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**Cultural Genocide**

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*Edited by Jeffrey S. Bachman*

# Cultural Genocide

Law, Politics, and Global Manifestations

**Edited by Jeffrey S. Bachman**

 **Routledge**  
Taylor & Francis Group  
LONDON AND NEW YORK

First published 2019  
by Routledge  
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge  
52 Vanderbilt Avenue, New York, NY 10017

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

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*British Library Cataloguing-in-Publication Data*  
A catalogue record for this book is available from the British Library

*Library of Congress Cataloging-in-Publication Data*  
A catalog record has been requested for this book

ISBN: 978-0-8153-8007-8 (hbk)  
ISBN: 978-1-351-21410-0 (ebk)

Typeset in Times New Roman  
by Wearset Ltd, Boldon, Tyne and Wear

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# 1 Raphaël Lemkin

## Culture and cultural genocide<sup>1</sup>

*Douglas Irvin-Erickson*

Much has been written about Raphaël Lemkin,<sup>2</sup> one of the foundational figures in genocide studies.<sup>3</sup> Indeed, Lemkin's theories of persecution and mass violence are increasingly influential outside the subfield of genocide studies.<sup>4</sup> As this volume would suggest, a particularly important aspect of Lemkin's work relates to the notion of cultural genocide. On one level, it is fitting that scholars studying cultural genocide would turn to Lemkin. Lemkin, after all, coined the word "genocide," which first appeared in print in 1944, and inspired the movement at the United Nations in the late 1940s to outlaw genocide, which culminated in the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide. Lemkin also wrote extensively about culture, genocide, and cultural genocide, and his work to outlaw genocide was inspired by a belief that cultural diversity enriched the human experience and should be protected.

Despite Lemkin's well-known interest in cultural destruction, what Lemkin meant by "cultural genocide" is less well-known, and Lemkin's views on the "death" of a culture are complex, nuanced and, at first-glance, counterintuitive. Oftentimes scholars will read Lemkin's writings and substitute their own definitions of "culture," "nations," and "genocide" in their interpretations of Lemkin's work. Of course, it is the prerogative of individuals to interpret a text in the way they see fit, but those who seek to understand Lemkin's writings should begin with accepting that Lemkin's definitions of these concepts are very different than the commonly held definitions of these words we have today. What is more, Lemkin's ideas on what "genocide," "culture," and "nations" were changed through time.<sup>5</sup>

Lemkin never used the phrase "cultural genocide" to refer to a type of genocide, except for a few years after 1946 when, during the second draft of the UN Genocide Convention, the US delegation split the concept of genocide into two concepts of physical genocide and cultural genocide. In my previous work, I have described at length the processes by which "genocide" was redefined during the drafting process of the UN Genocide Convention between 1946 and 1948.<sup>6</sup> As I have explained elsewhere, the US delegation's attempt to split the concept of genocide into two different concepts – cultural genocide and physical genocide – was an elaborate ploy to remove from the definition of genocide aspects of Lemkin's ideas that the US delegation found objectionable. Indeed,

the US delegation, along with the Soviet Union and the UK, did not want to enshrine a treaty into international law that criminalized the destruction of human groups as sociological entities. Lemkin began using this term “cultural genocide,” but always in the sense that attacking a culture was a way of committing genocide, and not a different type of genocide. But, as I have argued previously, the fact that Lemkin began using the term “cultural genocide” lent legitimacy to the notion that there was such a thing as two kinds of genocide, the physical and the non-physical. What is more, in the horse-trading of articles and definitions as the UN member states negotiated the treaty against genocide, Lemkin acquiesced. He stopped advocating for his wholistic conception of genocide and allowed what the US called “cultural genocide” to be removed from the treaty, so that he could preserve, in return, a consensus amongst a majority of the delegations drafting the convention that the treaty include provisions for referring the prosecution of genocide to a competent international tribunal (what is now Article VI of the final version of the Genocide Convention).<sup>7</sup>

Regardless of the minutiae of this history of the legal definition of genocide, Martin Shaw has shown convincingly that it is oxymoronic to refer to “cultural genocide” if the concept of genocide is already defined in reference to destroying a cultural group. Shaw, furthermore, presents an exceptional disquisition on the limitations of Lemkin’s theorizing on culture and the destruction of culture.<sup>8</sup> This chapter, instead, will attempt to parse Lemkin’s notions of cultural genocide, focusing on what Lemkin thought culture was. Indeed, I hope to make clear in this chapter that most definitions of “cultural genocide” that emerged in the writings of later theorists and scholars have very little in common with Lemkin’s notion of “cultural genocide,” precisely because the colloquial definitions of “culture” in current English-language usages have very little to do with the definitions of culture that emerged in the Anthropology of the 1930s, 1940s, and 1950s, which Lemkin used to define culture.

Crucial to this chapter, finally, is the point that Lemkin believed destroying a culture did not always result in the destruction of a human group and, therefore, attempts to destroy a culture were not always genocidal, and did not always result in genocide. For Lemkin, culture was not the primary object of protection under the UN Genocide Convention; national groups were. What takes many genocide scholars by surprise is that Lemkin’s definition of nations was so broad that it could include groups as small as “those who play at cards” or groups as large as Jews, Armenians, and Poles. Lemkin’s goal was to outlaw a broad range of attempts to destroy a broad range of human groups, and where cultural destruction intersected with attempts to destroy a particular group, then and only then would an act of cultural destruction be genocidal.

### **The concept of culture in “cultural genocide”**

The history of the concept of culture – not just Lemkin’s definition of culture, but the whole social history of the concept – is marked by several hundred years of definitional stability, with a sudden pattern of drastic changes in what this

word has been taken to signify in the past 100 years. The history of the concept of culture in the nineteenth and twentieth centuries is the subject of many dissertations, books, and learned essays. A cursory overview is sufficient to illustrate the points I wish to make. This overview is crucial because one’s notion of what constitutes cultural genocide is dependent upon one’s definition of culture. Definitions of culture employed by those who study “cultural genocide” tend to employ only two possible definitions of culture – the two usages that are most common in everyday colloquial English. This is important because Lemkin’s definition of culture, in contrast, was taken directly from his reading of his contemporaries Bronisław Malinowski and Ruth Benedict.

To supply one’s own definition of culture in interpreting Lemkin’s writings on culture, therefore, is to fundamentally misread and misinterpret Lemkin’s ideas.<sup>9</sup> As a result, there are many aspects of Lemkin’s thinking that can seem counterintuitive at first. For instance, Lemkin believed that it was a fundamentally positive thing for “world civilization” to have cultures that changed, coming into and going out of existence. Lemkin’s goal in outlawing genocide was not to prevent social groups from coming and going out of existence, but rather to prevent the intentional destruction of social groups because the intentional act of destruction caused devastating harm. Lemkin was clear, however, that no group had a prior right to exist, and that the disintegration of a given group (and, by extension, its culture) was not necessarily a bad thing. By outlawing genocide, Lemkin sought to protect a world where national-cultural diversity would be allowed to thrive. This necessarily implied that the destruction and creation of social groups was desirable, because he believed that the interactions of groups are what caused groups to change, and that this change was the engine of human progress and human creativity. It was the interaction of nations, and the changing of national groups, that inspired creativity, beauty, ingenuity, and countless other human goods, he believed, at the individual and group levels.

