrator’s as well as the victim’s perception.¹⁸⁸ The Darfur Commission apparently added yet another approach, namely the objectified subjective approach, whereby a subjective approach over time is hardened and acquires objectivity. The majority of judgments by the *ad hoc* tribunals favored a subjective approach based on the perception of the perpetrator, with due consideration of objective elements.¹⁸⁹ These objective elements, however, remain undefined.

Recent jurisprudence suggests a trend of describing a racial group as a social construct, thus gradually abolishing contentious objective attributes.¹⁹⁰ This development should be welcomed because it coheres with the genocidal dynamics. A perpetrator singles out for destruction a group that he considers to be different and inferior from his own. Whether the victim group is objectively different from the perpetrator is insignificant, as long as he perceives it to be. In addition, a subjective approach to race reflects the contemporary notion of the concept as a social construct or an imagined identity.

Nevertheless, a subjective approach that predominantly draws on the perception of the perpetrator, will not satisfactorily define the victim group. With an exclusive reliance on the perpetrator’s perception, virtually any kind of group, imaginary or real, could become a target of genocide. International criminal law cannot permit the crime to be determined by the perpetrator alone, because the law was intended to exclusively protect the national, religious, ethnic and racial groups.¹⁹¹ The perception of differentness, upon which the subjective approach is built, has therefore to be restricted to the four groups in order to accord with the principle of legality.

The combination of an objective and a subjective perpetrator-based approach will not lead to a coherent result either. In *Brđanin*, the ICTY took precisely such a mixed approach, which is unsatisfactory because it does not disclose what objective elements are required for the legal definition of the protected group.¹⁹² The legal certainty and foreseeability are not strengthened by such an undefined approach. The weakness of this mixed approach can be demonstrated by a hypothetical example: If the definition of the protected groups is left to the fantasy of the perpetrator, then he could – theoretically – perceive women as a different group and single them out for destruction. These women are also an objective group, into which they were born and to which they have an irreversible chromosomal membership. If a racial group is defined as a group that is perceived as being different from another group, should women be classified as a different

¹⁸⁵ *Ibid.*, para. 20.

¹⁸⁶ Lüders, *Die Strafbarkeit von Völkermord*, 55.

¹⁸⁷ Carola Lingaas, “The Elephant in the Room: The Uneasy Task of Defining Race in International Criminal Law,” *International Criminal Law Review* 15 (2015), 509-511.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*, with a comprehensive overview and graphic illustration of all relevant cases. See also Schuster, “The Crime of Genocide”, 218-219 and Berster, “Article II”, 103.

¹⁹⁰ William Schabas, *The UN International Criminal Tribunals: the Former Yugoslavia, Rwanda and Sierra Leone* (Cambridge: Cambridge University Press, 2006), 169.

¹⁹¹ Szpak, “National, Ethnic, Racial, and Religious Groups”, 164. David Nersessian, “The Razor’s Edge: Defining and Protecting Human Groups under the Genocide Convention,” *Cornell International Law Journal* 36 (2003), 312-313. Schabas, “The Crime of Genocide in the Jurisprudence”, 456. Schabas, “Groups Protected”, 384.

¹⁹² Schuster, “The Crime of Genocide”, 218.

race, because a male perpetrator could perceive them as such? This is obviously not the object and purpose of the genocide provisions.

Since apparently neither the objective nor the subjective approach nor a combination of both will result in a satisfactory definition a racial group, perhaps the theory of imagined identities will. The following conclusion will reveal that the theory of imagined identities can clear up the ambiguities and legal uncertainties.

Conclusion

International criminal jurisprudence increasingly acknowledges that collective identities are social constructs, so-called imagined identities that entirely depend on variable perceptions and not on facts.¹⁹³ The four protected groups do not necessarily have to be objectively verifiable, but moreover depend on the perception of their differentness. This recognition should lead the legal community to accommodate for collective identities in general and race in particular. As suggested above, a purely subjective approach that builds on the perpetrator's perception and fantasy violates the principle of legality. According to that principle, criminal provisions have to be as specific and clear as possible in order to allow the perpetrator to foresee the consequences of his behavior and enable a court to pass judgments in a provable and consistent way. An expansion of the protected groups to include any subjectively perceived victim group would not pass the scrutiny of a court. However, the theory of imagined identities accommodates for the principles of foreseeability and specificity. Over the course of time, any initially subjective and imagined differences between the groups become solidified, effective and real, thereby providing the courts with the objectivity required in order to determine the victim groups of genocide.

By relying foremost on the perpetrator's perception of the victim group, the subjective approach also accommodates for contemporary views on race. Race is a social construct. There is no objective foundation for race, and an objective approach to determining the racial victim group in the crime of genocide is particularly problematic. As such, the perpetrator's perception of the victims' membership to a racial group becomes determinative for their protection from genocide. If the perpetrator perceives the victims as members of a distinct racial group, they are granted protection by the Genocide Convention.

The Darfur Commission's objectified subjective approach to defining the protected groups of genocide was innovative and ground-breaking. It relied on Benedict Anderson's theory of imagined communities, which was extrapolated into a theory of imagined identities, based on the victim's perceived or actual membership to one of the four protected group of genocide. In the theory of imagined identity, the victims' identification and group membership are determined by their effectiveness and operationability; as such they are treated as objective and real. For future criminal cases, in which the determination of a racial group is an issue, the respective court should not hesitate to apply the theory of imagined identities. It is a novel, contemporary and legally sound approach that allows courts to better tackle a difficult and sensitive topic: the issue of group membership and in particular race. The theory of imagined identity enables the identification of the racial group in that the group gains social and legal relevance once it is treated as real. In other words, if the perpetrator perceives his victims as members of a distinct racial group and treats them as such, namely by inferiorating and stigmatizing, the group acquires objectivity. Despite their imagined identity, the members of the racial victim group acquire an objectified existence by being treated as real.

Ultimately, the existence of a victim group is an issue of evidence: the prosecution would have to prove the perpetrator's perception rather than the objective existence of the group. Race is thereby removed from the objective elements of the crime, the *actus reus*. This solution is coherent with the principle of legality, whereby courts may not create a new criminal offence, but can adapt provisions to changing social conditions, such as broadening the *actus reus*.¹⁹⁴ This is in essence the conclusion of the ICTR Muhimana trial judgment, according to which

¹⁹³ Verdirame, "The Genocide Definition", 592.

¹⁹⁴ Antonio Cassese, *Cassese's International Criminal Law* (Oxford: Oxford University Press, 2013), 32.

[t]he Prosecution also has the burden of proving either that the victim belongs to the targeted ethnic, racial, national, or religious group or that the perpetrator of the crime believed that the victim belonged to the group.¹⁹⁵

Muhimana thus gives the prosecution an alternative between proving the objective existence of a racial group, which would not be feasible, or the proof of the perpetrator's belief that the victim was member of such a group. In effect, it would result in releasing the racial group from the *actus reus* and fully including it into the mental elements, the *mens rea*.

The prosecution is thereby tasked to prove the perpetrator's intent to commit a genocidal act as well as the special intent to destroy a group. The protected group of genocide itself is also added to the prosecutorial burden. This might seem an unachievable task. However, the perpetrator's perception of the victim group will inevitably manifest itself in his behavior. As has been demonstrated above, the othering of the victim group becomes observable in any pre-genocidal process. The perpetrator's behavior becomes the key to determining the othering and his understanding of the victim group. The behavior becomes apparent in posters, books, pamphlets, but also radio broadcasts, personal statements, correspondence and the like. If this behavior is characterized by othering, namely the dehumanization of the victims, there is a clear and unequivocal indication of his perception of the group and the ensuing genocidal intent. The perpetrator's behavior is observable and will provide the foundation for a legal classification of the victim group. The solution lies in the mind of the perpetrator and in the way that he perceives the victim group. The legal definition of the national, racial, ethnical and religious group in the crime of genocide has to be seen through the eyes of the perpetrator.

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Book Review: Colonial Genocide in Indigenous North America

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Colonial Genocide in Indigenous North America

Andrew Woolford, Jeff Benvenuto, and Alexander Laban Hinton, editors

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During September 2012 scholars, activists, legal, and other professionals gathered for a workshop at the University of Manitoba to unpack and retell the legacies of colonialism in North America.¹ This exercise was conducted under the banner of genocide as a legal, sociological, political, and normative concept. This excellent collection of essays is a product of this 2012 exchange offering a review and syntheses of the conference. This tightly packed anthology not only reviews the contemporary issues of and positions on colonial genocide in North America, but stands as a wedge of discourse around the histories and interpretations of group destruction as part of the civilizing project. This review discusses the audience and aims of the publication, summarizes and connects the chapters, and draws some critical outlines of colonial and wider genocide studies as reflected in the contributors' voices.

Whilst the intended audience extends to scholarly and community-based actors engaged in the work of examining and retelling colonial genocide in North America, the editors establish a case for broader dissemination. Andrew Woolford, Jeff Benvenuto, and Alex Hinton situate their collection in the ongoing national debates about the legacy of civilization not only in Canada and the United States, but also in Australia (4-11). One is drawn to the politics of apologies, thorny discussions on reparations, and the regeneration of activism, challenging perceptions of victimhood and agency. The chief intentions here are the decolonization of genocide studies and frame issues of civilization, colonial legacy, and Indigenous politics using genocide (13). Such sweeping engagement posits this collection as modelled not only for academic shelves, but also, and more normatively, for wider public audiences in North America participating in debates about contemporary Global North privilege, historical assumptions about colonialism, and supposed peaceful assimilation in North America. This normative message is underscored by Theodore Fontaine's foreword. Fontaine, a scholar-survivor of Canada's Indian Residential Schools (IRS), implores a "call to every reader to examine our own awareness, depth of caring, and the integrity with which we apply our own thought processes and our voices to the lives and relationships we build, influence, protect, and empower" (ix). Colonial genocide should then be individually assessed with outcomes informing the "context of the future we must build together." This plea for recognition and reflection falls too often on the unhearing and unwilling to consider the colonial dimensions and legacies of genocide in a domestic context.

