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Douglas Irvin-Erickson
George Mason University

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Round Table (Part 5): What's Raphaël Lemkin Got to do with Genocide Studies?

Douglas Irvin-Erickson

George Mason University
Fairfax, Virginia, U.S.A.

Raphaël Lemkin and the Concept of Genocide

Douglas Irvin-Erickson

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Commentary by Douglas Irvin-Erickson

George Mason University

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What's Raphaël Lemkin Got to do with Genocide Studies? A Conversation on Gender, Culture, Economics, Categorical Violence, and Colonization with Professors Sarah Federman, Dirk Moses, Max Pensky, and Scott Straus

by Douglas Irvin-Erickson

I would like to thank the editors of *Genocide Studies and Prevention*, especially JoAnn DiGeorgio-Lutz, for organizing this conversation and soliciting essays from such a highly distinguished panel of experts. Thank you, in turn, to Sarah Federman, Dirk Moses, Max Pensky, and Scott Straus for their generous reviews of my book, *Raphaël Lemkin and the Concept of Genocide*. In my response to each reviewer, I cover a lot of ground from my book—in the hope that this conversation can be assigned in the classroom.

Lemkin: Founding Father, Great Man, Pioneer, Hero, Saint, or Prophet?

Alex Hinton has suggested that genocide scholars have constructed a narrative that Lemkin was the founding father of genocide studies, and the prototypical genocide scholar, “academically informed yet politically committed to this pressing social issue.”¹ These narratives do not situate genocide studies in the framework of Lemkin’s ideas. Instead, they reframe Lemkin in the image of later generations of genocide scholars, who ascribed to Lemkin their own predilections, persuasions, and politics.² With this founding father narrative, Lemkin hagiography comes to pass for Lemkin biography.³

Consider Samuel Totten and Henry Theriault’s recent college-level textbook *The UN Genocide Convention: An Introduction*.⁴ On the first page, the authors compare Lemkin to Susan B. Anthony, Mahatma Gandhi, Eleanor Roosevelt, Martin Luther King Jr., and Nelson Mandela. We are told that what distinguishes Lemkin from these other human rights heroes is that Lemkin was able to single-handedly accomplish something important—the United Nations

¹ Alexander Laban Hinton, “Critical Genocide Studies,” *Genocide Studies and Prevention* 7, no. 1 (2012), 4–15.

² A. Dirk Moses has done a brilliant job explaining this in A. Dirk Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (Cambridge: Cambridge University Press, 2021).

³ Benjamin Meiches and Jeff Benvenuto, “Between Hagiography and Wounded Attachment: Raphaël Lemkin and the Study of Genocide,” *Genocide Studies and Prevention* 13, no. 1 (2019), 2–10. For an excellent genealogical approach to the representation and uses of Lemkin, see Benjamin Meiches, *The Politics of Annihilation: A Genealogy of Genocide* (Minneapolis: University of Minnesota Press, 2019).

⁴ Samuel Totten and Henry Theriault, *The United Nations Genocide Convention: An Introduction* (Toronto: University of Toronto Press, 2020).

Genocide Convention (UNGC)—whereas the others needed the help of social movements to do their great deeds. This is a myth that persists in received scholarship.

As Max Pensky put it in his essay, Lemkin was a marginal figure during the diplomatic negotiations over the UNGC, with poor instincts as a negotiator. Yet, the myth of “Lemkin the great man” lives on (it is a great *man* tale, which leaves women out of the story). This is unfortunate because, as Pensky put it, it was Lemkin’s marginality that led to his impressive successes, forcing him to gin up a coalition of UN delegations representing small states and former colonies, women and social democratic members of delegations from major powers, and a global network of activists and lobbyists who flooded the offices of their governments’ officials and UN delegations with phone calls, telegrams, and letters pushing for a genocide convention. The more one has access to formal channels of power, the less one needs a coalition from the margins.

The forgotten “great man” motif is useful for scholars in genocide studies. Emphasizing that Lemkin did great deeds in the 1940s that were not appreciated until the field of genocide studies gained visibility in the late 1990s and early 2000s, confers upon genocide studies an artificial importance and a global civilizing mission. This dubiously elevates the prevention of genocide above other movements for liberation, peace, and justice—and places individual scholars into Lemkin’s intellectual lineage.

A similar phenomenon occurs amongst scholars who specialize in particular cases of genocide, ranging from the Holocaust to the Armenian, Ukrainian, Kazakh, and Polish cases, cases of genocide against indigenous peoples, and colonial cases in the Americas and Africa. In the literature on all these cases, we can find scholars claiming Lemkin was first (or most) concerned with their case. That is because Lemkin had a disingenuous habit of telling diasporic communities, survivor organizations, and advocacy groups that *their* case was really *the* case that first (or most) inspired him to come up with the idea of genocide. The archival record is thus filled with notes Lemkin wrote saying that some dozen or so cases were his first inspiration. The consequence of this, Henry Theriault observed, is that many different constituencies can now claim that Lemkin “invented” the idea of genocide in reference to the particular case that their community cares about.⁵

This why I appreciate Straus’ essay and the questions he poses to me: he suggests that genocide studies does not need Lemkin to be a vibrant, legitimate, and serious field of study. I agree with this. Furthermore, reducing the “great man” myth around Lemkin would help ease the cottage industry of activist-scholar groups that seek to legitimize their particular cases of interest by presenting Lemkin in a way that fits into their narratives. There are many Lemkins:

- The Jewish Lemkins (*plural*—the left Zionist Lemkin, the right Zionist Lemkin, the cosmopolitan Jewish Lemkin, the Lemkin who pretended to be a cosmopolitan-universalist his whole adult life so he could pass in a hostile and antisemitic world);
- The Polish Lemkins (*plural*—the right Polish nationalist Lemkin, the left Polish patriotic Lemkin, the a-political Polish Lemkin, the internationalist Polish Lemkin, the Polish-Jewish Lemkin, and the Jewish-Polish Lemkin);
- The Armenian suffering inspired Lemkin;
- The Ukrainian suffering inspired Lemkin;
- The Kazakh suffering inspired Lemkin;
- The Lithuanian suffering inspired Lemkin;

⁵ Henry Theriault, “Against the Grain: Critical Reflections on the State and Future of Genocide Scholarship,” *Genocide Studies and Prevention* 7, no. 1 (2012), 123–144.

- The New York Lemkin (which can also be the Native American suffering inspired Lemkin, or the anti-US Black racist Lemkin, or the pro-US Black anti-racist Lemkin); and
- The anti-colonial Lemkin, not to be confused with the pro-colonial Lemkin.