A. Dirk Moses was the first to notice this aspect of Lemkin’s thinking. Moses’ important work positions Lemkin, especially Lemkin’s late works, squarely in the camp of Malinowski. While Lemkin’s conception of cultural genocide is worked out in reference to Malinowski’s theories of cultural functionalism, Lemkin dedicates more space in his unpublished manuscripts to writing about Benedict. The two theories of culture (the Malinowski-functionalism school and the Boas-Benedict historical particularism school) are often presented as being at odds with each other; yet they both recognized two things that became hallmarks of the discipline of Anthropology in the middle of the twentieth century and appear in Lemkin’s thought, but are absent from the colloquial understandings of culture in current usage. First, they noted that a given culture was not the same thing as a human group as a sociological entity; and, second, that changes in a culture were necessary for ensuring the continuation of human societies, because these changes allowed people and groups to adapt to new situations and new challenges. Culture, therefore, was not something that existed as a reified whole, primordially or trans-historically. Lemkin, while never working out the contradictions between Malinowski and Benedict’s theories of culture in his own

theory of genocide, employed these two definitions of culture as his own. From these axioms, Lemkin did not view the destruction of culture as genocide; rather genocide was the destruction of a national group. As a result, definitions of cultural genocide built around definitions of culture outside of Malinowski and Benedict's terms have very little to do with Lemkin's notion of cultural genocide.

The first colloquial usage of "culture" that is pertinent to our discussion is, according to the Oxford English Dictionary, the usage that refers to "the arts of the mind" and "other manifestations of human intellectual achievement regarded collectively" dates to the late seventeenth century. A recent article in *The European Journal of International Law* is indicative of this approach to cultural genocide that uses this definition of culture, analyzing the organized restitution of heirless Jewish property such as books, archives, and works of art as a specific response to cultural genocide.<sup>10</sup> This usage of "culture" originated as an elliptical use of the sixteenth-century usage: "development of the mind, faculties, manners" or "improvement by education and training." Who does not remember Thomas Hobbes writing in *Leviathan*, "The education of Children [is called] a Culture of their mindes"? This usage marked a contrast with a parallel sixteenth-century usage of "culture" that referred to the training and improvement of the human body. And, again, who does not remember Hobbes, in his translation of Thucydides' *Peloponnesian War*, marveling at the Lacedaemonian soldiers' bodies "Amongst whom ... especially in the culture of their bodies, the nobility observed the most equality with the commons"? These understandings of the word "culture" – to train the body and to train the mind – trace to three fifteenth-century usages that signified the preparation of fields for the growing of plants and crops, and the raising of farm animals. Indeed, in its Anglo-Norman and Middle French forms, the English word "culture" was etymologically related to the word "cultivate." Cultivate was the verb form of the noun, "culture." While those who use the phrase "cultural genocide" in English probably do not intend to signify the destruction of plants and farm land that people have "cultivated," it is safe to say that a significant amount of the colloquial usages of "cultural genocide" probably do signify acts aimed at destroying "the arts of the mind" and "other manifestations of human intellectual achievement regarded collectively," such as music, architecture, the sciences, the arts and literature, libraries, books and paintings and such. When culture is understood as a collective intellectual achievement – curated, created, and collectively *cultivated* – the location of culture is placed into the past and the future, as something a group achieves, makes, or maintains beyond the scope of any individual life or any individual's life works. But, in this sense, culture is also taken, somewhat paradoxically, to be located in the material artifacts and creations of a group: in a painting, in a library, in a book, in the architecture of a religious site. This was not Lemkin's definition of culture. As I shall discuss below, Lemkin believed the destruction of these collective achievements such as libraries, books, and music could be a means for committing genocide, but the destruction of these things was not necessarily genocide or genocidal.

A second usage of "culture" employed by scholars of cultural genocide is a more familiar contemporary definition, which emerged in the nineteenth century. According to the Oxford English Dictionary, this usage of "culture" is a count noun meaning "the distinctive ideas, customs, social behaviors, products, or way of life of a particular nation, society, people, or period" and, hence, "a society or group characterized by such customs." This usage of "culture" came into existence as a reaction against the concept of civilization in Enlightenment philosophy to describe a given group's religion, economy, politics, morals, and technology. In the German counter-Enlightenment philosophy, culture was coined to stand in opposition to civilization as such, signifying national movements in the arts and common tastes. Towards the end of the century, the first definitions of culture in Anthropology combined the two concepts of culture and civilization, to define culture as socially taught knowledge, beliefs, arts, morals, customs, and habits. Indeed, this is perhaps the most common definition of culture, where "a culture" signifies a body of thoughts and habits, but can also stand in for the group, reducing the group to this body of thoughts and habits, so that civilizational advances are reduced to culture, and culture explains civilizational advances; thus, when this usage is employed in "cultural genocide," destroying a culture is tantamount to destroying the civilization, and vice-versa, and the destruction of either constitutes the destruction of the group.

We see this understanding of culture at work in a wide range of scholarship on cultural genocide, with authors who define cultural genocide as "the purposeful weakening and ultimate destruction of cultural values and practices of feared out-groups,"<sup>11</sup> and

the effective destruction of a people by systematically or systemically (intentionally or unintentionally in order to achieve other goals) destroying, eroding, or undermining the integrity of the culture and system of values that defines a people and gives them life.<sup>12</sup>

Authors who turn to these definitions do so because it allows them to reject the first usage of culture outlined above – as human intellectual achievement regarded collectively. Scholars of cultural genocide who employ this second usage of "culture" do so because the first usage is often taken as elitist, privileging "high culture" such as literature or art, and because this first definition would refute the possibility of cultural adaptation. For this second set of scholars, the "culture" in cultural genocide "refers to the wider institutions that are central to group identity" including "language, religious practices and objects, traditional practices and ways, and forms of expression."<sup>13</sup> This usage brings us closer to Lemkin's usage but, even still, Lemkin would not define such acts of destruction as genocide.