The book's organization itself is steered by the contributors' abilities to address the conceptual and theoretical framings of the subject matter and the diversity of the original offering at the 2012 workshop. "Intersections and Trajectories" (Chapters 1-3) identifies levels of colonialism and the latter as a shifting phenomenon; "Erasure and Legibility" (Chapters 4-7) historicize violence and destruction of groups and identities as features of genocide; "Transformations" (Chapters 8-11) frames genocide in a conceptual and etymological process of change; and, "(Re)Imaginations" (Chapters 12-14, including Hinton's conclusion) question and test the label of genocide.

Intersections and trajectories leads out with Woolford's "colonial mesh": a levelled analysis of the institutions and actors party to colonial genocide. The mesh levels include: macro, "dominant

¹ For the programme of the two day workshop see here, http://www.ncas.rutgers.edu/sites/fasn/files/ColonialGenocide_Program.pdf,

realms of social activity"; meso, regional institutional levels; institutional, noting types of schools; and, micro, regionally adapted interactions of actors and agents (32). Robbie Ethridge develops previously published work on the Mississippian "shatter zone" (49).² Capitalism is framed as radically reshaping the early colonial Mississippian world through slaving and warfare from the mid-sixteenth to the early eighteenth century. Christopher Powell and Julia Peristerakis combine their workshop presentations to present a relational framing of colonial structures and networks, developing Lemkin's specifically defined colonial process of destruction. The production of difference emerges as violent obliteration, referencing Powell's own work.³ The destruction "disrupt(s) the social institutions" that "produce and reproduce" social identity for groups (73, 86). They cover economic and political aspects, in addition to being book's rare contribution to gender analysis in genocide (81-83).

Erasure and Legibility introduce Benjamin Madley and Gray Whaley's work on the California and Oregon Indian experiences of genocidal assaults. Madley presents, in the traditional narratives of atrocity and ideology, violence as clustered reactionary events with an underlying process of destructive colonization. Dynamics of resistance and asymmetrical warfare are also acknowledged. Whaley develops these above experiences in Oregon drawing attention to "folk imperialism" (131). In contrast to Madley, Whaley expresses unwillingness to broadly cast colonial history as genocide, pointing to the later contribution by Joseph Gone. Whaley further offers a more nuanced view and discursive analysis of the "shift from assimilation to extermination when the colonial population came to believe that extermination was possible, necessary, and justified" (133). Tricia Logan brings valuable insight as a former insider from the Canadian Museum (CMHR). Logan unfolds the contradictions of memory and genocide in the colonial state. Furthermore, she reanimates perceptions of Indigenous agency in history and memory making and problem of impermanence at the CMHR (157).⁴ Dirk Moses' "conceptual blockages" are reflected in Canadian "blind spots" in policy and contemporary memorialization. Jeremy Patzer offers historical discussion of the processes theorized by Woolford, with support from Zygmunt Bauman's sociological approach to institutions and genocide. This critical analysis of reconciliation situates genocide in the Canadian IRS system.

Transformations begins with Margaret Jacobs on child welfare in the context of Patrick Wolfe's "logic of elimination" (191-193). Social construction of the "habits" built around and supporting processes of this logic, again overlapping with the theoretical generalizations made by Woolford. Jeff Benvenuto recasts precolonial history dynamic, complicating supposed victims of colonial genocide as agents and dynamic actors. The problematic nature of Lemkin's national group figuration is discussed, facilitating discussion of the ethnogenesis of the Choctaw, with the rhetorical tool of "cultural rivers" (209) and Schumpeter's "creative destruction," additionally building on Ethridge's shatter zone. Kiera Ladner assesses the political genocide in Canada's civilizing mission by discussing less so the genocide of political groups and more the political processes of group destruction through "regime replacements" and "cultural cancers" (231), focusing on the 1876 Indian Act (236). Colin Samson reveals Innu land claims as instruments of Indian group reconstitution, identification, and legitimacy through Canadian democratic processes. Land dispossession is framed as a "form of genocide" (247), with parallels to contemporary transformations or ethnogenesis as discussed by Benvenuto. Discussion here of amnesia is similar to Jacob's habits where Indian agency becomes subsumed into the civilizing project.

(Re)Imaginings introduces some of the strongest and starkest claims of the book. Joseph Gone highlights definitional issues in genocide studies by outlining "prototypical" and "criterial" approaches (276). Preference is clearly stated for massacres as destruction, critically using the 1948

² Robbie Ethridge and Sheri M. Shuck-Hall, eds. *Mapping the Mississippian Shatter Zone: The Colonial Indian Slave Trade and Regional Instability in the American South*, (Lincoln, NE:University of Nebraska Press, 2009).

³ Christopher Powell, *Barbaric Civilization: A Critical Sociology of Genocide* (Montreal, Quebec, Canada: McGill-Queen's University Press, 2011).

⁴ A fuller critique of the museum's ethos and memorialization process can be found here, A. Dirk Moses, "The Canadian Museum for Human Rights: the 'uniqueness of the Holocaust' and the question of genocide", *Journal of Genocide Studies* 14, no. 2 (2012): 215-238.

Convention, and disregarding Lemkinian framing of processes of group destruction, also leaning on “everyday discourse” and the slightly ambiguous “earlier generations of genocide scholars” (278). Central for *Gone* is the problematic impact of broad definitional approaches to genocide and associated discourses on Indigenous mental health, reconciliation, critically evaluating the notion of historical trauma. Tasha Hubbard, expanding on Powell and Peristerakis’ relational group identification and construction, turns to the role of biodiversity and buffalo herds in North American genocide. Hubbard claims “the slaughter of buffalo constitutes an act of genocide” (293), and weaves traditional and legalistic interpretations of genocidal processes. The chapter identifies a relational network of agents of genocide: army, “hide hunters” and complicit Indigenous seeking perceived survival (302). David MacDonald also pairs Indigenous perspective using the “*Shognoosh*” label for colonizers and the IRS as an instrumentalization of prohibited Convention acts (removal of children), aiming to present a “binational framework” (307, 319). Hinton concludes, highlighting the workshop’s points of debate between Indigenous scholars Tamara Starblanket and *Gone*: respectively between denial of colonial genocide and the incredulous diminishing genocide to “murder without death” (325-326). Critical genocide studies and the pursuit of “genocide studies imaginary” (329) is foregrounded as necessities of continuing this debate in uncovering and analysing the phenomenon of “hidden genocides” (331).

Woolford, Benvenuto, and Hinton have conscientiously collected essays from workshop contributors offering a pioneering combination of critical witness and scholarly analysis. Such a balance is often mis-stepped in attempts to incorporate any voices within a given set of histories of genocide, frequently framing such solely through the lens of the victim/survivor. This is the dividend of such a broad focus on North American colonial genocide. Multiple genocidal processes are considered over a vast temporal framing, incorporating the variability of actors, networks, and institutions. Many of the scholars are themselves speaking from their own Indigenous perspective, narrative or identity, however; such contributions are not limited by an experiential approach, as many maximalist approaches to the Holocaust do.⁵ Conversely, Powell and Peristerakis in an almost throwaway comment underscore the imperative of Indigenous peoples themselves to identify genocide in their social group past (71).

Referencing the works of Ward Churchill and David Stannard as key starting points of colonial genocide studies (both by the editors in the Introduction and by *Gone*: 9-11, 281-282), debates around colonial genocide are demarcated. Bundled up here though are the deep lying definitional issues within the study of genocide. Many, including Powell, consider such debates to be integral, and part of the emergent nature of genocide, as an “essentially contested concept.”⁶ Divisions do raise the question of how thoroughly, or even whether or not colonial mass violence is describable or classifiable as genocide. *Gone*, Whaley and Ethridge offer some provocative and varied positions on this approach. This collection acknowledges these debates and offers a picture of genocide studies as a field with intersecting layers, comprising tensions over definitions, recognitions, and denial. Such can be broadly characterized as between sociological and legalistic perspectives. This simplistic division is perhaps (but not entirely) attributable to Lemkin’s own apparent foci across his earlier and later writings.⁷ This specific debate represents the varied trends of using genocide as a rhetorical, political, emotive, and scholarly tool for the gamut of activities from building historical knowledge and social theory, to popular mobilization and even the perpetration of further atrocities or denial.

Wedded to these debates is the utility and structure of the UN Convention’s framing of genocide. Indeed as MacDonald and other contributors describe, the Convention itself represents an essential instrument of legal redress. However, can approaches like *Gone*’s emphasizing one part of the Convention (direct mass killing) over another (removing the children of a group), or

⁵ For further discussion here see Martin Shaw, *What is Genocide?* (Cambridge, MA: Polity Press, 2007), 37-47; and, again, A. Dirk Moses, “Genocide and the Terror of History,” *Parallax* 17, no. 4 (2011): 90-108.

⁶ Powel, 59.