The list goes on and on. What is interesting to me is that each version of Lemkin *feels* like it is the authentic Lemkin to individual scholars in each of these camps. Why? Because each community of scholars who adopts Lemkin as their own has their own narrative about who Lemkin is, so that the figure of Lemkin they craft resonates with their politics, their programs, their concerns, and even their aesthetics. (*Surely this must be the real Lemkin, because it feels so right!*)

Until recently, one thing that kept getting left out of the “Lemkin belongs to us” battles was Lemkin’s work with Arab and Muslim groups to document and prosecute what he called the “world genocide of Muslims in the 1940s and 50s” that he said “followed the world genocide of Jews in the 1930s and 40s.”⁶ I guess that never *felt* right to very many people. But, you cannot ignore the record of Lemkin’s work to prosecute “a world genocide against Muslims” that he carried out with the League of Arab Delegates from 1949 all the way through the 1950s. That is also part of the *real* Lemkin. For what it is worth, the relationship between Israeli studies and Lemkin studies has also been tenuous, at best, but well worth pursuing.⁷

None of this should prevent scholars from reading Lemkin to gain new perspectives on their cases of interest. Ukrainian studies has been a good example as the “Lemkin Turn” has inspired fruitful new avenues of inquiry.⁸ But none of these area studies or case-specific fields need to claim Lemkin as their own to be legitimate.

Nevertheless, communities of scholars will likely continue to re-interpret Lemkin to fit their own designs, long into the future. With this, the contradictions and uncertainties about Lemkin as a historical figure will continue to be erased in favor of simple tales of the “true” heroic Lemkin. Such is the nature of hagiography, to avoid nuance in favor of certainty, to ignore context if context threatens moral consistency. In the spirit of muddying the waters and calling it progress, I will respond to my colleagues’ questions by raising more questions, leaving much unanswered.

Response to Professor Sarah Federman: On The Missing Voices in Diplomatic History and Problems with Justice

I was not the first to notice that colonization was central to Lemkin’s understanding of genocide and the drafting of the UNGC. A. Dirk Moses, in particular, has been a leading figure here. What struck me, however, was just how much members of the UN delegations from Western

⁶ See Daud Abdullah, “A Century of Cultural Genocide in Palestine,” in *Cultural Genocide Law, Politics, and Global Manifestations*, ed. Jeffrey Bachman (London: Routledge, 2019), 227–245. Abdullah picks up on Lemkin’s concerns about genocides committed against Muslims in the aftermaths of the British mandate systems—in Pakistan and Palestine. In my book, I discuss Lemkin’s ambiguous position on “genocide in the holy lands,” as delegates in late 1947 and early 1948 debated whether genocide should be defined in a way that would include the treatment of Muslim and Arab Palestinians under the UN Resolution on the Partition of Palestine. Lemkin is careful never to say anything on this. But his closest allies, in the negotiating rooms, were North African and Arab delegations that wanted the definition of genocide to cover much of the conflicts that emerged with the partition of the holy lands.

⁷ Rotem Giladi has written a provocative and thoroughly researched book on the Jewish Israeli lawyers, Jacob Robinson and Shabtai Rosenne, showing how they approached international law with disinterest, aversion, and hostility. Giladi’s treatment of Lemkin gives us a fresh look at the conflicts that arose between Lemkin and Israeli diplomats, while providing a new take on Lemkin’s engagement with Israeli and Middle Eastern politics. See Rotem Giladi, *Jews, Sovereignty, and International Law: Ideology and Ambivalence in Early Israeli Legal Diplomacy* (Oxford: Oxford University Press, 2021).

⁸ For a discussion, see Douglas Irvin-Erickson, “The Construction and Destruction of Peoples, Nations, and Empire: The Study of the Holodomor as Genocide,” in *Genocide: The Power and Problems of a Concept*, eds. Andrea Graziosi and Frank Sysyn (McGill-Queen’s University Press, 2022), 145–173.

powers spoke plainly about their own governments' interests in maintaining colonization and using international humanitarian law as a means for this end. This included the Australian, Brazilian, Canadian, French, South African, Swedish, US, and UK governments' interests in preventing the criminalization of apartheid, racial segregation, and other policies concerning the forced assimilation and extermination of indigenous peoples and colonial subjects.

The delegates from these states, and many more, especially the USSR, wrote their own atrocities out of the definition of genocide during the drafting process.⁹ The UK, US, and France were still colonial and imperial powers. The USSR was very much an empire.¹⁰ In 1946, when the delegations from the great powers sat down to define and outlaw genocide, they wanted nothing to do with outlawing a crime that Lemkin, in his 1944 book *Axis Rule in Occupied Europe*, called an ancient practice and colonial process that was now being used as a common technique of governance in the 20th century.

I felt this had been largely missed by scholars who rely on the UN *travaux préparatoires* to tell the history of the UNGC (*travaux préparatoires* are the official documentation of negotiations and discussions of the drafting of treaties and international laws).¹¹ What many at the UN said in private was different than what they said in the negotiating rooms, where record keepers were busy keeping minutes. While I was writing my book, Anton Weiss-Wendt was preparing his excellent study of the USSR and the UNGC, published in two volumes.¹² What struck me about Weiss-Wendt's work (we read drafts of each other's manuscripts as we were writing) was how expertly he used Soviet sources to illuminate what was going on behind the scenes on the Soviet side. These Soviet sources paint a different picture of the negotiations over the UNGC than the UN documents, revealing Stalin and his UN ambassador Andrey Vyshinsky's heavy influence over the wording of the final draft of the UNGC. The Soviets saw genocide, as Lemkin defined it, as a tool for holding their empire together, but their diplomats were too disciplined to let this slip into the official record.

As for the rest of the great powers, there are many blatantly racist comments to be found in the official UN documents, and a healthy share of "white man's burden" type of language. But there is much more candor in unofficial sources about the "danger" of outlawing genocide, and letting "brown people" or "backwards people" take over human rights instruments.¹³ Washington, London, and Paris liked taking credit for defeating fascism in the name of democracy, but they did not want to criminalize something Lemkin defined in *Axis Rule* as "a colonial process" of "destroying the national patterns of the oppressed and imposing the national patterns of the oppressors."¹⁴

These private conversations and correspondences—telegrams, sentence fragments scribbled on napkins, messages typed on hotel stationery, notes written down after midnight walks—give us different perspectives on the drafting of the UNGC than the *travaux*

⁹ Anton Weiss-Wendt, "Somebody Else's Crime: The Drafting of the Genocide Convention as a Cold War Battle, 1946–48," in *Genocide: The Power and Problems of a Concept*, eds. Andrea Graziosi and Frank E. Sysyn (Montreal: McGill-Queen's University Press, 2022), 22–43.