While the two usages of culture outlined above have remained constant in common usage, definitions of culture in Anthropology continued to change considerably. It is difficult to imagine many of the disciplinary definitions of culture that Anthropology has put forward in the last fifty years being used in a

definition of "cultural genocide." What would be destroyed if "cultural genocide" employed Claude Lévi-Strauss' definition of culture? A system of underlying structures of opposition common to all human societies? How could you destroy something intrinsic to the human condition? What if we employed Vic Turner or Clifford Geertz's definitions of culture? Would cultural genocide be the destruction of independent systems of meaning deciphered by interpreting key symbols and rituals, or the destruction of webs of significance that changed the way people interacted? Definitions of cultural genocide that use these definitions of culture would border on the nonsensical, since Turner and Geertz constructed definitions of culture in which no individual or society ever belonged to any one culture but, at the same time, no individual could ever exist outside of culture. Indeed, theorists of "cultural genocide" are often putting their finger on the destruction of something that is different than what cultural anthropologists usually define as culture.

Before Lévi-Strauss, Turner, and Geertz created the frame for much of Anthropology's theories of culture in the mid twentieth century, Franz Boas in the early part of the century saw culture as an integrated whole shaped by historical processes, not as something that was biologically, environmentally, naturally, or socially predetermined. This approach cleared the way for the founding of modern Anthropology to create definitions of culture that were different than the two common understandings of culture outlined above. Early twentieth-century anthropologists, writing before and after the two world wars, and during the early years of decolonization, were the contemporaries upon whom Lemkin built his understanding of culture. Following Boas, one of Lemkin's heroes, Ruth Benedict, in her seminal book *Patterns of Culture*, placed learned behavior at the center of the human experience, drawing a sharp contrast with the idea that behavior was racially or biological determined. Benedict also charted a path toward viewing culture as a kind of human laboratory, so that the world's cultural diversity provided a "vast network of historical contact" in which "we may study the diversity of human institutions" which "provide ready to our hand the necessary information concerning the possible great variations in human adjustments, and a critical examination of them is essential for any understanding of cultural processes."<sup>14</sup> These sentiments echo throughout Lemkin's writings.

Rather than cataloguing the scholars who employ a colloquial definition of culture when they interpret Lemkin's writings on "culture," or those who appropriate ideas about Lemkin's notions of cultural genocide that circulate in received scholarship in genocide studies, it is far more productive to outline some examples of scholars who have considered the breath of Lemkin's thinking through a careful examination of his theoretical writings. In one of the first scholarly treatments of Lemkin's idea of cultural genocide, aside from Moses' essay cited above, Barry Sautman correctly observed that Lemkin did not believe that cultural assimilation, or the loss of a cultural group, was a bad thing that had to be avoided at all costs.<sup>15</sup> As such, Sautman dismisses much of Lemkin's work, and proceeds to chart a new path toward understanding "cultural genocide." Indeed, Lemkin did not believe that any group had a prior right to exist, and he

believed that dynamic changes in group identities were beneficial to the human condition. Lemkin distinguished assimilation through moderate coercion, and voluntary assimilation, from acts of genocide. He considered, for example, the forced transfer of children from one group to another to be genocide, but not the construction of incentives that encouraged children to take on new forms of group membership and shift identities.<sup>16</sup> As Dominik Schaller has argued, Lemkin's views here are problematic when weighed against contemporary sentiments, especially when Lemkin framed the cultural changes brought about by colonialism as beneficial to non-European peoples, whose cultures he had a tendency to portray as lacking agency and being somewhat helpless in the face of the social and material challenges posed by a modernizing world.<sup>17</sup>

### Lemkin: genocide as the destruction of nations

Before considering Lemkin's ideas on cultural genocide further, it is necessary to remind readers of Lemkin's definition of genocide.

The word "genocide" first appeared in print in Lemkin's 1944 magnum opus, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*.<sup>18</sup> Lemkin derived "genocide" from the Greek word *genos* (race, family, tribe) and the Latin root *cide* (to kill). In a footnote, he added that genocide could equally be termed "ethnocide," with the Greek *ethno* meaning "nation." "By 'genocide' we mean the destruction of a nation or an ethnic group," Lemkin wrote.<sup>19</sup> Lemkin likened the word "genocide" to other words, such as tyrannicide, homicide, and infanticide. Genocide signified the attempt to destroy a national, racial, or religious group, but "it did not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation."<sup>20</sup> Instead, genocide was a social process of destroying nations that was not necessarily quick nor violent. For Lemkin, genocide signified "a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves."<sup>21</sup> The objective of such a plan, Lemkin added, was the

disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.<sup>22</sup>

The key detail here is that the destruction of culture, in Lemkin's thinking, is one of many ways in which genocide can be committed.

As a new word, "genocide" would also be free of the connotations carried by similar existing words, Lemkin felt, such as the German word *Völkermord*, meaning "nation-murder." *Völkermord* appeared in turn-of-the-century reports about the German colonial war against the Herero and Nama peoples, and it was used by public and private German and Habsburg sources to describe the Ottoman campaign against Armenians.<sup>23</sup> Lemkin was fluent in German and had

used the term, but decided against the word – perhaps because the root *Volk* was too close to the German Romantics' use of *Volk* to describe an organic nation, a concept that Lemkin believed was an important structuring aspect of the Nazi genocide.<sup>24</sup> Similarly, *nationicides* was first used by François-Noël Babeuf in his 1794 book, *Du Système de dépopulation ou la vie et les crimes de Carrier*, to describe and condemn the conduct of Jean-Baptiste Carrier in the War of the Vendée, when troops sent from Paris started a project of depopulation to destroy the “nations” living in the territory.<sup>25</sup> The English word “denationalization” was commonly used too. But, as Lemkin explained, “denationalization” denoted the deprivation of citizenship or the removal of national groups from geographical territories, not the destruction of a national pattern as a sociological entity, nor the attempt to replace a given national pattern with national patterns of the oppressor.<sup>26</sup> “Genocide” would be the neologism Lemkin had been searching for, “coined by the author to denote an old practice in its modern development,” in order to mobilize efforts around the world to denounce the practice and remove it from the repertoire of human actions.<sup>27</sup>

While lecturing at Yale University after his work at the UN, Lemkin told his law students that he settled on the term “genocide” because the Greek and Sanskrit connotations of the root word *genos* signified a human group that was constituted through a shared way of thinking, not objective relations. The concept of the *genos* Lemkin said, “was originally conceived as an enlarged family unit having the conscience of a common ancestor – first real, later imagined.”<sup>28</sup> Martin Shaw has pointed out that, while Lemkin knew that human groups were mental constructions and did not have a reified form outside of their social constructions, his mistake was that he viewed all human groups, sociologically, as a kind of extended kinship or family unit.<sup>29</sup> Shaw's interpretation, in my view, is largely correct. Theorists who employ Lemkin's concepts of culture and cultural genocide should be well aware that Lemkin's theory of the *genos* was deeply flawed by today's social science standards, and that his overall notion of culture relies upon conceptions of culture that have been discredited by social scientists and historians.<sup>30</sup> However, simply because Lemkin's understanding of culture and human societies is no longer accepted by social scientists does not mean Lemkin's thinking on genocide and the destructions of nations should be thrown out. It is in this imagined connection between people, Lemkin presciently observed, where “the forces of cohesion and solidarity were born.” The same forces for group cohesion, Lemkin taught his students at Yale, could also serve as “the nursery of group pride and group hate” that is “sometimes subconscious, sometimes conscious, but always dangerous, because it creates a pragmatism that justifies cold destruction of the other group when it appears necessary or useful.”<sup>31</sup> This meant two things for Lemkin. First, he believed all social groups, including races and religions, were aspects of human consciousness that did not have trans-historical permanence. Second, he believed that genocide, as an attempt to destroy groups as such, was the product of “anthropological and sociological patterns” that could be changed.<sup>32</sup>