⁷ Donna Lee-Frieze, “New Approaches to Raphael Lemkin,” *Journal of Genocide Research* 17, no. 3 (2013): 247-252; and Michael A. McDonnell & A Dirk Moses, “Raphael Lemkin as historian of genocides in the Americas,” *Journal of Genocide Research* 7, no. 4 (2005): 501-529.

where specific intent, the supposed secret ingredient of any genocide, leave holistic analyses of colonial genocide wanting?⁸ Can such legalistic considerations of what makes a genocidal process offer a thorough picture? One might even consider Logan's contribution here a rebuttal of these types of approaches to genocide that only reproduce blind spots in the post-colonial state as Mahmood Mamdani so clearly outlines in the "bifurcated state."⁹ Is the legalistic approach guilty, in a sense, of perpetuating erasure?

Do the more sociological accounts of what is genocide, more recently offered by Martin Shaw and Powell, offer this more holistic approach? Powell and Hubbard's use here of relational conceptions of targeted groups and violent destruction offer a fittingly emergent approach to this phenomenon. This is key as colonial genocide studies is still growing as a sub-field of genocide studies, especially in North America, not to mention the enduring apathy of British memory of colonial genocide.¹⁰ This collection therefore serves well as a model of further investigation of colonial genocide. As attested to by Fontaine, Powell, and Peristerakis, and the editors some even consider Canada to be a currently colonial state as it continues to engage in or permit forms of obliteration of its indigenous population (viii-ix, 9, 13, 83-85). This kind of analysis is necessary if the questions of memory and reconciliation are to be sufficiently addressed in the face identifying colonial genocide in North America. Woolford, Benvenuto, and Hinton's collection serves to challenge the so-called Pax Americana of peaceful assimilation in a not quite post-colonial North America.

⁸ Adam Jones, *Comprehensive Introduction to Genocide*, 2nd ed. (New York, NY: Routledge, 2010), 37-39; see also for more extensive examination, Larry May, *Genocide: A Normative Account* (New York, NY: Cambridge University Press, 2010), 115-136.

⁹ Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ: Princeton University Press, 1996), 19-23.

¹⁰ Tom Lawson, *The Last Man: A British Genocide in Tasmania* (London: I.B. Tauris, 2014), 2-28.

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Social Relations in Ottoman Diyarbekir, 1870-1915
Joost Jongerden and Jelle Verheij, editors
Leiden, Brill Academic Publishing, 2012
pp. 369; Cloth: \$180

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An important book to read:

The most marked characteristic of Armenian genocide studies thus far is its focus almost entirely on understanding the policies of state power. Everything has concentrated on subjects like the changing government's policies, the political positions, and the evolution of political parties and ideological streams (nationalism, Islamism, Turkism, etc.) that identified the flow of events. Even when oppositional movements to central power are considered in the analyses, they have been taken up essentially as a component of the developments within the center.

There are many somewhat mundane reasons that explain why most of the research has focused on the state and its actors. The first has to do with the general characteristic of the records that we possess. The type of records you have access to will inevitably affect the way you discuss events. With the Armenian genocide—putting aside the limited number of personal memoirs touching upon local events—most of the material available on the subject narrates developments from the political center. For example, the largest component of the Ottoman archival records deals with the activities of the government. Reports that derive from regional offices are practically non-existent and the ones that do exist pertain to policies from the central office. We could say the same thing about foreign diplomatic reports, another important source of historical records.

The second reason is the unfortunate lack of a tradition with local archiving in Turkey. There is not a single city where the governor's office or the municipality maintains a formal and systematic archive. Local newspapers could have provided a good source of material but we know that they too were never systematically collected in one place. We could list other reasons why local historiography never developed, but in the end it is quite obvious that the lack of studies on local events is one of the fundamental gaps in our field.

However, during the past few years some changes in this area have been observed and local studies have picked up.¹ What is notable is how Diyarbekir holds a special place in these studies. *Social Relations in Ottoman Diyarbekir, 1870–1915*, edited by Joost Jongerden and Jelle Verheij, is one of these studies.² The richness of the subjects this book touches upon and some of the new approaches that it proposes will ease our ability to understand the Armenian genocide. For this reason it deserves a detailed introduction.

Preface

The writers have described the book's main ideas in the preface in a clear and concise way. While explaining their own personal motivation in choosing Diyarbekir, they emphasize the lack of local studies in general and point out two important errors made in connection with studies focused on the Armenian genocide. First is the teleological character around these studies. According to the editors, researchers who study a region (Diyarbekir) are "searching for clues and evidence of what

¹ With the emergence of oral histories, in particular, as an important field of study, studies based upon "memory" have been conducted and are being conducted. For just one example of just such a study, Adnan Çelik, Namık Kemal Dinç, *1915 Diyarbekir: Yüz Yıllık Ah: Toplumsal Hafızanın İzinde*, (Istanbul: İsmail Beşikçi Vakfı Publication, 2015).

² Joost Jongerden and Jelle Verheij, *Social Relations in Ottoman Diyarbekir, 1870-1915* (Leiden, Boston: Brill, 2012).

was later to occur, teleologically tending to ignore the elements which are not 'useful' for or even militate against their perspective" (3).

Secondly, is the nationalistic discourse which is prominent among researchers, "the tendency to view the history of the area through 'ethnic' and 'nationalistic' glasses, be it in Armenian, Kurdish, Turkish or other, and the usurpation and appropriation of other issues and narratives by and within the nationalistic discourse" (3). The editors describe their contribution to the field around the concepts of "poly-centricity" and "poly-activity." With the first, they refer to a "shift of attention from the so-called center to the so-called periphery and with the second, a move from an exclusive focus on the acts and deeds of the elite alone, to one that includes also those of multiple subaltern categories" (3).

What is referred to as "poly-centricity" is not simply an attempt to analyze the periphery; it asserts that the relationship between the central power and regional offices is not just one directional and hierarchical. Besides not being a passive recipient to the central power, regional offices act as a factor that influences and determines the former. The writers conceptualize the center-periphery relationship as one that is mutual and a dynamic structural element.

The same approach is equally applicable to local actors. Local actors are not simply engaged in implementing orders or opposing them; they function as a structural element that is present throughout the process. The editors present the practice of confiscating Armenian properties as an example of their thesis. They describe this practice as something that did not come about as a reform proposal from the top. Rather, it existed as common practice prior to the reform but took on a new shape with the implementation of reform.

Chapters in the Book

The first chapter is by Suavi Aydin and Jelle Verheij. It gives a general historical-social overview on the geography and the administrative structure of the region; it also illustrates the serious changes that occurred in Diyarbakir, which was known as the state of Kurdistan at one time, to its administrative boundaries and ethnic-religious make-up which experienced an evolution during this period. What is clear from this chapter is that up until the *Tanzimat* era the region was effectively 'independent' and that the central authorities carried little if any influence.

At the start of the 19th century, those who served the government in the region were in actuality the leading families of the area. Titles would pass from father to son like legacy inheritances. The government in Istanbul started to gain control over the region when an army unit under the command of Reşit Mehmet Pasha was sent in 1834. The military operations that swept the region operated in parallel to a great degree, with the occurrence of massacres. For example, the Yezidi population of Sinjar was decimated by at least ¾ during this time.

It is an interesting fact to note that in the 1870s, the Christian population in the city center was fifty-five percent. This gives a clear indication of the extent of the ethnic cleansing that was to occur just years later. Another interesting fact that we learn is that the official regional newspaper that would begin publication in 1869 was also printed in Armenian script. Additionally, the consular offices that were established there by the French and British after 1865 were called the "Kürdistan Consulates" (45).

The *Tanzimat* reforms and the centralization that was a product of this movement lead to some significant social changes in the region and with it the rise of new problems. The dispersion of old traditional structures and the inability to firmly establish a new and strong administrative replacement coalesced with tribal and religious in-fighting, leading to an environment that was marked by chaos. Also during this period, foreign consular offices, missionaries, and foreign officers serving in the Ottoman army started to appear in the region; an outcome of centralization and reforms. The local population that became familiar with the new actors concurrently with the rising chaos began to view them as the cause of it.

The *Tanzimat* Reforms led to expanded and closer relations with foreign states and a changing social, administrative, and commercial role for Christians. This led to their attaining greater power in many areas of activity, one of the side effects of the increased activities of missionaries. Muslims connected the changing status of local Christians to the presence of these new actors. When this situation combines with a cultural foundation that already has an entrenched religious prejudice

against the equality of Christians, it strengthened ethnic-religious segregation. Christian-Muslim tension, conflict, and massacres increased during the period of the great wars. The writers, who describe all of these factors, state that the massacres which occurred during the end of the 19th century and the start of the 20th century can be understood through this socio-cultural back story. The *Tanzimat* and modernization gave way to ends that were the polar opposite of what had been conceptualized.

After this general overview, readers are presented with the specific aspects of the region's history. The second chapter by Joost Jongerden has a long title: "Elite Encounters of a Violent Kind: Milli İbrahim Paşa, Ziya Gökalp and Political Struggle in Diyarbekir at the Turn of the 20th Century." The chapter deals with the fight amongst the regional elites that is symbolized by the names Milli İbrahim Pasha and Ziya Gökalp. Jongerden calls these groups "Hamidian" Milli İbrahim Paşa and "Proto-nationalist" Ziya Gökalp and claims that between 1890 and 1910 both parties determined to a great degree the political development that occurred in the region. These groups are even influential with the central authorities. For example, it is possible to see the area's (Diyarbekir) influence in the process of changing the central policies from Ottomanism into Turkish nationalism; however this is not a unilateral process. One needs to speak of a dynamic process whereby each side gives shape to the other.

Jongerden presents two very important ideas. The first has to do with the Hamidian regiments. According to a prevailing view of studies on the subject, the Hamidian regiments played an important role in the Armenian massacres that occurred in Diyarbekir in 1895. Meanwhile, Jongerden believes the Hamidian regiments had not been involved in the Diyarbekir massacres and that, on the contrary, Milli İbrahim Pasha, the commander of the Hamidian regiments in the region, had followed a policy of protecting the Christians. The chapter presents information that during the 1895 massacres many Armenians in the towns and villages of the area saved their lives by moving to Viranşehir, where İbrahim Pasha lived.