¹⁰ Mark von Hagen, "Wartime Occupation and Peacetime Alien Rule: 'Notes and Materials' toward a(n) (Anti-) (Post-) Colonial History of Ukraine," *Harvard Ukrainian Studies* 34, no. 1–4 (2016), 153–194. More broadly, see Alexander Motyl, *Imperial Ends: The Decay, Collapse, and Revival of Empires* (New York: Columbia University Press, 2001), 68.

¹¹ Nathan A. Kurz, "'Hide a Fact Rather than State It': The Holocaust, the 1940s Human Rights Surge, and the Cosmopolitan Imperative of International Law," *Journal of Genocide Research* 23, no. 1 (2021), 37–57. Kurz shows that relying only on the official UN documents also minimizes the degree to which the German attempt to annihilate European Jews shaped the debates on the convention, partially because UN note keepers did not register discussions of Jewish suffering as worthy of documenting.

¹² See Anton Weiss-Wendt, *A Rhetorical Crime: Genocide in the Geopolitical Discourse of the Cold War* (New Brunswick, Rutgers University Press, 2018); and see especially Anton Weiss-Wendt, *The Soviet Union and the Gutting of the UN Genocide Convention* (Madison, University of Wisconsin Press, 2017).

¹³ I have always thought the definitive book on this matter is Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2011).

¹⁴ Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, DC: Carnegie Endowment for International Peace, 1944), 79.

préparatoires.¹⁵ Diplomacy is just as much about what happens in the negotiation room as what happens outside of it. Where do the plans hatch, the plans for the motions and coordinated votes that take a room by surprise? They hatch at dinner, over cocktails, coffee or tea, in hotel rooms. Lemkin ascribed an almost magical quality to a green sofa in the delegates' lounge during the first UN General Assembly in Lake Success, New York. The bar, however, he seemed to hate, complaining about all the conversations over martinis that he was not invited to join. It is funny: the bar and the lounge were only a few feet away, yet the social meaning of these two spaces made all the difference for Lemkin.



Image 1. Sofas and chairs at the UN Delegate's Lounge, Lake Success, NY.
Source: UN Online Archives

¹⁵ James Finkel has often told me, reflecting on a long and distinguished career in government, that modern governments are not monolithic, and their policies are not made and carried out seamlessly. Rather, they can be messy and sometimes, one branch (or office) competes with another to determine how the government should act. It is through this mess of bureaucratic politics that state policy is made and carried out, and in these conflicts within government individuals really do matter. See three of Jim's fine essays: James P. Finkel, "Atrocity Prevention From Obama to Trump," in *Preventing Mass Atrocities: Policies and Practices*, eds. Barbara Harf and Ted Robert Gurr (London: Routledge, 2018), 113–134; James P. Finkel, "Beyond the Crossroads: Strengthening the US Atrocity Prevention Board," *Genocide Studies and Prevention* 9, no. 2 (2015), 138–147; James P. Finkel, *Atrocity Prevention at the Crossroads: Assessing The President's Atrocity Prevention Board After Two Years* (Washington, DC: US Holocaust Memorial Museum, 2014), accessed August 29, 2022, <http://www.ushmm.org/m/pdfs/20140904-finkel-atrocity-preventionreport.pdf>.



Image 2. The bar at the UN Delegate's Lounge, Lake Success, NY.
Source: UN Online Archives

It is at those same social gatherings, outside, not inside the meeting room, where one's friends catch wind of what is going to occur the following day in committee, and plan counter measures. Over and again, Lemkin's most ardent ally in this great game of rumors and schemes and plans and counterplans, was the entire Egyptian delegation, followed by the Indian, Pakistani, Saudi, and Filipino delegations, and his dear friends, the Chilean diplomat and poet Gabriela Mistral, and the Chinese born novelist and diplomat Pearl Buck, who both worked hard to maintain Chinese and Latin American support for the passage of the UNGC.

But not all of this backroom talk was bad. Ann Newland from New Zealand, Dana Wilcox from Canada, and Herbert Evatt from Australia helped Lemkin identify sympathetic individuals in other delegations, and circumvented their own governments' early opposition to the convention. American diplomats, namely the progressive and labor stalwart Adlai Stevenson, a committed internationalist, helped Lemkin persuade influential people in Washington. Stevenson arranged for Lemkin to meet Eleanor Lansing Dulles, who convinced her brothers Allen and John Foster Dulles to support the UNGC. John Foster Dulles had been an important figure during the drafting of the UN Charter, and generally supported the UNGC as a symbol of America's international commitments. But, as soon as the US delegation signed the UNGC in 1948, John Foster Dulles became a leading voice urging the US Senate not to ratify the treaty. He most certainly is one of the statesmen whom Lemkin describes as "living in perpetual sin with history" and "treating life like currency in a bank."

Gender and the Betrayal of the Women's NGOs

I want to thank Federman for calling attention to the gendered aspects of this story. It matters that Lemkin knew the most ardent supporters of outlawing genocide in Western governments' delegations were the women members of those delegations. Lemkin presented himself to them as a longtime advocate of women's rights by highlighting the instances in *Axis Rule* where he documented German crimes consistent with what we would now call sexual violence and gendered crimes. Women's NGOs at the UN invited Lemkin to speak, often during women-only meetings where survivors shared their experiences of sexual assault committed by German soldiers. Without fail, Lemkin reminded these audiences that he tried to get the Allies at Nuremberg to prosecute crimes he documented in *Axis Rule*, such as Germany issuing payments to women who were raped by German soldiers to incentivize the birth of "children with Germanic blood." Federman is right to say explicitly what I merely implied in my book: that Lemkin did not care that much about how sexual and gender-based violence fit into the eventual law against genocide. He just wanted the support of the women's NGOs.

As Lemkin says in his autobiography, there would be no UNGC if it were not for the women's NGOs. For instance, it was US congresswoman Helen Gahagan Douglas, whom Lemkin met in 1945, who first introduced Lemkin to Adlai Stevenson on the US delegation. It was only after Douglas convinced Stevenson of the merits of a law against genocide that Stevenson opened the door to channels of influence inside the US government, including the Dulles family. With Stevenson's introduction, Lemkin sent a telegram to the US Ambassador to the UN, Warren Austin, urging him to support the convention so the US could present itself as taking the lead in humanitarian affairs. Knowing that Austin was a "deeply religious" Congregationalist Christian—a denomination with ties to the temperance, abolitionist, and women's suffrage reform movements in the US—Lemkin emphasized to him the progressive aspects of a genocide convention and its importance for women's rights (incidentally, Turkey supported the UNGC as a symbol of its commitments to women's rights). Lemkin's persuasion worked, and his ability to frame the convention within the tradition of progressivism won the support the former president of the World Alliance of Women, Margery Corbett Ashby, who organized a private gathering of women from around the world to discuss genocide.