Lemkin also believed genocide was a colonial practice, and he said so explicitly.<sup>33</sup> Genocide had two phases, he wrote: “One, the destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor.”<sup>34</sup> “Directed against the national group as an entity,” he wrote, “the actions involved” in committing genocide “are directed against individuals, not in their individual capacity, but as members of the national group.” Lemkin thus interpreted the genocide perpetrated by Nazi Germany as a colonial project of transforming the demographics of Germany and the newly conquered regions of occupied Europe. “In line with this policy of imposing the German national pattern, particularly in the incorporated territories, the occupant has organized a system of colonization of these areas,” Lemkin wrote.<sup>35</sup> As a consequence of this German colonization of the occupied territories, Lemkin concluded, “participation in economic life is thus dependent upon one's being German or being devoted to the cause of Germanism. Consequently, promoting a national ideology other than German is made difficult and dangerous.”<sup>36</sup>

Lemkin believed that twentieth-century nationalist movements were not the first to inspire genocide, and he sought a definition of genocide that would capture what genocide was as a type of conflict. For much of history before the rise of the nation-state, Lemkin wrote, the “fury or calculated hatred” of genocide was directed “against specific groups which did not fit into the pattern of the state [or] religious community or even in the social pattern” of the oppressors, he continued. The human groups most frequently the victims of genocide were “religious, racial, national and ethnical” and “political” groups, he wrote. But genocide victims could also be other families of mind “selected for destruction according to the criterion of their affiliation with a group which is considered extraneous and dangerous for various reasons.” These other groups did not have to be racial or religious groups. Lemkin even included under the rubric of nations sociological groups such as “those who play cards, or those who engage in unlawful trade practices or in breaking up unions.”<sup>37</sup> Genocide, Lemkin reasoned, could be conducted against criminals because states often criminalized certain types of subjectivities and identities. Lemkin derived this point from his study of the penal codes of fascist regimes, where the state conceptualized national-cultural diversity as a crime against the nation and the state. The principle, Lemkin felt, was evident in the Soviet penal codes that criminalized national identities and tried to transform the Soviet population into a nation of “new Soviet men.” It was also evident in the Nazi citizenship laws and race law that defined Jews as enemies of the state – criminals – and set about the task of removing Judaism from Germany and then the world, Lemkin wrote. In similar fashion, religious groups could seek to remove other religions from the world, and so forth. Genocide, for Lemkin, was not a fixed concept, in terms of what kinds of social groups committed it; what kinds of social groups it was committed against; or even how it was committed. Any attempt to destroy a nation, as a family of mind, was genocide. If genocide was the destruction of nations and national patterns, what was a nation according to Lemkin?



Here, Lemkin borrowed heavily from the Austro-Hungarian Marxist and Social Democratic theorists and political figures, Karl Renner and Otto Bauer. Indeed, he told Renner as much in his personal correspondences.<sup>38</sup> Bauer had argued that modern nations were “communities of character” that developed out of “communities of fate.”<sup>39</sup> For Bauer, Renner’s longtime co-author and close political colleague, nations were not derived territorially, as liberal nationalism professed, nor were they the closed off and organic entities that conservatives (and German Romantic theorists) believed them to be. For Bauer, national consciousness was “by no means synonymous with the love of one’s own nation or the will for the political unity of the nation.” Instead, “national consciousness is to be understood as the simple recognition of membership in the nation.”<sup>40</sup> This also meant that the content of national identity was always changing because both nationality and nations as social groups were products of the consciousness of individuals.<sup>41</sup> Thus for Bauer, nations were neither trans-historical nor primordial entities but constantly changing as individuals themselves changed and as new “communities of fate” formed and developed into new “communities of character.” Consequently, national identity was not a zero-sum game, and national identities were not mutually exclusive. Lemkin would borrow these ideas explicitly in his late, unpublished writings on genocide and quietly announced this position in a footnote in *Axis Rule*.<sup>42</sup>

“Nations are families of mind,” Lemkin wrote.<sup>43</sup> Moses has written that Lemkin believed that “nations comprise various dimensions: political, social, cultural, linguistic, religious, economic and physical/biological.”<sup>44</sup> While this is true, a nation, according to Lemkin, was above all a collection of individuals who thought of themselves as belonging to the same group, with the help of shared languages, arts, mythologies, folklores, collective histories, traditions, religions and even shared ancestry or a shared geographical location. Languages, lineages, pseudo-scientific theories of biology, religions, and geography – these only created the boundaries of national groups when people believed that these things mattered. Importantly, this principle meant that a given individual could belong to more than one nation at the same time since the criteria for establishing nations were not mutually exclusive. Individuals could enter into and out of certain “families of mind” throughout their lives or could express one identity at one time and another at another time, or multiple national identities at once. Within this conception, no individual could ever be fully representative of a nation; nor could any individual be reduced to a nation.

It was for this reason that Lemkin considered many different kinds of groups to be “nations,” believed that nations were constituted by people’s recognition that they were part of a nation, argued that nations were always changing their national character and that this dynamism enriched the lives of individuals, and felt that each individual could hold many different national identities throughout his or her life – oftentimes holding several at once. For Lemkin, genocide was, above all else, an attempt to deny this dynamism in human societies, to wall-off the boundaries of social groups, and to produce static forms of social identity that served the interests of narrow groups within a conflict, such as political or

religious elites, but that would ultimately stifle human creativity, beauty, ingenuity, and the forms of social interaction necessary for promoting social change.

Lemkin’s definition of genocide was simple. Genocide was the destruction of nations, which entailed the destruction of the national patterns of the oppressed group and the imposition of the national patterns of the oppressor. For Lemkin, genocide was not necessarily an act of mass murder, though mass murder could be genocide if the act was committed with the intention of destroying a nation. Instead, if genocide was the destruction of nations and national patterns, then genocide for Lemkin was very much the destruction of “families of mind” as well as the destruction of social processes by which “communities of character” formed from “communities of fate,” to apply Bauer’s terminology. For Lemkin, the destruction of cultural symbols, artifacts, and institutions was not genocide, by itself, unless it “menaces the existence of the social group which exists by virtue of its common culture.”<sup>45</sup> In such a formulation, therefore, the outlawing of particular customs and rituals, attempts to abolish a language, or the destruction of social institutions or cultural institutions become genocidal for Lemkin when the acts are committed with the intention of preventing the replication of a group’s social identity.