The second important claim relates to Ziya Gökalp. Jongerden summarizes the opposing views around Ziya Gökalp's influence within the Union and Progress Party and his role in the Armenian genocide. As is well known, one of the views makes the claim that Ziya Gökalp is the theoretician of the Union and Progress party and its chief ideologue and that he played a determinative role in the decisions that were made towards the Armenians. The other view is that he did not have much influence over Unionist policies. According to this view, his ideas, which can be summarized as an amalgamation of *Turkishness-Islamicism-Westernism*, consisted of a pragmatic response to the Party's internal confusion rather than being the product of an original ideology. In other words, Gökalp was a follower rather than a leader.

After briefly summarizing these views Jongerden presents his own, which are that Ziya Gökalp played a large role in the development of hostilities against and persecutions of Armenians, especially in the Diyarbekir region. This is a new argument which has not been presented before and can be considered a new contribution to the field. Although Jongerden expends a great deal of effort to limit Gökalp's role in the formulation of anti-Armenian politics to Diyarbekir itself, the information he presents clearly has significance that reaches beyond regional boundaries. What we learn is that Ziya Gökalp was a small-scale 'aga' and that Armenians and Kurds had been living together in the villages that were under his control and possession. While we cannot surmise Ziya Gökalp's personal role in this, in the massacres of 1895 almost all of the Armenians in these villages were annihilated. Additionally Jongerden claims that the 'proto-nationalist' group in Diyarbekir, for which Ziya Gökalp was an important leader, held a strong anti-Armenian political stance. For example under the leadership of this group, anti-Armenianism played a role during the protests in November 1905, January 1906 and November 1907 against Sultan Abdul Hamid and especially Milli İbrahim Pasha (and his cruelties).

The important fact is that these protests against Sultan Abdul Hamid are presented in Turkish historical accounts and even in the writings of critical historians as a progressive-revolutionary people's movement against economic exploitations and despotism! The information that this so called "progressive" movement possessed an anti-Armenian character and that Milli İbrahim Pasha's pro-Armenian policies were the basis for the accusations of the protesters against him is truly remarkable. The group around Ziya Gökalp (nationalists) was asking for the removal

of Milli İbrahim Paşa because he had aided Armenian revolutionaries. Another important bit of information that we learn is that the regional Armenian organizations did not participate in the actions. These are indeed very refreshing contributions to our knowledge.

Joost Jongerden wants us to interpret the skirmish between the groups representing Milli İbrahim Pasha and Gökalp within the context of a transition from empire to nation-state. According to him, Gökalp represents the embodiment of nation-statehood while İbrahim Pasha is the representative of old imperial style policies. For İbrahim Pasha to possess an understanding of political authority that did not take ethnic or religious identity at its central core allowed for a semblance of protectiveness for Christians, while Ziya Gökalp's nation-state outlook excludes the Christians which thereby opens the door to extermination. For this reason, during the massacres of 1895 Milli İbrahim Pasha and his Hamidiye regiments played a 'protective' role for Armenians while the notables in the city around Piriñçizade and Gökalp group were ringleaders of the massacres.

The question remains, is it really enlightening to pit the nation-state project against the imperial concept to explain the Armenian massacres (and later genocide)? This could be the subject of a very good debate. Did the Unionists really have a project to establish a nation-state in mind when they were eradicating not only the Armenians but other Christians? Or should their efforts at ethnic-religious cleansing and homogenization of the population be understood as only within the framework of a project aimed at protecting and re-constructing the Empire? We will no doubt, be evaluating these topics for quite some time and Jongerden's arguments will have an important place in it.

The book's third chapter by Jelle Verheij is entirely focused on the Armenian massacre in Diyarbekir in 1895: "Diyarbekir and the Armenian Crisis of 1895." Verheij rightly states that there is a wealth of information about the subject in Ottoman and Western archives but that these materials have not until now been utilized in a comparative fashion. His article aims at doing this and so it is extremely valuable.

The chapter begins by drawing a general framework over the Armenian question starting from the end of the 19th century and then provides some general information around certain controversial subjects – for example population numbers, etc. The fact that the Diyarbekir's regional newspaper was published in Turkish, Arabic, and Armenian is an interesting detail. Another interesting observation that Verheij makes is that during the post *Tanzimat* period, modernization and increasing connections with the West brought about an improvement in the social status of Armenians living in the cities; however, the living conditions of rural Armenians deteriorated by contrast.

The chapter is not solely about the 1895 massacre of Diyarbekir as it tries to present a general evaluation of the massacres over the 1894-96 period. The role that the Sultan (the central authorities) played in the massacres is still not entirely known. Verheij is of the opinion that Abdul Hamid's role is not what the Western or Armenian sources would have us believe. In other words, he reserves some doubt that the massacres were planned and organized from the central government.

Nevertheless, this view does not render the massacres any more innocent. Quite the contrary, it reminds us that we need to approach the issue at hand from another angle, focusing on the question of mass participation during the massacres. If the massacres did not come about as a consequence of planning and following orders from above, it tells us that the massacres were the product of powerful local dynamics.

In fact, Verheij makes a multi-faceted debate around the example of Diyarbekir and explains that the massacres in the city were not limited to those that occurred between the end of October 1895 and the beginning of November but rather that there were a series of attempts at massacre that occurred throughout 1896. It was not limited to the local Muslims in Diyarbekir; Kurdish clans in the surrounding area wanted to come to the city and participate in massacres and looting. What is surprising and important to know is that it was the military garrison located in the city that actually ended up preventing many of these attempts at massacre. However, the facts on the ground are far too complex to fit into a duality between massacre hungry local powers and a central authority that is trying to oppose it. For example, the governor of Diyarbekir, obviously a representative of the government, was in charge of those amongst the local leaders who were organizing the massacres. Just this situation alone is enough to illustrate how illuminating local studies can be.

The other important idea presented in this chapter, although it is not formulated in quite as clear a manner as the other, is the direct connection drawn between the massacres of 1894-96 and the Reform debates and packet of October 1895 that ensued after the Treaty of Berlin in 1878. Undoubtedly, this connection is not the only reason underlying the massacres. However, it was the background that provided the basis from which the massacres sprang forth. This contradictory relationship that developed between the reform efforts and the frequent use of violence provides extremely important traces to help us understand both the massacre of Adana in 1909 and the genocide of 1915.

The problem cannot simply be circumscribed by the content of the reform bill that was to be approved by the government. It is much more revealing to examine how this was being perceived in the provincial areas. In setting out how the massacres came about, Verheij proposes to include the actions of the Armenian revolutionary organizations into the analysis and the ensuing fear amongst the Muslim population of the implementation of the reforms. The point is not whether the activities of Armenian revolutionaries in question were widespread, effective, or frequent, or whether the reforms would in fact ever be implemented. In reality, the activities were extremely limited in scope and it did not appear that the reforms would ever be carried out. Verheij draws attention to the gap between reality and its perception by Muslims. Both the activities of revolutionaries and the possibility of reform took on a special form of code in the cultural worldview of Muslims and created its own special form of perception. Perception took the place of reality and formed the basis for Muslim fears. For example, in the anti-Armenian atmosphere that developed prior to the massacres, the rumor that “Armenians are going to establish an independent state” was a very effective one in terms of mobilizing masses (121).

One of the most important aspects of the chapter is the comparative analysis between Ottoman and French-British records. With these comparisons we are able to learn how the same events (for example, the massacres starting after the sound of a gunshot during the Friday prayers) are described in different reports. It is especially interesting to read how the account of the event in Ottoman records changed during its commission. For example, in the first police reports, the news that “the sound of gunshot was heard outside” would later turn into “two Muslims were injured after armed groups [Armenians] attacked the mosque” in a later record (121). Another thing that the local rulers did was to draw statements from Armenians through torture that would support their own version. To sum up, Verheij’s chapter is not only the longest, but it sets the main tone with new insights to the massacres in and around Diyarbekir.

The fourth chapter by Janet Klein is about the Hamidiye regiments which Klein takes a close look at in the Diyarbekir region. She discusses the changes that occurred to the different Kurdish clans that were in the region and to their relations with each other both before and after the Hamidiye regiments. Klein’s main idea is that the subject should not be approached by examining Diyarbekir alone but rather it should be evaluated by looking at the whole of all six provinces where Armenians were most numerous. Klein, who also discusses the reasons for the establishment of the Hamidiye regiments, states that approaching the subject from the perspective of the Armenian context alone leaves some things out. She recites many reasons for the creation of the Hamidiye regiments and presents border security as one of the most significant ones. She states that the Hamidiye regiments were established to combat Russian-Armenian collaboration, in other words, a potential Russian threat. If one considers that the Russians were acting in concert with Abdul Hamid, against the Armenian revolutionary organizations in the 1890s, it would seem that this thesis needs to be reconsidered. It is an open question for me whether or not Sultan Abdul Hamid did indeed fear the Russians. There are some facts that speak against such a fear. For example, the signals that Russia had given to the Sultan that they would not interfere in case there was any aggression against Armenians, as occurred in the massacres of 1894-95, had played a very crucial role. There was also military-security cooperation between both powers on the border against Armenian revolutionary activities. Ottoman-Russian relations during the 1890s is another area that is in need of further study.