In the opening days of the General Assembly in 1946, after Ashby's women's meeting, Lemkin asked Ashby to introduce him to the chair of the Indian delegation, Vijaya Lakshmi Pandit. India at the time was not yet technically free of British rule. Pandit was won over by Lemkin's idea that genocide was a colonial crime, and she gave Lemkin the fifth and final signature he needed to bring a resolution to write a genocide convention to the floor of the General Assembly for debate. Believing a genocide convention would uphold what "Gandhi worked for," Pandit claimed that Lemkin's "concept of oneness" out of "many races and creeds," was a principle "we in India live by" and "our philosophers preached."¹⁶

The final definition of genocide, in 1948, is largely a betrayal of these advocates' goals. While "forced removal of children" and "imposing measures intended to prevent births" were included as acts of genocide in Article II of the convention, "forced impregnation" (an unfortunate euphemism for rape), "forced marriage," "prevention of marriage," and "forced divorce" were excluded. Let me be clear: forced abortions can be legally recognized acts of genocide under the UNGC, but not rape. Ultimately, I found no answers as to why these aspects of gendered violence did not make it into the final text of the UNGC. Not a single document I found could help me explain why preventing births made it to the negotiating table, but rape did not. Not once did I ever find any evidence that Lemkin pushed or advocated for forced marriage or rape to be enumerated in the acts legally constituting genocide. Eliding this history prevents honest conversations about why violence against women was erased from the legal definition of genocide. For what it is worth, it also shuts down conversation on the significant

¹⁶ Raphael Lemkin, *Totally Unofficial: The Autobiography of Raphael Lemkin*, ed. Donna-Lee Frieze (New Haven: Yale University Press, 2013), 123–126.

role the women's NGOs played in pushing the convention onto the UN agenda in the first place.

Corporate Responsibility, Economic Conflict, and Collective Justice

With regards to Federman's question about how the history of the UNGC and the Nuremberg trials shape our treatment of transnational corporations, I do not have a good answer. I would love for someone who knows more about Franz Neumann to answer for me. Let me explain.

In 1942, Lemkin was hired as chief consultant on the US Board of Economic Warfare and Foreign Economic Administration. Lemkin, at the time, was a well-known expert on economic conflict and international finance law. He had just published, in 1939, a well-received book in French on the way currency exchanges and international commerce caused conflicts between states, followed by a Swedish language book in 1941 on the way totalitarian regimes laundered money and manipulated currency exchanges to undermine the economies of social groups they sought to subjugate. At the Board of Economic Warfare, Lemkin befriended Franz Neumann and met Otto Kirchheimer (and possibly Herbert Marcuse).

Holocaust scholars know Franz Neumann as the author of *Behemoth*, an early and influential study of the economic basis of the Nazi regime, and the Ph.D. advisor of Raul Hilberg, one of the first Holocaust scholars. Neumann's book took seriously the role of economic power in the evolution of the German government and the rise of Nazi terror. He argued that the authoritarian nature of the Nazi regime was a façade, and the German government used terror and violence for the advantage of arbitrary social groups. For example, Neumann argued, the confiscation of Jewish property primarily served the interests of large capitalist companies such as the steel company Thyssen or the industrial conglomerate Mannesmann.

Political theorists know Neumann, Kirschheimer, and Marcuse as social democratic German Jewish social scientists who fled Germany in 1933 and contributed to the growth of Critical Theory when they linked up with Max Horkheimer's Institute for Social Research in New York City.¹⁷ During the Second World War, Neumann, Kirchheimer, and Marcuse were employed by the US government's Research and Analysis Branch of the Office for Strategic Services, and by 1942 Neumann and Lemkin were working together in the same office of the US Board of Economic Warfare. At the beginning of the Nuremberg trials, US chief prosecutor Robert Jackson relied heavily on the work of Neumann, Kirchheimer, Marcuse, and Lemkin to understand the structure of the German government under Nazi administration.

I mention this because Neumann, Lemkin, and Aron Trainin—the same Trainin I will discuss in my comments on Max Pensky's essay—were the authors of the three most important contemporaneous books used by the Nuremberg prosecutors as sources of facts and documentation about German atrocities. All three were present for the Nuremberg trials and influential in their own way. So, I would love to see someone who knows more about Neumann take up this question of Nuremberg and the legacy of corporate responsibility. *Behemoth*, a book about the corporate and economic underpinnings of the horrors we now call the Holocaust, played a major role in shaping the thinking of the prosecutors at the Nuremberg tribunals.

Lemkin, however, inverted Neumann's thesis on the relationship between mass violence and economic power. Where Neumann saw the destruction of peoples as a function of economics, specifically a corrupt relationship between a government that committed genocide to enrich national industries that financed the government, Lemkin instead saw economics as a tool for the destruction of peoples (and, thus, punishable as an act of genocide).

This discussion of corporate responsibility leads to Federman's questions of individual and collective responsibility. She asks, if genocide prevention requires collective action and genocide itself, mass participation, how then does accountability become singular? In other

¹⁷ Alexa Stiller, "The Mass Murder of the European Jews and the Concept of 'Genocide' in the Nuremberg Trials: Reassessing Raphaël Lemkin's Impact," *Genocide Studies and Prevention* 13, no. 1 (2019), 144–172.

words, why do we punish individuals for the crime of genocide when genocide, so clearly, is a social process requiring mass participation to carry out?

I do not have a good answer to this. Lemkin thought collectivities could be guilty of genocide, but he believed legal responsibility should be individualized to avoid group demonization. My personal sense is that collective accountability is important, but retributive justice would be a poor mechanism for collective accountability. So, I would vote for restorative justice processes, if we are talking about collective accountability for genocide.

In response to Federman's question about whether the UNGC, as written, prevented the Holocaust—I will take the bait and play around in counterfactual guesswork! No.

On the one hand, there was broad agreement amongst the great powers that genocide should be defined as closely as possible to the German case to prevent the law against genocide from applying to the types of mass violence and oppression their governments could be accused of committing. That is a sobering thought. They were explicit (in sources not found in the *travaux préparatoires*) that they wanted to support a treaty outlawing this new idea of genocide so they could show their domestic audiences that they cared about doing something good for humanity in the wake of the war, but they did not want the treaty to cover their actions or have mechanisms for enforcement. I am convinced, therefore, that efforts to cripple the convention won out—something Max Pensky brings up in his essay, and Dirk Moses has written about in *The Problems of Genocide*.

Response to Professor A. Dirk Moses: On Permanent Security and the Fallacy of the Political Will Thesis

Dirk Moses asked me if a new intellectual history of genocide needs to transcend the assumption about its humanization of domestic and international affairs?