If Lemkin defined genocide as the destruction of nations (as families of mind) – and believed that genocide involved the destruction or removal of the national pattern of the oppressed and the imposition of the national pattern of an oppressor – then we can understand why Lemkin would be so concerned with acts that destroyed the bonds of social solidarity that made group life, and the social reproduction of groups, possible. This is precisely why Lemkin believed that in many cases, the destruction of libraries and the banning of folk traditions and religious customs could be acts of genocide, while large-scale acts of mass killing and massacres might not qualify as genocidal.

Lemkin was not trying to coin the word “genocide” to signify a particular type of violence.<sup>46</sup> Rather, he was trying to create a new juridical and conceptual category of “different actions” that, “taken separately,” constitute other crimes but, when taken together, constitute a type of atrocity that threatened the existence of social collectivities and threatened a peaceful and cosmopolitan social order of the world.<sup>47</sup> As a consequence, Shaw writes, in contrast to subsequent theorists who narrowed genocide to a specific crime, Lemkin saw genocide as including not only organized violence but also a wide range spectrum of forms of persecution.<sup>48</sup> Genocide, in Lemkin’s thought, was a social and political process of attempting to destroy human groups, not an act of mass killing. But he defined human groups as mental constructions, families of mind, nations created through a historical process. It followed, therefore, that genocide was the destruction of *social processes* not social things. Remember, also, that he defined nations themselves as processes, not objective wholes.

As Lemkin explained in his unpublished manuscript, *Introduction to the Study of Genocide*, “like all social phenomena, [genocide] represents a complex synthesis of a diversity of factors; but its nature is primarily sociological, since it means the destruction of certain social groups by other social groups or the individual representatives.”<sup>49</sup> Any analysis must, therefore, recognize that

genocide is a gradual process and may begin with political disenfranchisement, economic displacement, cultural undermining and control, the destruction of leadership, the break-up of families and the prevention of propagation. Each of these methods is a more or less effective means of destroying a group. Actual physical destruction is the last and most effective phase of genocide.<sup>50</sup>

It bears repeating again, for emphasis, that Lemkin did not believe the destruction of cultural symbols, artifacts, and institutions was genocide, unless these acts of destruction “menaces the existence of the social group which exists by virtue of its common culture.”<sup>51</sup> Here was Lemkin’s notion of genocide as a process that destroyed a process, not an act that destroyed a thing.

### Lemkin on group destruction in *Axis Rule in Occupied Europe*

To position Lemkin as a key theorist in the study of mass violence, identity-group violence, cultural violence, and community destruction, it is necessary to examine his 1944 magnum opus, *Axis Rule in Occupied Europe*. Lemkin begins the book by presenting chapters titled simply, “Administration,” “Police,” “Law,” “Courts,” “Property,” “Finance,” “Labour,” “Legal Status of the Jews,” and, ninth, “Genocide.” The book documents how the Nazi Party ruled Germany, and directed the Axis occupation, before presenting Lemkin’s thesis that genocide was the guiding principle of that occupation. The short, five-page eighth chapter on the legal status of the Jews introduces the chapter on genocide by showing how the Nazi Jewish laws structured the actions of bureaucracies and individuals at almost every level of the Axis governments. The ninth chapter demonstrates that the legal status of the Jews, beginning in the early 1930s, set in motion a social and political process that was both institutional and normative, shaping expectations of how Jews should be treated socially, legally, and politically. Thus, a banker, a store owner, a judge, and a police officer would all be compelled to treat Jews in a certain way according to their individual duties and social roles, ensuring a process of social reification in which Jews become the imagined “other” that Nazi policies took them to be in the first place. Moreover, the chapter also demonstrates that the Jewish laws directed the governments and societies in occupied Europe toward a systematic suppression of people who were understood to be Jewish. When taken individually, none of these separate actions compelled by the law – whether they were the actions of a functionary doing his or her job or a racist – constituted a genocidal scheme to dismantle an entire Jewish nation. It was only when they were taken together, on the whole, that they constituted genocide.<sup>52</sup> In the eighth chapter on the legal status of the Jews, the concept of genocide is, therefore, fully implicit even though Lemkin does not mention the word “genocide.” But it is also clear that Lemkin saw genocide as a systematic plan of persecution, aimed at destroying groups as sociological entities.

The ninth chapter on genocide sets the groundwork for the rest of the book, which contains an exhaustive analysis of the genocide as it was conducted in each of the occupied territories. The third part of *Axis Rule* includes nearly 400 pages of translations of statutes, directives, and decrees that Lemkin began collecting in Stockholm in late 1941. From his analysis of Axis laws, Lemkin demonstrated that the various occupying administrations were engaged in a systematic attack on enemy “elements of nationhood” in every Axis administration across Europe. Though systematic, the genocide was not conducted uniformly throughout Europe. Instead, Lemkin identified eight distinct “techniques of genocide” being employed across Germany and the occupied territories. He introduced these techniques in his chapter on genocide before analyzing the laws of occupation. These techniques were: political, social, cultural, economic, biological, physical (including racial discrimination in feeding, endangering of health primarily in ghettos, and mass killings), religion, and moral. Lemkin did not intend these eight techniques to be a typology for all genocides. Where he outlines techniques such as “economic” or “biological” or “cultural” genocides, for instance, Lemkin is not outlining a particular type of genocide or a means of committing genocide that could apply to all cases across history. Instead, in *Axis Rule*, Lemkin simply attempts to outline the way the Axis genocide was being conducted, and the specific ways the Nazi program of genocide was structured across Europe, in accordance with the particular contours of Nazi ideologies and interests.