Another important observation of Klein is the social outcomes that occurred in the region as a result of the establishment of the Hamidiye regiments. According to Klein the

Hamidiye regiments constituted the foundation for large-scale social transformations in the Kurdistan society that were not initially detected by those who had formed them. Their effects can still be observed today.

The fifth chapter by Nilay Özok Gündoğan discusses peasant dispossessions and she begins by criticizing those approaches which describe the history of the region along ethnic-religious conflict lines. She does not limit this criticism to the region alone and also includes the revolution of 1908. According to Gündoğan, the revolution of 1908 cannot be explained solely along a CUP (Union and Progress Committee) axis or with a paradigm based upon preventing the fall of an empire that was disintegrating; this revolution was also a social rebellion by workers especially those opposed to heavy taxation.

Gündoğan also draws attention to the shortcomings of the studies that have focused on the social side of the revolution of 1908. According to her, these studies are too city-centered, unduly limited to places like the Balkans, Istanbul, and Izmir and have for the most part focused on the bourgeoisie in the cities, or the relations between the retired classes and the central authorities and the CUP. Gündoğan claims that the social role of the peasants during this period, have been ignored. Also, she believes the social problems of the regions where Kurds and Armenians are most populous have especially been left out.

Gündoğan discusses how the changes to the management of land in the region of Diyarbakir, affected the peasantry and disagrees with looking at the developments in the region entirely through the lens of ethnic-religious conflict. She states that the net of social-economic relations, something that operates beyond ethnic-religious differences, were important in determining the direction of developments. It is possible to view the problems of Kurdish and Armenian peasants through a common perspective within this framework.

Another idea put forth by Gündoğan is that the studies around this region have been centered on elites only. The leading Kurdish clans of the region, and/or its most powerful families or the various cultural-political organizations that were formed by the latter, or the various social-revolutionary activities of Armenians have been the primary focus of these studies. Starting with the written grievances that were dispatched by peasants to the central authorities, she attempts to develop a new historiography that isn't centered on elites, by placing a new social actor into the mix. The ideas that she is presenting are important but it is debatable whether a study that is circumscribed by the written grievances of peasants is enough to defend the general theoretical framework that has been drawn.

The chapters by Emrullah Akagündüz and David Gaunt, meanwhile, are focused on the Syriac Christians in the province of Diyarbakir and their relations with other groups. The information imparted by Akagündüz's heretofore little known "Mardin Collection" which uses some of the filings that were preserved in the Kırklar Church is very edifying. These filings contain the communications of the Syriac community with the central authorities, along with various court decisions. If you consider that these types of filings would most likely be found in the central government's archives, the fact that they are in the possession of a church places a special significance on those sources. Meanwhile in his chapter, Gaunt takes on the meaning of different terms like Syriac and Assyrian, discusses them, and describes how Assyrian relations, especially with Kurds, deteriorated over time and lead to massacres.

The last chapter in the book by Uğur Ümit Güngör covers what happened in Diyarbakir during the period between 1919 and 1925. Güngör's main idea could be summarized as "continuity." According to this idea, the politics of violence directed by the Union and Progress towards Armenians, and by Kemalists against Kurds, are directly related to the respective goals of creating a nation-state by both political circles. According to Güngör, both the Unionists and the Kemalists followed policies aimed at homogenization upon a Sunni-Turkish foundation and a desire to form a nation-state. There are, in truth, many valid points to be made in asserting a thesis of continuity from Unionists through Kemalism. However, is this a linear continuity as Güngör claims? The central questions that we need to answer are how accurate is the view that the political program of the Unionists aimed at the formation of a nation-state? Can we interpret and explain the Unionist and the Kemalist movements from the same "nation-state formation" paradigm? In my opinion, rather than a clear nation-state program, the Unionists were more interested in an Imperial plan

of expansion into new regions. For this reason G ng r's linear continuity thesis is somewhat problematic and requires more detailed analysis.

The other problematic idea in the chapter is the one asserted on the Kurdish migrations of 1916. G ng r believes these forced migrations were the product of pre-planned policies from the central authorities. As far as I know, these migrations were not planned in advance and had in fact come about as a collateral effect of war. The Unionists were searching for a solution to an unexpected situation that was in line with their Imperial mindset. For example, in the document that pertains to the migration of *Ahlat* Kurds which G ng r uses as evidence of policies by the central government, a local solution to a situation brought about by military authorities is discussed.³ The central government is simply requesting information about this relocation of which it has received news. This subject deserves a deeper more detailed discussion.

As a last point, I would like to direct special attention to one point that G ng r highlights. He considers the negotiations for Armenian Reform in 1913-14 and the signing of an agreement at their conclusion to be one of the main reasons that triggered the local massacres during the Genocide of 1915. The parallels that can be observed between the 1915 and the 1895 massacres are truly remarkable. The similarities between the letter written in 1895 to the central government by the notables of Diyarbekir because of the Reform issue, which is presented in full, unedited in Verheij's chapter (pp. 124-126) and the writings from Diyarbekir's local authorities to the government that G ng r publishes (pp. 273-5) are stunning. All the expressions made by the notables of Diyarbekir (both in 1895 and 1914) that they are ready to spill blood to prevent the Reform show us that there is a strong relationship between the massacres of 1895 and 1915 and the respective Armenian reforms that had preceded each of them. This connection is crucial to understanding the policies of violence that were directed towards Armenians.

In summary, we have a very important study here. One that I hope will provide an impetus for further similar studies.

³ BOA/DH.ŞFR.,no:57/275, coded telegram from the Ministry of the Interior to the province of Diyarbekir, dated 3 November 1915.

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Remembering Genocide

Nigel Eltringham and Pam Maclean, editors

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Recently in this journal I appealed for an opening up of genocide studies to embrace more disciplines and the approaches to understanding they might offer. My hope in "Liberating Genocide" (GSP Issue 9.2, pp. 103-119) was for a kind of inquiry that would shine a wide range of theoretical lights to help us illuminate actions, intentions, and contexts in ways we are already benefitting. I suggested that ethnographic history has demonstrated the utility and promise of such an approach. As I was trying to clarify these ideas I encountered a path-breaking collection of essays that engaged with one of the most pervasive and elusive problems of genocide studies; that is, the many questions raised by the term "memory." Commemoration and memorials take the questions into the future, whereas testimony and remembering take us back into terrible events and traumatic experience.

How do people who lived through it remember a genocide? What should we, who did not, remind ourselves to remember? Why should we remember? Who should remember? Where should we remember? *Remembering Genocide* addresses such key questions through a series of arresting case studies. Should we in Melbourne, for instance, remember the genocide so deeply felt by First Nations in Canada? It would not have occurred to me before I was a guest in Manitoba and listened to survivors of the Canadian Indian Schools. There I began to learn from Ted Fontaine, Tricia Logan, and others and was ashamed of my ignorance. I did not even remember that there had been a Canadian apology the same year as Prime Minister Rudd made the apology to the stolen generations in Australia. I was surprised that Stephen Harper had managed to say sorry for "kill the Indian in the child." Now, with Logan's chapter in this book, people far from Winnipeg can join her in remembering.

How do different ways of remembering work? As the editors remind us, memory is not a passive storage system, nor an image bank of the past, but an active, dynamic, shaping force. Raphael Samuel, whom the editors quote at the outset, says it is "historically conditioned to the emergencies of the moment... Like history, memory is inherently revisionist and never more chameleon than when it appears to remain the same" (1). We do tend to forget this, even as we recall its unreliability. In their sophisticated and sometimes provocative introduction, the editors raise yet more questions, all worth pondering. What is the relationship of memory to "truth"? Which kind of truth? What can we hear in testimony and in silence? Remembering an experience is very different from telling someone about it. The same memory cannot be passed on, not even by great art, and it cannot really be mediated. But art and media are all we have. Every commemoration has some art in its performance as does every medium, from concrete ruins to YouTube.

A book on memory is also a commemoration; there is an act of commemorating in every chapter of this book. For instance, the violence in the separation of India and Pakistan; the 1915-1918 genocide of Turkish Armenians; two chapters on Rwanda along with two distinctively different chapters on remembrance of the Holocaust. There are two chapters that concern Australia where the colonial genocide receives the same searching and forthright treatment in ways similar to the Canadian case.

The persistent question of whether the atrocities of the Khmer Rouge in Cambodia were indeed a genocide is dealt straightforwardly by Elena Lesley-Rozen in "Memory at the site: Witnessing, education, and repurposing of Tuol Sleng and Choeung Elk in Cambodia" along with

the issue of such atrocities bleeding into the present. All genocides carry into the present, as this book reminds us again and again. Henning Melber's argument in "Contested notions of genocide and commemoration: The case of the Herero in Namibia" makes it clear that the infamous case of German South West Africa is resolved neither in a present day reunited Germany nor in an independent Namibia.

When I say resolved I do not mean reconciled. Some authors here are more explicit than others about what the editors deal with under "utilitarian remembrance" (5). They nominate the "therapeutic" and "deterrent" uses of bringing up the past (5). There is little evidence that exhibiting earlier horrors has prevented later ones. But those of us who have direct experience of survivor testimony at memorial sites will also know that the hope of making a difference is an important part of the therapy guides can gain in bearing witness. Avril Alba's chapter, "Set in stone? The intergenerational and institutional transmission of Holocaust memory" has a special significance here as the generations change; as does Tricia Logan's chapter "National memory and museums: Remembering settler colonial genocide on the great Human Rights edifice in Winnipeg." The role therapy guides will play in healing First Nations wounds is far from resolved. The same of course is true in Australia. No-one will be surprised at how passionately I agree with Damien Short and his historical perspective on the open wound in our own country.