Yes. But how? I think it begins by getting scholars to stop calling Lemkin the author of the UNGC. He was not. Lemkin felt the final definition of genocide established by the UN treaty was largely a betrayal of his most cherished principles, purposefully flawed, and morally compromised. While he kept up a brave face and publicly celebrated the UNGC, his private writings express despair and disappointment. "The fact is that the rain of my work fell on a fallow plain," Lemkin wrote in his autobiography, "only this rain was a mixture of the blood and tears of eight million innocent people throughout the world. Included also were the tears of my parents and my friends."¹⁸ When "the lights in Palais de Chaillot went out," he wrote, "the delegates shook hands hastily with one another and disappeared into the winter mists of Paris."¹⁹ The UNGC, he concluded, was now in the hands of the world's politicians and statesmen—people "who lived in perpetual sin with history" and could hardly be trusted with "the lives of entire nations."²⁰

Furthermore, Lemkin was not consistent with anything, which makes it difficult to build a system of knowledge on his work—especially a system of humanitarian praxis. It is very telling that, after 1948, Lemkin used his definition of genocide from *Axis Rule* when he wrote his social scientific and historical manuscripts, and used the UN legal definition when he was making legal arguments. When he shamefully, publicly denounced Black Americans who accused the US of genocide, Lemkin cited the legal definition to assert their claims did not amount to genocide.²¹ Yet, in his unpublished manuscripts on the history of genocide and genocide in the social sciences, Lemkin supported the idea that genocide was committed against

¹⁸ Lemkin, *Totally Unofficial*, 132.

¹⁹ *Ibid.*, 178.

²⁰ *Ibid.*, 115.

²¹ William Patterson, ed., *We Charge Genocide: The Historic Petition to the United Nations for Relief from a Crime of the United States Government Against the Negro People* (New York: International Publishers, [1952] 1970). The book was a case study in Lemkin's system, and even included a robust study of the economics of genocide against Black Americans. See Daniel E. Solomon, "The Black Freedom Movement and the Politics of the Anti-Genocide Norm in the United States, 1951–1967," *Genocide Studies and Prevention* 13, no. 1 (2019), 130–143.

Black Americans (from slavery to Jim Crow) by citing his definition of genocide in *Axis Rule*. The racist hypocrisy is clear. But it also tells me three things. First, Lemkin understood that the legal definition of genocide was different than his first definition of genocide. Second, he felt that his definition in *Axis Rule* was superior conceptually, but he knows it was not the law. And, third, Lemkin changes his definition depending on his audiences, picking and choosing definitions of genocide to fit his purposes. This certainly undercuts a great deal of the notion that “genocide” is a concrete, moral, and humanitarian category.

I would add one more thought in response to the question of “how do we transcend the assumption about the UNGC’s humanization of domestic and international affairs.” While many genocide scholars and anti-genocide activists uphold the UNGC as a kind of moral document, Lemkin knew the convention was a product of post-war geopolitics. At the end of the day, it was a treaty colonial powers could tolerate (and even use to advance their interests). The implication is that if scholars adopt the legal definition of genocide as their working definition of genocide, or even if they take the legal definition as an ethical or moral concept, they implicitly align their work with a concept that was designed to erase from its boundaries the vast majority of the kinds of violence, repression, and oppression being committed by the major powers at the time the convention was negotiated.²²

I would agree with Moses, therefore, that the armed conflicts, wars, and mass violence of the 20th and 21st centuries make a mockery of the UNGC. I might have chosen a different word than “mockery,” but I will take the bait and use the term. The conventional liberal view, as Moses points out, is that the UNGC culminated in the Rome Statute of the International Criminal Court and the Responsibility to Protect norm in the early 2000s, and promoted a broad expansion of human rights norms more generally. Progress all around, it would seem. So why do they fail, and why does genocide still occur?

Stated crudely, the liberal-interventionist argument suggests that the UNGC and the body of relevant international treaties and laws (i.e., the Rome Statute) and multilateral institutions (i.e., the ICC) are perfectly fine; the problem is those fickle policy makers and unambitious civil servants who do not want to jeopardize their careers by taking morally right actions to prevent genocide. In other words, the problem is political will. I do not think this is a very compelling argument.²³ The problem is not a lack of will.

As Moses has demonstrated in *The Problems of Genocide*, the victorious powers at the UN constructed an international legal regime that normalized and legalized many different ways that modern states kill people in the name of permanent security.²⁴ It matters that Stalin was a much more important and influential co-author of the UNGC than Lemkin. And, the Soviets were on the same page as the Americans when it came to what they wanted to achieve with the UNGC: they wanted a law that could not be used against them and their allies, but could still be used against their geopolitical adversaries.²⁵ As Moses’ work has shown, the governments of the Atlantic alliance and the Soviets then used the UNGC as moral cover when confronted by human rights activists, minimizing their atrocities by pointing to their support for the UNGC and comparing themselves favorably to the Nazis they defeated.

²² I think this argument emerges from three books: Irvin-Erickson (2017); Moses (2021); Weiss-Wendt (2022).

²³ The four main English language journals in genocide studies (*Journal of Genocide Research*, *Genocide Studies and Prevention*, *Genocide Studies International*, and *Holocaust and Genocide Studies*) and a good number of related journals (such as *Global Responsibility to Protect*) are filled with examples of the “the problem is political will” thesis. Curious readers can simply type “political will” into the search bar on these journal’s websites and judge for themselves.

²⁴ Jeff Bachman has shown how the permanent five members of the UN Security Council—China, France, Russia, UK and US—have exploited the UNGC to isolate themselves from the reach of the law; he contends the P-5 should be understood as “outlaw states.” See Jeffrey S. Bachman, *The Politics of Genocide: From the Genocide Convention to the Responsibility to Protect* (New Brunswick: Rutgers University Press, 2022).

²⁵ This should not surprise diplomatic historians because the US and USSR, adversaries in the Cold War, routinely collaborated to put down threats to the international system from which they derived their power. The diplomatic history of the UNGC was an early example.

I furthermore agree with Moses' argument that Lemkin played a role in naturalizing Western empires and modernizing liberal states by repudiating the Nazi biological conception of race and embracing a cultural version of this same idea. In this way, I do think the UNGC became a handy way for Western liberals to claim their states' violence and oppression was not genocidal. Distinguishing armed conflict from genocide, and then declaring genocide a moral evil, thus implies that armed conflict is a lesser evil (maybe even good). For example, the US military's mass murder of civilians with napalm and the use of experimental chemical weapons the US Department of Defense intentionally added to defoliants to cause inherited genetic mutations in plants, animals, and people, and then lied about when US soldiers started having babies with birth defects—and the many other horrors unleashed during the United States' imperial, predatory, and aggressive war in Vietnam—all of this could now be presented as good (or at least not evil) when contrasted with the German killing of civilians with Zyklon B. We now find ourselves at an absurd formulation:

Q: Why is the German killing of civilians by cyanide-based gasses evil, but not the American killing of civilians by sticky flammable petroleum jellies and DNA-altering chemicals?