The first technique of the Axis genocide, Lemkin believed, was politics. Politically, Lemkin argued, the German occupiers prepared for genocide by destroying the local institutions of self-government in the incorporated areas, which would have been capable of resisting Nazi orders. The German occupation subsequently replaced the political institutions with “German patterns of administration” that could be effective institutional conduits for implementing German policies. The regime ruled through the “usurpation of sovereignty,” which was achieved by hollowing out local institutions likely to resist Nazi orders, shattering existing legal orders, and then instituting new juridical orders channeled through those most likely to be loyal in each region. As Lemkin later explained in a manuscript he authored in the 1950s but never published, “the Nazis never broke a law if they could help it. They changed instead the law to fit the new situation – or rather the new crime.”<sup>53</sup>

The second technique of the Axis genocide was social. Indeed, Lemkin saw political and social techniques of genocide as interrelated, and believed that removing the “local law and local courts” and replacing them with “German law and courts” was the first step to destroying the “vital” social structures of the nation. The focal point of the laws of occupation and the Nazi decrees quickly became “the intelligentsia, because this group largely provides national leadership and organizes resistance against Nazification,” Lemkin wrote.<sup>54</sup> Lemkin also included laws banning Polish youth from studying the liberal arts because “the study of liberal arts may develop independent national Polish thinking,”<sup>55</sup> the closure of private schools across occupied Europe to promote a

unified National Socialist education, and the banning of perceived anti-German textbooks.<sup>56</sup>

Cultural genocide, Lemkin's third category, was closely intertwined with social techniques. By cultural genocide, Lemkin did not mean that the destruction of culture was genocide, but rather that genocide against a group could be committed through cultural techniques. Across the incorporated territories, he observed, "the local population is forbidden to use its own language in schools and printing."<sup>57</sup> There were decrees ordering teachers in grammar school to be replaced by German teachers to "assure the upbringing of youth in the spirit of National Socialism."<sup>58</sup> It was even illegal to dance in public buildings in Poland, except for dance performances officially approved as sufficiently German.<sup>59</sup> In fact, in every occupied territory, people who "engaged in painting, drawing, sculpture, music, literature, and the theater are required to obtain a license" from the local office of the Reich Chamber of Culture "to prevent the expression of the national spirit through artistic media."<sup>60</sup> In Poland, the authorities in charge of cultural activities organized the destruction of national monuments and destroyed libraries, archives, and museums, carrying away what they desired and burning the rest.<sup>61</sup>

Fourth, the genocide was being committed through economics, from liquefying financial cooperatives, to confiscating property, to manipulating financial systems to undermine the elemental base of human existence. Fifth, genocide was being committed biologically, he wrote. Because the German ideology thought of nations in idioms of race and biological superiority, there was very clearly a biological element to the Nazi German genocide, Lemkin believed. The Nazi regime sought to lower birthrates of people whose bloodline was undesirable, while promoting the reproduction of those who were biologically more favorable. Sixth, physical genocide, Lemkin wrote, signified the "physical debilitation and even annihilation" of national groups. The physical attack on nations was conducted through racial discrimination in feeding, measures intended to endanger the health of groups, and mass killings. This technique of mass killing, Lemkin wrote, "was employed mainly against Poles, Russians, and Jews, as well as against leading personalities" who represented the intelligentsias of enemy nations. The Jews, Lemkin wrote, were liquidated by disease, hunger, and executions inside the ghettos, on transport trains, and in labor and death camps.

The seventh technique was religious, Lemkin wrote, as the German occupation attempted to change the religious patterns of the occupied territories. The eighth technique of the Nazi German genocide, Lemkin wrote, was the closely related category of morality. Moral genocide, he argued, included acts intended to "weaken the spiritual resistance of the national group." This could include forced drug use or the practice of inflating food prices to prevent people from affording basic nutrition, while artificially keeping alcohol prices low to encourage people to drink instead of eat.<sup>62</sup>

By themselves, none of these eight techniques would constitute genocide. Nor did Lemkin intend these ideas to signify typologies of genocide. Nor were these techniques the only way to commit genocide. Rather, Lemkin's analysis of the

laws of the Axis occupation of Europe revealed that the legal order in the occupied territories was oriented toward destroying enemy nations using these eight techniques. In other words, Lemkin's goal in *Axis Rule* was to define genocide as a general, broad category of conflict, and then outline the ways in which this particular genocide was being committed by the Nazis. "Cultural genocide" in Lemkin's terminology in *Axis Rule*, therefore, was not a type of genocide – but rather one of many techniques of committing genocide that included mass killings and concentration camps, but also forms of political, social, and economic destruction, and more.

### Culture and genocide

Lemkin scholars have argued that Lemkin's idea of genocide is dangerous because it is derived from a "Herderian ontology" of groupism that is explicitly anti-liberal.<sup>63</sup> Herder, of course, was the German Romantic theorist who first developed the notion of culture that gave rise, historically, to the bedrocks of Anthropology, including cultural relativism, and a deep sense of compassion for the suffering caused by colonial attempts to destroy culture in the name of civilization. Romantic nationalism might have generated an appreciation for cultural diversity, Lemkin pointed out, but it did so by glorifying cultures as primordial entities that transcended history, to which all individuals could be reduced. This notion of culture was grounded in a form of nationalism, he continued, that sought to glorify the trans-historical and primordial German nation above and beyond the forms of oppressive European governments. Lemkin believed this Romantic notion of culture, which underpinned German nationalism, would later be used by anti-semitic and militarist thinkers such as Ernst Moritz Arndt, Heinrich von Treitschke, and Friedrich Ludwig, the philologist and theologian who felt the German nation was humiliated by the Napoleonic victories and started a nationalist gymnastic movement to unify and strengthen the young men of the country.<sup>64</sup> Troubled by this ideology that presents the individual, the community, the nation, and the state as objective and organic wholes bound by language, blood, and territory, Lemkin saw Romantic nationalism as highly exclusionary, consolidating the idea of the nation – the *Volk* – into the service of an intolerant nation state.

Fichte, the prominent follower of Herder, was especially problematic for Lemkin. In Fichte's conception, the nation expressed an organic "will" that provided social cohesion by enforcing a strict vision of relativity that shaped individuals' tastes, beliefs, values, morals, and actions. Fichte's theory of the union of the state, nation, and morality – where the highest principles of morality and right were attained by people living together in a physically and spiritually self-reproducing society that manifested its will in the state – was the starting point from which the ancient practice of genocide took its modern form, Lemkin wrote.<sup>65</sup> Fichte and Herder, Lemkin wrote, invented the idea of a singular German *Volk* that was present throughout history in order to advocate uniting "German" peoples, such as the Danes, Poles, Prussians, Austrians, Bavarians, and so forth, into a single empire and nation-state.

To argue that Lemkin conceptualized human groups, and culture, in organic or Herderian-Romantic terms is to ignore Lemkin's own thoughts on the matter. Lemkin could not have been more clear that he rejected a definition of culture that was derived from a German Romantic world view, and even believed that this notion of culture was an important factor in shaping the Holocaust. Lemkin argued explicitly that the "Herderian Romantic approach" which valorized organic cultures and believed human groups were organic and trans-historical entities might have inspired emancipatory nationalist movements in the revolutions of 1848, but "it became culturally atavistic in the nineteenth century and politically aggressive in the late nineteenth and the first half of the twentieth centuries," when it "coupled with the strive for power, aggrandizement, internal anxieties, and disrespect for minorities [to] create a climate ... for the perpetration of genocide."<sup>66</sup>

With an understanding of nations derived from the national cultural autonomy theorists – not organic or romantic nationalists – Lemkin rejected atavistic theories of the nation and was resolute in his opposition to a relativistic form of nationhood. When Lemkin told the *Christian Century* in a 1956 interview that he did not consider himself to be only Polish or Jewish because he did "not belong exclusively to one race or one religion," he was rejecting this organic nationalist worldview without completely giving up his communitarian sentiments.<sup>67</sup> Lemkin, as Moses put it, did not structure identity like a zero-sum game, and never "believed that being a Polish patriot and advocate for all cultures entailed renouncing his Jewish heritage or cultural rooting."<sup>68</sup> Likewise, he held that standard of identity for all of humanity, where individuals could hold as their own many identities at once – could belong to many families of mind at once – and could not be reduced to any particular one.