The activist starting point for this book begins with the observation that "critical to the process of countering genocide has been the desire that details of genocidal events, the victims and the worlds they inhabited are not forgotten" (1). Leaving aside the hope of countering future genocides, entering into the historical actualities of past events has to be the continuing challenge. It is a measure of quality that in every instance we want to take up the notes and bibliography to relive the horror of lives being violently ended. The chapters by Nicki Hitchcott "Memorial stories: Commemorating the Rwanda Genocide through fiction" and Nigel Eltringham "Bodies of evidence: Remembering the Rwandan Genocide at Murambi" take us into the technical school in Rwanda where some of the most terrible slaughter was committed. The photos of buildings in this book could be anywhere in Melbourne or Los Angeles direct us from the present memorializing into the history.

History, of course, is not memory. But the history will never contain the reality of atrocity if memory does not enable us to feel the calculation, the chaos, and the terror. Here we enter the realm of art and the ancient skills of narrative, image, and evocation. Pam Maclean's chapter "To be hunted like animals: Samuel and Joseph Chanesman remember their survival in the Polish countryside during the Holocaust" on two fugitives from the German murder machine is exemplary in its reworking of recollection into writing. In only a few pages she takes us into the fear, the mud, and the tension. Then she explores how the shared but individual experiences of father and son come through in very different styles of memory and retelling.

Tellers and interpreters rarely succeed without awareness of their audience and in this respect *Remembering Genocide* might have ventured further into debates on representation, ideology, and interests. Many contributions deal directly with the reception of the past in the present without penetrating far into the conventions and resistances of the public being addressed. I was caught by a reference to the consumption of what we produce (7). I argued in "Consuming the Holocaust"¹ that we do have to worry; that the stories we tell, the commemorations we produce, do not just pass into patterns of media consumption. In the name *Auschwitz* we can recognize how a word becomes an image reinforced by the visual—as the Nazis knew when they banned photography in the death camps. In other cases, words provide the framing. In "'No man's land' and the creation of partitioned histories in India/Pakistan" Pippa Virdee points out that the 1949 partition of India enters world history as "communal violence" rather than genocide (21). Popular representations (perhaps produced by Attenborough's film epic *Gandhi*) will not be interpreted as genocide unless reframed as she does here. Donna-Lee Frieze reminds us that our remembering is affected by the loss of an image track in "Three films, one genocide: Remembering the Rwanda Genocide through fiction." With her commentary on *Ravished Armenia*, Frieze restores some images that foreground

¹ Tony Barta, "Consuming the Holocaust: Memory Production and Popular Film," *Contention* Vol. 5, No.2. (Winter 1996): 161-175.

gender in the Armenian genocide. In other chapters, too, the images, the photos, are important contributions; they help us engage with further historical questions they pose. Pam Maclean's chapter holds us to the very grammar of testimony, the halting or fluent deployment of words and images in painful recollections of Holocaust survival.

This is where the opening to other disciplines will pay dividends. We all readily accept that literary skill matters—in Primo Levi, in Paul Celan, in thousands of others. We tend to be less analytical about how other forms of media generate their power. One of the rewards of this book for me was the reopening of questions I had not much examined in the ways it represents events and memories. *Screening the Past* came out at an earlier stage of the hugely expanded memory scholarship referenced in *Remembering Genocide*, but I was reminded that some of the very earliest human communication capacities that film returned to after the heyday of print will remain fundamental in the new world of pervasive video. Reading faces and following spoken narrative return to centre stage. The sense experience of being caught up in the sense experience of another—this complex of the diegetic whole—will have to be further explored if we are to understand how narratives, images, and memorial sites work their effects.

Recollections, *re*-collections. There are now millions of recordings, voices, videos, films, books, websites, memorial sites, museums, names on monuments, schoolrooms, killing fields, skulls behind glass. When is too much remembering not enough, when is not enough memory already too much? Am I right in thinking Raphael Lemkin himself recorded Simon Dubnow's command "Schreibt und farschreibt," write and record? To what end? As Alba says, that may be debated, after Dubnow's first essential step.

I like the title of Ernesto Verdeja's book *Unchopping a Tree: Reconciliation in the Aftermath of Political Violence*². We cannot unchop a tree. We cannot bring back the dead. But in a book such as this we remember them, in too many places where even the remembering is fraught. We owe these authors a debt for helping us to go there.

² Ernesto Verdeja, *Unchopping a Tree: Reconciliation in the Aftermath of Political Violence*, (Philadelphia, PA: Temple University Press, 2009).

Book Review: *Denial of Violence: Ottoman Past, Turkish Present and Collective Violence against the Armenians, 1789-2009*

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Denial of Violence: Ottoman Past, Turkish Present and Collective Violence against the Armenians, 1789-2009

Fatma Müge Göçek
Oxford, Oxford University Press, 2014
pp. 680; Price: £35.99

Reviewed by Andrekos Varnava
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Monumental—I use this word positively to describe the 656 page (478 pages of text) tome produced by Fatma Müge Göçek. Her account is part of a wider shift in the field of Armenian Genocide studies: from using archives to prove that the term genocide is appropriate in this context, towards more theoretically informed approaches that deal with the experiences, responses, and the aftermath. It is important to note from the outset that Göçek's *Denial of Violence* takes an innovative sociological-historical approach, as opposed to an archive-driven, political science, or even a sociological-political approach. Furthermore, although she is not the first Turkish scholar to openly write about the Armenian Genocide (Taner Akcam, Ayhan Aktar, Uğur Ümit Üngör and others),¹ unlike the others, she infuses throughout the book a personal dimension, which is essentially her own encounter with the mass violence that looms large in the Turkish past. Göçek goes beyond exploring the fate of the Armenians and the issue of Turkish denial by addressing a more general question of why collective violence seems endemic and normal to the Turkish state and its society across generations. She argues that the act of violence against the Armenians during the Great War was an act of 'foundational violence' and therefore it has been justified by the Turkish state and accepted as normal by the Turkish people.

Standing at sixty-six pages, Göçek's introduction is an attempt to leave no stone unturned in setting up the narrative that is to follow. She does a marvellous job of situating her study alongside the broader literature and relevant theories. However, readers could be put off by the length and density of the chapters. Paradoxically, there is also a lack of historical context from both a Turkish and Armenian historical perspective as well as broader Great Power engagement. This is addressed in the chapters, but would be preferable at the start so that repetition is avoided later because it detracts from the main argument. For example, Göçek claims that the Armenian Genocide reduced the non-Muslim population from 20 percent to 4 percent at the start of the Great War. However, does she take into account the period of mass violence and ethnic cleansing after the war or not? When we finally get some context, it mostly comes in each chapter, making them very long. I would have suggested splitting the introduction and separating the historical context into a stand-alone chapter. Most importantly, there is no discussion in the introduction of her main sources; that is, the 307 authors of 356 memoirs (mostly Turkish, with some Kurdish, Armenian, and Greek). Who were these people? What role did they play in the events they describe? What role, if any, did the distance between the events and the penning of their memoirs play in influencing their writing?

The main chapters (there are four) center around the denial discourses or 'legitimation' narratives that Göçek identified in the memoirs she consults. The first chapter aims to cover the

¹ Taner Akcam, *From Empire to Republic: Turkish Nationalism and the Armenian Genocide*, (London: Zed Books, 2004); Taner Akcam, *A Shameful Act: Armenian Genocide and the Question of Turkish Responsibility*, (New York: Metropolitan Books, 2006); Ayhan Aktar, "Debating the Armenian Massacres in the Last Ottoman Parliament, November – December 1918," *History Workshop Journal*, 64, Autumn (2007), 240-70; Uğur Ümit Üngör and Mehlet Polatel, *Confiscation and Destruction: The Young Turk Seizure of Armenian Property*, (London: Continuum, 2011); Taner Akcam, *'Young Turks' Crime Against Humanity: The Armenian Genocide and Ethnic Cleansing in the Ottoman Empire*, (Princeton, NJ: Princeton University Press, 2012).

period 1789 to 1907. However, it revolves specifically around the 1894-6 Hamidian massacres and the 1896 Ottoman bank seizure. Chapter two moves onto the denial narratives concerning the Young Turks for the period 1908-1918 with the years of the Armenian Genocide, 1915 and 1916, being the crucial years of focus. The third chapter focuses on the early Republican denial discourses, that is, for the years 1919-1973. The last chapter explores how Turkish denial has continued since the 1970s, with a particular focus on justifying denial alongside the Armenian terrorism of the 1970s and 1980s. It also sees its most recent manifestation with the assassination of the journalist Hrant Dink in 2007. This structure follows closely the sources Göçek consulted, which is normally a good approach, and there was indeed a strong knowledge of the historical context. However, there is the occasional failure to reference other historical works that make similar arguments. Göçek argues that the Balkan Wars between 1912 and 1913, with the influx of displaced Muslims from the Balkans into Constantinople and Anatolia, were important in creating hostility towards Christian communities. This argument was made by Nicholas Doumanis in his excellent book (also with Oxford University Press) published only three years ago, which Göçek did not consult.² Additionally, I was concerned by the use of the term genocide, especially in reference to Greek and Assyrian genocides. Göçek did not provide a definition of genocide, but to my mind we need to distinguish between an attempt to exterminate a people (racial, ethnic, national), which is genocide, and an attempt to expel them, which I contend is ethnic cleansing, and which may or may not involve massacres aimed at creating a climate conducive to forcing more or all of the rest of the people targeted to flee. I cannot speak with any confidence about the Assyrian case, but in the Greek case there was never any attempt by the Ottoman and Turkish authorities to exterminate the Greek or Turkish speaking Orthodox Christians. The plan was expulsion and therefore to ethnic cleanse areas in order to Turkify them, and massacres were a part of the process, but never with the aim of extermination of the entire community. In the Assyrian case, they seem to have been caught up in the attempt by over-zealous local authorities implementing the Armenian Genocide. Finally, it needs to be corrected that the mass violence in Istanbul in 1955 against the Christian population was the result of events in Cyprus and not, as Göçek claims, in response to a massacre of Turkish Cypriots by Greek Cypriots. The Turkish government and deep state were trying to jostle for position in any upcoming negotiations.