A: Oh, right. Because one was genocide and the other was not.

Yes, this makes a mockery of the UNGC.

I also agree with Moses that the UNGC reifies the idea that there is a tidy relationship between nation and state. But I do not blame Lemkin. The whole UN Charter does that, as does the Universal Declaration of Human Rights. In fact, I like Lemkin's formulation of genocide in *Axis Rule*. His definition was simple, and easy to use if you are a social scientist. Genocide was a "colonial process" with two phases: *first, the destruction of the national patterns of the oppressed, and second, the imposition of the national patterns of the oppressor*. No nation states there.

I do an exercise with my students where I show them an image of page 79 of *Axis Rule*, juxtaposed with the UNGC. First, I have them talk about what Lemkin writes on page 79 of *Axis Rule*:

This new word, coined by the author to denote an old practice in its modern development, is made from the ancient Greek word *genos* (race, tribe) and the Latin *cide* (killing), thus corresponding in its formation to such words as tyrannicide, homicide, infanticide, etc. Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves ... Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.

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

Next, compare *Axis Rule* to the text of the UNGC:

Article I: The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

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

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

There is a lot you can pull out with your students. Just think about the breadth of different types of oppression that could be included under the rubric of “destruction of national patterns of the oppressed,” compared to the five specific acts of genocide enumerated in Article II of the UNGC.

This is why rape is not an act of genocide, but preventing births is. (This led to the famous determination in the International Criminal Tribunals for Rwanda and Yugoslavia that rape was an act of genocide in so far as rape constituted serious bodily or mental harm, if that harm was directly linked to an intention to destroy a protected group). I never found any evidence of how and why the deprivation of food and the confiscation of property were excised from the draft lists of possible acts of genocide. But they disappeared by mid-1947. For sure the Soviets had a hand in this. Forced removal of civilians, deportations, and population transfers were removed as acts of genocide because of such abuses were occurring in Syria, Lebanon, and Palestine, and in the conflicts that emerged in the aftermaths of the British mandate systems. The US, Canada, and Sweden worried that forced removals might also apply to their handling of indigenous peoples, and so their delegations were more than happy to exclude this as an act of genocide. On and on it went.

While we are at it, notice that Article II establishes that genocide is a crime committed against only four kinds of social groups—national, ethnical, racial, and religious groups. Therefore, an attempt to destroy “in whole or in part” other types of social groups is not legally genocide (such as LGBTQ+ people; economic groups like peasants, capitalists, and communists; political groups; secessionist insurgents or rebels; college students; people who like certain kinds of music; or drug addicts). There were delegations at the UN who argued that it was sometimes necessary to destroy whole groups—such as “backwards peoples” and “cannibals.”

The difference between the 1948 UN definition and Lemkin’s definition in *Axis Rule* (written in early 1942 and published in 1944) appears stark when we parse what Lemkin meant by “national groups.” The word “nation” in the UNGC is, almost as a rule, interpreted by English language scholars and international lawyers in the spirit of the UN Charter and the system of nation-states that defines the UN system. But Lemkin’s idea of a nation was not the idea of a nation that emerges from the legacies of the American and French revolution, which is then established in English and French language political theory and everyday language. (Lemkin’s idea of a nation was most certainly not the idea of a nation that emerged in German political theory, either. He believed German Romanticism paved the way for the Holocaust).

Lemkin's idea of "nation" was largely synonymous with what we now call "social groups" in today's parlance. This definition of nations is so broad that it would have included, in Lemkin's own words, "those who play at cards." Lemkin, quite literally, believed that people who shared similar tastes in art, people who were part of the same labor union, people who gambled, all constituted national groups. Moreover, he believed that individuals belonged to many nations at once, and that genocide could be committed without physically killing a single individual, but rather by imposing types of repression and oppression intended to eradicate different types of national patterns in a social or political community. Genocide, for Lemkin, could even be constituted by a government's attempt to eliminate criminals (his first three books discussed the way the Italian and Soviet penal system created the idea of enemy nations, and in the USSR, the way this directed the force of the state towards the eradication of enemy national patterns amongst the domestic population).²⁶

Lemkin wanted a law to protect the broad foundation of plural, diverse, and tolerant societies by outlawing an expansive array of state-backed (or state-tolerated) oppressive, repressive, and coercive actions against almost any social group imaginable. What Lemkin called genocide often went hand-in-hand with the violent processes that accompanied the founding of nation-states. This is what excited delegates from formerly colonized and small states, including India and Pakistan, who were busy accusing each other of committing genocide, but supported the UNGC because they thought it would prevent a reoccurrence of British-era horrors. This is what excited the women's NGOs at the UN. But much of the violence nation-states commit against their own populations was written out of the law which, yes, naturalizes the kinds of violence states commit in the name of the security of their nation.

I want to conclude with Moses' reflection that:

On the one hand, [genocide's conceptual] proximity to the Holocaust (history's largest race hate crime) means that states claim their attacks on minorities do not violate the UNGC because security imperatives rather than racial animus motivate them; on the other hand, their victims insist they are victims on genocidal racialization. The law that shields the perpetrator is also a rhetorical weapon of the weak, meaning that the question of genocide is a structural feature of an incoherent global order of stateless nations seeking political independence. This unresolvable tension was built into the concept by Lemkin and his successors.

I think this is the result of at least two competing forces during the UNGC drafting process (there were more than two forces, of course). The first was the delegations representing powerful state actors who wanted a treaty that could not be used against them. The second was the activists from an impressive collection of humanitarian movements and activist communities who really did want a treaty that served the interests of the weak. What emerged was a UNGC that turned out to be a powerful rhetorical tool for activist and survivor communities, but an intentionally convoluted and largely unenforceable treaty.

Response to Professor Max Pensky: On the Law of International Commerce, Norms, and Marginal People

Max Pensky reflects on the significance of "a small group of Jewish legal theorists and jurists" that Lemkin was part of, who were "rooted in the shifting and violent political universe of eastern Europe, in what was, alternately, East Prussia, Poland, and Ukraine." He continues:

²⁶ Rafał Lemkin, *Kodeks Karny Republik Sowieckich* (Warsaw: Wyd. Sem. Prawa kar., 1926); Rafał Lemkin, *Kodeks Karny Rosji Sowieckiej 1927* (Warsaw: Skład Główny w Księgarni F. Hoesicka, 1928); Rafał Lemkin, *Kodeks Karny Faszystowski Włochy* (Warsaw: Nakładem Księgarni F. Hoesicka, 1929).

“Their experiences of marginalization and persecution, of cultural and physical vulnerability under capricious political authority, and ultimately of the destruction of their families and their world, appropriated the concepts and mechanisms of international law with the goal of transforming a collection of treaties and customs, largely designed to lubricate international commerce, into a demand for the protection of individuals from obliteration by their own political authorities.”