What makes Lemkin's thinking difficult to parse is that he did not believe nations were organic and primordial entities with a concrete existence defined by blood, language, geography, or some other objective criteria; rather, he believed that nations were aspects of consciousness that took on a social reality as a "family of mind" between individuals. By contrast, culture, in Lemkin's definition of the concept, was a functional, structural force that provided for the basic needs of a human group, and helped bind the social group together as a group. After the war, Lemkin explained his ideas on cultural destruction and genocide by citing anthropologists James Frazer and Bronisław Malinowski's theories of cultural functionalism, the theory that culture was necessary for maintaining the physical well-being of people because it integrated social institutions and coordinated practices, beliefs, and actions to allow people to pursue and sustain their biological needs.<sup>69</sup> Lemkin wrote after the war in his unpublished manuscript *Introduction to the Study of Genocide* that all human beings "have so-called derived needs which are just as necessary to their existence as the basic physiological needs." These derived needs "find their expression in social institutions," Lemkin wrote, citing Frazer. He concluded, "If the culture of a group is violently undermined, the group itself disintegrates and its members either become absorbed into other cultures which is a wasteful and painful process or succumb to personal disorganization and, perhaps, physical destruction."<sup>70</sup>

If nations were "families of mind" according to Lemkin's definition of the concept, then it was culture that integrated nations. Culture, in Lemkin's definition, was a functional, structural force that integrated individuals into social groups. As Shaw has explained, Lemkin recognized that nations did not actually have concrete linkages that united them through history; rather, he believed it was the social construction of these linkages that mattered. In Lemkin's thought, there were certain aspects of culture – common rituals, music, arts, practices, and shared beliefs – that integrated individuals into national groups and allowed them to form the "family of mind" (and, remember, indeed, that Lemkin's definition of nation had such a low bar that almost any imaginable social group, such as "card players," would have qualified as a nation so long as individuals of that group believed they were a group). The destruction of culture was therefore closely associated with the destruction of nations, in Lemkin's thought, because the destruction of culture could undermine the ability of a nation to exist. However, Shaw observes, Lemkin's definition of culture "cannot bear the weight of representing the essence of what is attacked in the whole range of genocides," which means that Lemkin could not have considered the mode of genocide to be mainly cultural.<sup>71</sup> Lemkin spelled out his position when he wrote that the "destruction of cultural symbols is genocide" only when "it implies the destruction of their function" and subsequently "menaces the existence of the social group which exists by virtue of its common culture."<sup>72</sup> Thus we see at work Lemkin's belief that the destruction of culture, according to his definition of culture, is not genocide; genocide was the destruction of the family of mind.

Lemkin explained his ideas further by turning to the anthropologist Ruth Benedict, who became one of his main academic sources in his manuscript *Introduction to the Study of Genocide*. In *Patterns of Culture*, Benedict created a framework for understanding how individuals were shaped by culture and how individuals shaped culture.<sup>73</sup> Although Benedict built on existing theories of cultural functionalism that have been dispelled in contemporary Anthropology – and although she believed that individuals' subjectivities were almost completely shaped by their cultural groups, which has also been refuted in the discipline – she argued that culture was not a fixed object and therefore could not be dealt with typologically. Rather, the critic had to look to an area "beyond cultural relativity" to see how cultures were constantly changing, adjusting to challenges, or adapting to meet the demands of crisis.<sup>74</sup> The text is crucial for understanding Lemkin's writings on the difference between cultural change and genocide. "Gradual changes occur by means of the continuous and slow adaptation of the culture to new situations," Lemkin wrote, echoing Benedict.<sup>75</sup> No culture can exist without changing, he added, but the process of gradual change also ensures that a given culture may slowly disintegrate over time. As culture changed, so too did nations change. Genocide, in contrast to cultural change, was an attempt to destroy a nation. Thus the act of genocide, in Lemkin's thought, was an act that was intended to protect the inviolability of an imagined organic national group by destroying other forms of national consciousness, and thereby prevent cultural change from taking place. The end result of genocide, Lemkin wrote, was a static and unchanging world civilization.

Lemkin's internationalism and cosmopolitanism were intertwined. His vision of human rights was predicated on the state's responsibility to protect all who lived in the state, not just its citizens – where the liberal rule of law stood to guarantee the ability of individuals to exercise their ethnic traditions, religious beliefs, and identities. Lemkin's theory was ecumenical, as well. He believed the Genocide Convention represented something larger than a promise of tolerance and good governance: the promise for all people to live in a world where they could enjoy the experience of difference. The acceptance of others with different traditions and identities was the source from which all other demands for human rights were derived in the first place. In Lemkin's thought, the Genocide Convention was part of a larger effort: "first we make existence safe," and "then we work to improve it."<sup>76</sup> The freedom of speech, the freedom to vote, the freedom to worship, he argued, were meaningless in a world that sought to stamp out national-cultural diversity and obliterate people's ability to freely exercise their subjectivity.

Turning back to Ruth Benedict's writings on the importance of cultural values changing in relation to challenges faced by a society or individuals, Lemkin cited *Patterns of Culture* to argue that "cultural relativity can be a doctrine of hope rather than despair" when it fosters a universal respect for national-cultural diversity, an understanding that cultures and national identities are always changing, and that this dynamism is a fundamental human good.<sup>77</sup> "In our present endeavors at unifying the world for peace," Lemkin continued,

this doctrine [of cultural relativity] has a two-fold significance. It means that we must respect every culture for its own sake. It also means that we must probe beyond specific cultural differences in our search for a unified conception of human values and human rights. We know that this can be done.<sup>78</sup>

Here is the heart of what Moses calls Lemkin's "ecumenical cosmopolitanism."<sup>79</sup> In his description of his research project for *Introduction to the Study of Genocide*, Lemkin explained that the "philosophy of the Genocide Convention is based on the formula of the human cosmos" that recognized a need to outlaw the destruction of nations "not only by reason of human compassion but also to prevent draining the spiritual resources of mankind."<sup>80</sup> "World culture is like a subtle concerto" that "is nourished and gets life from the tone of every instrument," Lemkin explained.<sup>81</sup>

Lemkin saw this diversity as the wellspring of human creativity and the great animator of a dynamic world.<sup>82</sup> The interaction between nations, as culture-bearing groups, is what prevents world culture from becoming "static," Lemkin wrote. Lemkin did not join with Herder and Fichte to celebrate cultures as the sources of all creativity and the human good. Rather, the engine of all human creativity was the possibility of living in a plural world animated by diversity, to allow for the free exercise of subjectivity, and to allow individuals to experience different subjective positions. Such national-cultural diversity, Lemkin believed,

is what generated new kinds of thought, tastes, aesthetics, and beliefs and enriched the lives of individuals.<sup>83</sup> The struggle against genocide, he wrote, began when "it was felt that a brutally imposed, national or racial pattern by one nation or race over the entire world would be an end of civilization."<sup>84</sup> For Lemkin, the struggle against genocide was a struggle to create a world where the "subtle concerto" of a peaceful, accepting, and diverse world civilization could finally take hold.