What Göçek does really well is the way she uses the words of the perpetrators of collective violence to indict themselves. She does so not by merely 'letting the sources speak', but by giving these words meaning through her skilful and theoretically inspired analysis. Göçek shows that Turkish denial of mass and collective violence against Armenians takes on historical dimensions as authors writing after the events, in some cases decades after, legitimise the mass and collective violence through their nationalist and one-sided interpretation of historically contested events. This is how the denial of violence is continued. In this way, Göçek delves into socio-psychological explanations and the socio-psychological effects in the Turkish-Armenian relationship. Above all her strong points, she shows that emotion rather than reason, empathy, and compassion have been allowed to dominate Turkish responses.

I have described the book as monumental, though perhaps not definitive. Göçek makes only a passing reference (p. 248) to the first official publications denying any attempt to exterminate the Armenians, two volumes, titled *The Armenian Aspirations and Revolutionary Movements*, and published by the Ottoman Ministry of the Interior at the start of 1916.³ A close analysis of this publication (the language and images) is pivotal to understanding that denial is part of the processes of genocide—denial does not merely manifest itself afterwards, although it can take on different legitimising discourses, as these change (as with this case) over time.⁴

Returning to Göçek's argument—which is that because the Armenian Genocide was an act of foundational violence—helps to explain its continued denial, as well as the endemic

² Nicholas Doumanis, *Before the Nation: Muslim-Christian Coexistence and its Destruction in Late Ottoman Anatolia*, (Oxford: Oxford University Press, 2013).

³ National Archives of the UK, Foreign Office (FO): FO96/212, Toynbee Papers, *The Armenian Aspirations and Revolutionary Movements*, 2 Volumes, Ottoman Ministry of the Interior, 1916.

⁴ I am currently working on an article on this subject.

collective violence against non-Turks throughout the republican era across various generations and governments. This claim is correct in some ways, but incomplete in others. I agree that the Armenian Genocide was an act of foundational violence, but not by those who perpetrated it in 1915 and 1916. Because, at the time, they were aiming at preserving the Ottoman Empire or at least some form of an Ottoman Empire with a dramatically reduced Christian presence. It was those who inherited the genocide, many being Committee of Union and Progress (CUP) officials and members, who included the Armenian Genocide on the script of foundational violence of the new Turkish state, even though it was for other reasons that it was perpetrated. So the reasons to justify the act differed even if the arguments used to do so were similar.

Göçek's *Denial of Violence* is a must read for anyone interested in the Turkish denial, of its periodic collective violence against Armenians, and to understand Turkish-Armenian relations in the past and present. It is also a must read for those interested in the denial of mass violence against any group of people. Its sociological-historical approach is innovative and should inspire others to adopt it, although they should be mindful to mine the archives for the words (and images) of the perpetrators as well as their published memoirs.

Film Reviews: *Franco's Forgotten Children* and *Give Me Back My Child!*

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Franco's Forgotten Children

Directors: Montse Armengou, Ricard Belis
Spain, 2002.

Give Me Back My Child!

Directors: Montse Armengou, Ricard Belis
Spain, 2011.

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The two documentary films, *Franco's Forgotten Children*, and *Give Me Back My Child!*, both by Montse Armengou and Ricard Belis, single out the particular evils perpetrated on women and children during the Spanish civil war and Franco's dictatorship.¹ A 2003 volume entitled *Los Niños Perdidos del Franquismo* is the result of collaboration between the filmmakers and Ricard Vinyes, Professor of History at the University of Barcelona.²

Franco's Forgotten Children tells the suppressed story of Franco's attempt to wipe out from Spain the supporters of the Second Republic. Army Commander and Psychiatrist Antonio Vallejo Nágera was Franco's pseudo-scientific ideologue. He developed a eugenic theory based on German doctrines of racial hygiene and Catholic moral doctrine. On 23 August 1938, Franco authorized Vallejo Nágera to study the biopsychic roots of Marxism in search of the red gene, allegedly carried by the Republicans, and to cleanse Spain of the so called degenerative elements.³ Vallejo Nágera conducted psychiatric experiments on women, Republicans, International Brigades prisoners. He concluded that Marxism goes together with social immorality, and Marxists are "social imbeciles."⁴

The filmmakers compare Franco's use of a [pseudo] scientific theory - the underlying ideology used by the regime for the legitimation of the outrageous treatment of Republicans - with that of Nazi Germany. Indeed, Vallejo Nágera served in the military department of the Spanish Embassy in Berlin where he became acquainted with German psychiatrists and their work. However, this similarity was not limited to the realm of theory. Franco's Falanges ruthlessly persecuted the vanquished Republicans and their families through executions and imprisonment, in a manner similar to the Nazi persecution of the Jews and other minorities.

The viewers are presented with several profiles of survivors of Franco's concentration camps and prisons. These are women who attempted to flee Spain by sea from Alicante and Valencia and were forcibly disembarked; women who were guilty by association as spouses, mothers or sisters, and children of Republican parents or people targeted by the Francoists. The survivors describe the inhumane conditions, the torture, violence, disease, and hunger. Many children were taken into the camps along with their mothers, or were born in captivity sometimes as the result of rape. Special prisons were designed for lactating mothers. The conditions at these camps and prisons were appalling. Children who did not perish from hunger or disease were often kept in the camps and prisons until their mothers were released, or until they reached the age of three years. Although, sometimes the children were shot by firing squads sometime after their mothers gave birth.

¹ Montse Armengou and Ricard Belis, *Franco's Forgotten Children*, (Catalunya TV3, 2002); Montse Armengou and Ricard Belis, *Give Me Back My Child!*, (Catalunya TV3, 2011).

² Ricard Vinyes, et al., *Los niños perdidos del Franquismo* (Barcelona: Debolsillo, 2003), 314.

³ Paul Preston, *The Spanish Civil War: Reaction, Revolution and Revenge* (New York: W.W. Norton & Co., 2007), 310. Giles Tremlett, *Ghosts of Spain: Travels through a Country's Hidden Past* (London: Faber and Faber, 2006), 63.

⁴ Antonio Vallejo Nágera, "Psiquismo del Fanatismo Marxista," *Semana Médica Española* 6 no. 1 (1938): 172-180.

The separation of children from their parents was authorized by law. The Spanish *Law on the Protection of Orphans* 1940 gave the government custody over children whose moral education was allegedly at risk. The law stipulated that the children were to remain with their incarcerated mothers until the age of three. However, by the end of 1940 only parents with flawless religious, national and moral credentials could continue raising their children.⁵ The children were placed in orphanages and religious institutions where they were systematically brainwashed to despise their parents' ideals and serve Franco's regime. Many of these children were given up for adoption to Franco's supporters and were never reunited with their families.

The testimonies are devastating and empowering at the same time. They tell the horrors of the perpetrators' unspeakable crimes, but also attest to the survivors' stamina and fortitude. Survivors are often glorified for their resilience, mainly for adapting well in the face of a catastrophe or trauma. Yet the reference to the survivors' resilience could be a projection or a collective wishful thinking operating through society's mechanisms of autopoiesis and its drive towards resuming social order. At the same time, the attribution of resilience is at the same time deceiving for it often downplays the long-term consequences of the atrocities. Hence, while survivors can never really overcome the losses and the absence of loved ones, they are expected to submit to the supposed healing function of the passage of time, or the termination of the oppressive regime.

This ambivalence is clearly evident in the testimonies. For example, Carme Riera was three month pregnant and got married the night before her husband faced the firing squad. She was imprisoned for being the wife of a trade unionist and her daughter was born in prison in Saturraran in the Basque country. Upon her return to Saturraran beach, Riera says: "I am here today, I wear a smile on my face, but I am not smiling inside ... because I remember everything that went on there."⁶ This is also evident in the stories of the other women who faced tough choices. After describing the painful death of her infant, Julia Manzanal concludes: "Her fate was sealed at her mother's womb. I was fighting for a cause but she was the one to be sentenced."⁷

Give Me Back My Child! is in a sense an upshot of *Franco's Forgotten Children*. The film begins with 3D ultrasound image of a fetus *in utero* and a woman in labor. A voiceover reminds the viewers of the shockwaves Armengou and Belis' film *Franco's Forgotten Children* sent throughout Spain. It is then followed by a trailer from *Franco's Forgotten Children*.

Give Me Back My Child! focuses on the oppressive mechanisms of child appropriation that were part of routine life during Franco's dictatorship. It unfolds the coercion, illegal adoptions, the changing of names and identities, and trafficking of children. These were aided by the *Parto Anónimo* (anonymous birth) law that allowed for concealing the mother's identity after birth, pursuant to an interpretation of the *Civil Registration Act* of 1957 and the *Civil Registration Regulations of 1958*.⁸ These enabled the adoptive mother, who was sometimes encouraged to fake a pregnancy, to register as the child's biological mother. For the biological mother, an anonymous birth meant a point of no return. She had lost all her maternal rights and was not granted the possibility to rethink her decision after several months. In 1999 the Spanish Supreme Court ruled that the *Parto Anónimo* was unconstitutional.⁹

Whereas the kidnapping and illegal adoptions of children under Franco's dictatorship did not target any group in particular and were allegedly individual-based crimes, they originated from the same ideological state apparatuses as Vallejo Nágera's eugenic aspirations and the Catholic Church's notions of morality. In contrast to the forcible separation of Republican children, however, the trafficking of children was also motivated by economic gains to those actively involved.