There are two parts of this observation I want to unpack. One is the Jewish intellectual, social, cultural, and political foundations of this small group of international lawyers working to establish a coherent system of international criminal justice—which included treaties to establish international laws and international courts, and corresponding legislation within the domestic architecture of states. The second is that the areas where these systems of international criminal justice and international laws worked best was in the area commerce, trade, and travel. You cannot have passports and currency exchange clearing houses without an implied system of international law.

Yes, Lemkin was committed to the flawed minority rights tradition of the League of Nations—though he held some important reservations.

Yes, Lemkin was deeply concerned with the rise of violent, extremist, and totalitarian regimes in Europe (from the political right and left), which employed unprecedented terror upon civilians in the service of nationalist agendas.

Yes, by the late 1930s, Lemkin was a committed anti-colonialist who connected the experience of minorities and oppressed peoples in Eastern Europe, especially Jewish people, to the experience of people forced to live under the brutal conditions of colonial subjugation.

However, above all of this, Lemkin made a small fortune as a tax lawyer specializing in international financial law, and owned a thriving practice with individual and corporate clients across Poland. He was also a well-regarded scholar of international economic and finance law, who dabbled in minority protections and violence prevention as a side project. So, it always made sense to me that in Lemkin’s work on genocide, we see him move seamlessly from international commercial law to international laws protecting vulnerable peoples.

His 1933 formulation of “barbarity and vandalism” was the precursor to his idea of genocide. (Barbarity referred to physical attacks on groups with the intention of destroying the group; vandalism referred to attacks on the group’s cultural symbols and social institutions). In the paper where he worked out these ideas, he frames barbarity and vandalism within a larger conversation of international efforts to outlaw the spreading of vegetable contagions and protecting underwater communication cables—matters of international commerce that terrorist acts can disrupt.²⁷

While writing *Axis Rule*, Lemkin explicitly synthesizes his ideas on barbarity and vandalism into a new singular concept of genocide. The only major difference between his 1933 ideas and his idea of genocide is that he described barbarity and vandalism as acts, but he turns genocide into a type of conflict. And, thus, he attempts to turn an entire type of conflict into a crime. Conflicts are, by definition, social processes that involve lots of different kinds of acts.

To find a way to criminalize an entire social process, Lemkin had to extend his work in the 1920s and 1930s that dealt with preventing the domestic causes of international conflicts (including violent conflicts) that arose from friction between nation-states’ competing systems of financial law that governed their respective nationals’ engagement in international transactions. Lemkin applied these frameworks to his work on Soviet terror and nationalities conflicts, the rise of European totalitarianism, the legacies of colonization, the violence and repression across Eastern Europe that targeted Jews and sought to shatter Jewish communities, and the kinds of oppression against vulnerable and marginalized groups that defined the intertwined systems of state power and international finance. Then, in the late 1930s and early

²⁷ Raphaël Lemkin, “Les Actes Constituant un Danger General (Interétatique) Considérés Comme Delits du Droit des Gens,” in *Actes de la Vème Conférence Internationale Pour l’Unification du Droit Pénal, Madrid 14–20 Octobre 1933*, eds. Jimenez de Asua et al., (Paris: A. Pedone, 1935), 48–56.

1940s, Lemkin wrote two books on how totalitarian governments used economic policy to wage conflict against groups they sought to socially annihilate.

The first was published in France in 1939, after Poland was invaded by Germany and the USSR. Lemkin was correcting the manuscript proofs as he was fleeing to Sweden. When he arrived, he lectured at the University of Stockholm on chapters from his newly published *The Regulation of International Payments: Comparative Law Treatises on Currencies, Clearing and Payment Agreements, and Legal Conflicts*.²⁸ Written in French, the book made Lemkin a well-known expert on economic law and conflict. After learning Swedish in less than two months, Lemkin decided he would write the follow-up volume in his new language. This book, *Currency Exchanges and Clearing House Regulations*, analyzed the way totalitarian governments manipulated international money laundering and currency exchange rates to level economic devastation on peoples they sought to conquer or destroy.²⁹ In Sweden, Lemkin also began collecting documents on the German occupation of Europe that would form the basis of *Axis Rule*, which he began writing in 1941 at Duke University in the US. Lemkin would transpose almost 30 pages of his French and Swedish books, in almost word for word translation, into his English language book, *Axis Rule*. This is why, in 1942, Lemkin was hired as chief consultant on the US Board of Economic Warfare and Foreign Economic Administration, and why he got along so well with Franz Neumann.

What makes this background curious is that, by appropriating mechanisms of international law that were “largely designed to lubricate international commerce,” and applying them to efforts “to protect individuals from obliteration by their own political authorities,” to borrow Pensky’s phrasing, Lemkin gets himself denounced as an enemy of the Bolshevik Revolution in 1935 by none other than Stalin’s feared henchman who orchestrated the show trials: Andrey Vishinsky.³⁰ Vyshinsky, the procurator general of the Russian SFSR at the time, read Lemkin’s 1933 paper and believed Lemkin’s grouping of barbarity and vandalism with crimes such as terrorism, slavery, and spreading vegetable contagions was a ruse.

In the introduction of a book by Aron Trainin, Vyshinsky accused Lemkin of proposing ideologically and politically motivated laws to target the Soviet Union under the pretense of creating a neutral, apolitical body of unified international laws. The unification movement that Lemkin was part of never mentioned actual struggles “with international crooks and charlatans of any stripe, not the fight with the bandits like Al Capone,” Vyshinsky wrote, but instead focused on abstract concepts like “terrorism.” The concept of terrorism these Western liberals claimed to be fighting, he continued, “turned into the central problem of the bourgeois unification [of international law] movement” because it created the basis for limiting state sovereignty and “removing the state from its pedestal.” Vyshinsky went on to add that “no evasions and intricacies of such unifiers as Lemkin, who tried again to disguise the true purpose of the criminal interventionists with references to ‘vandalism’ and ‘barbarism,’ can mislead anybody” because “the true meaning of the unifiers’ efforts is to legally and politically justify the right of the counterrevolutionary bourgeoisie to intervene in the internal affairs of any state, under the pretext that they are concerned for the fate of ‘culture and civilization.’”³¹

In 1946, Lemkin found himself squaring off against Vyshinsky again, who was now the Soviet ambassador to the UN. Lemkin primarily used the Czechoslovakian diplomat Jan Masaryk, whom he befriended early on, as an intermediary between himself and Vyshinsky. But that line of communication breaks down around 1947 when conflicts between the Czechs and

²⁸ Raphaël Lemkin, *Valutareglering och Clearing: Bearbetat efter Författarens Föreläsningar vid Stockholms Högskola Hösten 1940* (Stockholm: P. A. Norstedt & Söner, 1941); also see Mark Klamberg, “Raphaël Lemkin in Stockholm—Significance for his Work on “Axis Rule in Occupied Europe,” *Genocide Studies and Prevention* 13, no. 1 (2019), 64–87.