## Notes

- 1 Acknowledgment: This chapter is adapted from lectures delivered at Harvard University, the University of Buenos Aires, and Florida International University. Portions of this chapter appeared earlier in Douglas Irvin-Erickson, *Raphaël Lemkin and the Concept of Genocide* (Philadelphia: University of Pennsylvania Press, 2017). Thank you to the University of Pennsylvania Press for permission to reproduce portions of the book in this chapter, which I have cited as needed.
- 2 John Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention* (New York: Palgrave Macmillan, 2008); William Korey, *An Epitaph for Raphael Lemkin* (New York: Jacob Blaustein Institute for the Advancement of Human Rights, 2001); Raphael Lemkin, *Totally Unofficial: The Autobiography of Raphael Lemkin*, ed. Donna-Lee Frieze (New Haven: Yale University Press, 2013). Samantha Power, "A Problem from Hell": *America and the Age of Genocide* (New York: Basic Books, 2002); Irvin-Erickson, *Raphaël Lemkin and the Concept of Genocide*; and Philippe Sands, *East West Street: On the Origins of Genocide and Crimes against Humanity* (New York: Knopf, 2016). David Crowe is writing a much-anticipated biography of Lemkin.
- 3 Agnieszka Biencyk-Missala and Slawomir Debski, eds., *Rafal Lemkin: A Hero of Humankind* (Warsaw: Polish Institute of International Affairs, 2010); and Dominik Shaller and Jürgen Zimmerer, eds., *The Origins of Genocide: Raphael Lemkin as a Historian of Mass Violence* (New York: Routledge, 2009). See two special issues on Lemkin in *Journal of Genocide Research* 15, no. 3 (2013), and 7, no. 4 (2005). Several important early journal articles and chapter include Steven L. Jacobs, "Genesis of the Concept of Genocide According to Its Author from the Original Sources," *Human Rights Review* 3, no. 2 (2002): 98–103; A. Dirk Moses, "Raphael Lemkin, Culture, and the Concept of Genocide," in *Oxford Handbook of Genocide Studies*, eds. Donald Bloxham and A. Dirk Moses (Oxford: Oxford University Press, 2010), 19–41; and Steven Schnur, "Unofficial Man: The Rise and Fall of Raphael Lemkin," *Reform Judaism* (1982): 9–11 and 45. And see introductions to: Steven L. Jacobs, ed., *Raphael Lemkin's Thoughts on Nazi Genocide: Not Guilty?* (Lewiston, NY: Edwin Mellen Press, 1992); Steven L. Jacobs, ed., *Lemkin on Genocide* (Lanham, MD: Lexington Books, 2012); and Frieze, ed., *Totally Unofficial: The Autobiography of Raphael Lemkin*. A special issue of *Genocide Studies and Prevention* dedicated to Raphaël Lemkin, edited by Benjamin Meiches and Jeff Benvenuto, is forthcoming.
- 4 Alexander Laban Hinton, "Critical Genocide Studies," *Genocide Studies and Prevention* 7, no. 1 (2012): 4–15.
- 5 The subject that has been studied extensively. For instance, see Moses, "Raphael Lemkin, Culture, and the Concept of Genocide"; Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*; Irvin-Erickson, *Raphaël Lemkin and the Concept of Genocide*; Martin Shaw, *What is Genocide?* 2nd edition (London: Polity, 2015); Martin Crook, Damien Short, and Nigel South, "Ecocide, Genocide, Capitalism and Colonialism: Consequences for Indigenous Peoples and Global Ecosystems Environments," *Theoretical Criminology* 22, no. 3 (2018): 298–317.

- 6 Irvin-Erickson, *Raphaël Lemkin and the Concept of Genocide*, Chapter 6.
- 7 Ibid.
- 8 Shaw, *What is Genocide?*, 25–35.
- 9 For an excellent review, see Moses, “Raphael Lemkin, Culture, and the Concept of Genocide.” Cf. Ruth Amir, “Law Meets Literature: Raphael Lemkin and Genocide Studies,” *Pólemos: Journal of Law, Literature and Culture* 12, no. 2 (2018): 429–447.
- 10 Leora Bilsky and Rachel Klagsbrun, “The Return of Cultural Genocide?” *The European Journal of International Law* 29, no. 2 (2018): 373–396.
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## 2 An historical perspective

### The exclusion of cultural genocide from the genocide convention

Jeffrey S. Bachman

#### Introduction

Prior to its adoption at the General Assembly and subsequent entry into force, the text of the United Nations Genocide Convention (UNGC) evolved through a drafting and negotiation process that determined the final provisions of the treaty. Throughout this process, debate over whether cultural genocide (for the purpose of this chapter, "cultural genocide" refers specifically to a particular technique of genocide) ought to be included in the treaty was highly contentious. This chapter provides an overview of the UNGC's drafting process, the means by which cultural genocide was excluded from the final text, how the "colonial clause" was added, and historical context to show how colonial powers were aggressively seeking the exclusion of cultural genocide.

#### Overview of the drafting process

In 1946, Raphael Lemkin began in earnest his campaign to make genocide a crime under international law. The importance of Lemkin's efforts cannot be overstated. As Elisa Novic explains, in the aftermath of World War II,

Ultimately, it was genocide, rather than crimes against humanity, which received codification. It is hard to explain this fact by any reason other than Lemkin's involvement; he relied upon the post-war momentum of a new international order to lobby the international community to adopt quickly an international instrument dedicated to genocide.<sup>1</sup>

On November 2, 1946, Cuba, India, and Panama requested that the UN General Assembly include on its agenda the prevention and punishment of genocide. Approximately one month later, on December 11, 1946, the General Assembly adopted Resolution 96(I), which affirmed that genocide "is a crime under international law which the civilized world condemns" and requested that the Economic and Social Council "undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly."<sup>2</sup> From this point forward, the