⁵ Ricard Vinyes, "Las desapariciones infantiles durante el Franquismo y sus Consecuencias," *International Journal of Iberian Studies* 19 (2006): 60.

⁶ Armengou and Belis, *Franco's Forgotten Children*, 027:00-027:17.

⁷ Armengou and Belis, *Franco's Forgotten Children*, 023:53-023:57.

⁸ See the Spanish Civil Registration act, Ley de 8 de junio de 1957, del Registro Civil, available at http://noticias.juridicas.com/base_datos/Privado/lrc.t1.html, art. 47, accessed August 20, 2015; *Civil Registration Regulations*, Decreto de 14 de noviembre de 1958, por el que se aprueba el Reglamento para la aplicación de la Ley del Registro Civil. Available at http://noticias.juridicas.com/base_datos/Privado/rrc.t5.html, art. 167, accessed August 20, 2015.

⁹ See the ruling of the Spanish Supreme, *Recurso de Casacion num. 2854/1994*, Sentencia del TS, September 21, 1999.

Armengou and Belis tell the story of the consequences of identity changes and the destruction of official birth documents, and their effect on both the then-children and mothers. They also investigate the networks and mechanisms of trafficking and key figures. One such network, *Maria Madre*, was established by Doña Mercedes Herrán de Gras. *Maria Madre* was a charitable fund that maintained apartments for pregnant women who allegedly conceived in sin and had to give their babies for adoption. *Maria Madre* and other organizations like *Santa Isabel* and *Via Teresita* were spread out across Spain, supplying newborns to adoptive parents. According to the filmmakers, there were hundreds of cases in which the parents were told that their baby had died at birth or shortly afterwards when it was actually put up for adoption.

Both documentaries resist Spain's *Pacto del Olvido* (the pact of forgetting), a tacit agreement to leave the past behind. Apparently, the agreement reached by the political leaders was to ease Spain's transition to democracy.¹⁰ The pact of forgetting was reinforced and enhanced by the Amnesty law of 1977 that afforded the release of all political prisoners and prevented the prosecution of Francoist perpetrators who committed politically-motivated crimes prior to the transition to democracy.¹¹ As Paloma Aguilar suggests, "the two sides ended up reaching a kind of agreement regarding their mutual guilt."¹² Nevertheless, this law was criticized by numerous international human rights bodies, such as the Human Rights Committee (HRC) and the Committee against Torture (CAT).¹³

Franco's Forgotten Children was aired in 2002, at a time when the organization for the recovery of historical memory (ARMH), a non-profit organization established by the United Left Party in 2000, exhumed mass graves and attempted to identify the remains of the victims.¹⁴ *Give Me Back My Child!* was aired four years after the enactment of the Historical Memory Law in 2007.¹⁵ This Law has acknowledged the crimes and violations of Francoism and Judge Garzón's investigations and exhumations.

Both documentaries draw on original, in-depth research and field-work. They use witnesses and survivors' narratives to counter the denial of those involved in the trafficking of children, including nurses, mediators, and doctors, historic film reels of happy and well-groomed children, documents, propaganda, and the (pseudo) scientific basis of the ideology that legitimated these atrocities. The films provide a severe charge sheet against the Catholic Church and its outrageous direct involvement in the atrocities.¹⁶ Both films reveal, through the testimonies of women and then-children the extent and devastating consequences of the atrocities. Yet, the filmmakers succeed in not falling into a privatized sentimental narrative of the victims. The individual stories are carefully interwoven into the larger picture and the political, social, and economic context of the events. In this, both films feed the resurgence of interest and activism in Spain's repressive legacy and the array of official responses.¹⁷

¹⁰ See Paul Preston's account of the *Pacto del Olvido* in Paul Preston, *The Politics of Revenge: Fascism and the Military in Twentieth-Century Spain* (London and New York: Routledge, 1995), 33-34. Madeleine Davis, "Is Spain Recovering its Memory? Breaking the *Pacto Del Olvido*." *Human Rights Quarterly* 27 no. 3 (2005): 858-880.

¹¹ See the Spanish Amnesty Law, Ley 46/1977 Amnistia, art. 2 (15 Oct. 1977) (Spain), available online at <http://www.boe.es/boe/dias/1977/10/17/pdfs/A22765-22766.pdf> accessed September 19, 2015. See Paloma Aguilar, "Justice, Politics and Memory in the Spanish Transition," in *The Politics of Memory*, ed. Alexandra Barahona De Brito et al. (London: Oxford University Press, 2001), 104.

¹² Paloma Aguilar, *Memory and Amnesia: The Role of the Spanish Civil War in the Transition to Democracy* (New York: Berghahn Books, 2002), 132.

¹³ Fifth Periodic report of Spain, UN Doc. CCPR/ESP/CO/5, 27 October 2008, para. 9); AT/C/ESP/CO/5, 9 December 2009, see para. 21.

¹⁴ On the jurisdictional obstacles to prosecution of Franco-Era perpetrators see Angela M. Guarino, "Chasing Ghosts: Pursuing Retroactive Justice for Franco-Era Crimes Against Humanity," *Boston College International and Comparative Law Review* Vol. 33, no. 1 (2010): 61-85.

¹⁵ See the Spanish Historical Memory law, Ley de la Memoria Histórica (Ley 52/2007 26 December 1977) (Spain) available online at <http://www.boe.es/boe/dias/2007/12/27/pdfs/A53410-53416.pdf> (accessed September 19, 2015) See an English translation of the Law at <http://www.derechos.org/nizkor/espana/doc/lmheng.html> accessed August 1, 2015.

¹⁶ See the 2002 award-winning *The Magdalene Sisters* by Peter Mulan on the Magdalene asylums for fallen women; Stephen Frears' *Philomena* (2013), and Jim Loach's *Oranges and Sunshine* (2012) about the British children forcible migration to Australia. All these films are based on books.

¹⁷ See Aguilar, "Justice, Politics and Memory in the Spanish Transition" and Davis "Is Spain Recovering its Memory?," 862-863.

Documentary films can be powerful sources of evidence, advocacy and recognition. Indeed, *Franco's Forgotten Children* and *Give Me Back My Child!*, provide a form of truth-telling that is much-needed in societies confronting and reconciling with dark pasts. Both films appeal to the viewers' moral conscience. They not only recreate the wrongfulness of the past through the documents and the historic visuals, but also show how such wrongdoings have shaped present lives. Moreover, they steer the viewers to reflect upon the intergenerational effects of both atrocities.

From the point of view of genocide research, the films pinpoint the two major shortcomings of the legal definition of genocide adopted by the United Nations Convention on the Prevention and Punishment of Genocide; namely denying the protection of political groups, and the proof of specific intent. Raphael Lemkin himself was ambivalent about granting protection to political groups, particularly in the context of civil wars or revolutions. He writes: "Should the state allow a revolutionary group to overthrow by violence its constitution, to burn its parliament, to destroy its courts, even for the sake of a higher and better form government? On the other hand, should we allow a government which fights a revolution to exterminate its political opponents?"¹⁸ Yet, Lemkin who had a soft spot for children was strongly opposed to forcible transfers of children. While the Spanish case is not considered genocide in the formal-legal sense, some argue that there are hermeneutical and comparative grounds for considering it as such.¹⁹

While atrocities perpetrated on women and children are considered particularly heinous, some acts seem to be open to interpretations and justifications that resist the application of existing legal instruments. Perpetrators often attempt the laundering of heinous atrocities towards children by alleging that they were enacted out of benevolent motives. A related argument made in reference to historical violations is that the norms and conduct that are now considered gross violations of human rights were part of a legitimate positivistic politico-ideological doctrine grounded in scientific knowledge. In other words, those seeking to suppress and obscure these atrocities consider them a temporal event and an isolated occurrence. Yet, the prevalence of similar cases across the world at approximately the same period warrants the attention of genocide scholars.

Title of the Film: *Los niños perdidos del franquismo* (*Franco's Forgotten Children*); Directors: Montse Armengou, Ricard Belis; Producer: Muntsa Tarrés; Screenplay: Montse Armengou, Ricard Belis; Cinematography: Walter Ojeda; Film Editor: Maria Josep Tubella; Country: Spain; Year of Release: 2002; Production Company: Televisió de Catalunya. Duration: 120 minutes.

Title of the Film: *¡Devolvedme a mi hijo!* (*Give Me Back my Child!*); Directors: Montse Armengou, Ricard Belis; Producers: Tonà Julia, Jordi Campàs; Screenplay: Montse Armengou, Ricard Belis; Cinematography: Carles de la Encarnación; Film Editor: Maria Josep Tubella; Country: Catalunya, Spain; Year of Release: 2011; Production Company: Televisió de Catalunya. Duration: 78 minutes.

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¹⁸ Raphael Lemkin. "The Nature of Genocide". *Unpublished Raphael Lemkin Collection*, (Boston and New York: American Jewish Historical Society, Undated), Box 7, Folder 2.

¹⁹ Antonio Miguez Macho, "A Genealogy of Genocide in Francoist Spain," *Genocide Studies and Prevention: An International Journal* Vol. 8 no. 1 (2013), 22. Paul Preston uses the term the Spanish Holocaust as a title for his book on the Civil War, see Paul Preston, *The Spanish Holocaust: Inquisition and Extermination in Twentieth-Century Spain* (London: Harper Press, 2012).

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