²⁹ Raphaël Lemkin, *La réglementation des paiements internationaux: traité de droit comparé sur les devises, le clearing et les accords de paiements, les conflits des lois* (Paris: A. Pedone, 1939).

³⁰ Andrey Y Vyshinsky, “Predisloviye [Foreword],” in *Ugolovnaia interventsia* [Criminal Intervention] by Aron Trainin (Moskva: Gos. izd-vo Sovetskoe zakonodatel'stvo, 1935), 3–7.

³¹ Ibid.

Soviets emerge over the Czech government's announcement it would join the Marshall Plan (that is when I stopped finding letters between Czech and Soviet diplomats on behalf of Lemkin). And, in March 1948, Masaryk mysteriously fell off a balcony at the Czech foreign ministry.³² Did Lemkin and Vyshinsky ever speak or communicate directly? I am not sure. The Soviets had just assassinated his friend and made it look like a suicide—and now Lemkin had to engage with a Soviet delegation at the UN whose lead ambassador had already denounced him as a bourgeois enemy of the Soviet state.

This is what makes Pensky's conversation on Lemkin's marginality at the UN so fascinating. Weiss-Wendt's work has shown that the Soviets in 1946 saw Lemkin as an unemployed has-been who could be ignored. Lemkin had slipped from being a central figure in the realm of Eastern European international lawyers during the interwar years, to a marginal figure at the UN where he did not represent a government—he just showed up and hung out by the couches. But this marginality, as Pensky called it, turned out to be his greatest asset.

Norms & The Purpose of the Law

I want to use this to transition to Pensky's comments about the norms of international law. Lemkin was right about the importance of norms, and the Soviets should have taken him more seriously. Pensky writes:

The legal route toward a global norm restraining sovereign attacks against a state's own domestic population never lost sight of the fact that norms ... only exert an effect on would-be perpetrators ... if the norm succeeds in catalyzing an international political shift of values, priorities, and interests strong enough to change potential *genocidaire's* calculations of cost and benefit ... As a marginal figure, Lemkin was also marginalized from the kind of political engagement that would no doubt have proven useful once his plan for legal protection of vulnerable groups had to go through the sausage factory of international political bargaining.

I think this is a fantastic argument to make, which is why I quote it at length. I would love for someone who is an expert on Russian schools of international law and legal practice to take up this question. There is a dissertation hiding in plain sight here, which can link Lemkin's legal training to the Russian tradition of legalism, legal practice, and international law.

I am thinking now of Peter Holquist's excellent work on what he calls "The Russian Empire as a Civilized State," which explores the paradox that the Russian empire was domestically not even close to being governed by the rule of law; yet, from 1870 to 1917, it was the Russian government that most championed the cause that states be brought under a system of codified international law.³³ Holquist has a brilliant analysis of how Russia conducted the 1877–79 Russo-Turkish War against the backdrop of their contemporaneous efforts to codify the laws of war, and the curious ways norms of conduct make their way into state practice. In my book, I wrote about how Lemkin was influenced by a number of Russian-led efforts in international law (admittedly, without the sophistication of an expert on Russian legal traditions). And I would make the argument (capriciously maybe) that, as a lawyer and jurist,

³² The Marshall Plan was the US's multimillion-dollar aid program for postwar Europe. Masaryk was the one who formally indicated Czechoslovakia's interest in participating late in 1947, and personally told the Soviets. In February 1948, the Soviets were widely suspected as orchestrating a communist coup in Czechoslovakia, deposing President Benes. Masaryk was one of the few non-communists who remained in government. On March 10, 1948, Masaryk fell out of a third-story window at the Foreign Ministry, which the Communist dominated Czech government ruled death by suicide.

³³ For a brief overview, see Peter Holquist, "Laws of War," *The Berlin Journal* 32, no. 32 (2018), 68–70.

Lemkin was more indebted to Russian traditions of the law and legal practice than he was to Western European traditions, especially British and American.

Lemkin viewed all law as intertwined with politics and power, so he did not see the point in pretending the law could be independent. He also believed the power of the law was that it was a pedagogical vector for inspiring critical reflection across a society (from common folk to the rulers of states, and everyone in between), and thus the law was an agent for provoking change to a society's moral fabric. Lemkin explicitly compared international law in the 20th century to poetry, literature, drama, paintings, sculpture, dance, music, the Jewish, Christian, and Islamic holy texts, and religion more generally. The classes he taught at Yale University law school drove his dean and his colleagues nuts, who complained in their evaluations of his teaching that his law syllabus was mostly literature, history, and shallow moral theory (they also complained that he spent more than an average professor's annual salary making international calls from the department telephone).

International law was no different than novels and the Bible, Lemkin believed, in the sense that they were the creative products of humanity which people imbued with powerful symbolic value. As such, religion, art, and international law did not reflect prior existing universal moral truths, Lemkin wrote. They created them. So, if people create their own moral systems, why not attempt to change the world's moral system by creating a law that says genocide is bad?

Lemkin is very clear that genocide was something that had been celebrated as something good. It was not called genocide in the past—it was called victory, heroism, progress. Lemkin even went so far as to argue that the Hebrew, Christian, and Islamic texts created justifications for genocide when it came to the elimination or destruction of god's enemies or non-believers. He saw international law, accompanied with anti-genocide movements in the arts and literature, as the starting point for efforts to cause a normative shift against genocide in world society. That was Lemkin's theory of change.

In this sense, Lemkin had a lot in common with Vyshinsky, who was a great 20th century innovator of murderous show trials, which were never supposed to be fair, but rather, were highly choreographed dramatic demonstrations for public consumption. If Vyshinsky wanted to use domestic law to teach Soviet functionaries, communist party members, and the general population to never go against Stalin, then Lemkin wanted to use international law to teach people around the world that genocide was a bad thing and should never be committed. I think these two adversaries shared a legal theory—that the law's one and only power was its ability to create and reify norms.

Lemkin might have had a point. Between 1946 and 1947, the South African delegation warned that the convention was "dangerous" where "backwards people" and "uncivilized people" were concerned because it would acknowledge that the systems of government of African peoples had an equal right to exist. The New Zealand delegation brought to the floor their concerns that the genocide convention would criminalize the only appropriate way of dealing with "cannibals." The Brazilian delegation said outlawing genocide would be a genocide against Latin Americans because it was Latin American culture to mass murder political opponents. All of this can actually be found in the interstices of the UN *travaux préparatoires*.

They said this stuff in committee meetings, openly. Why? Because there were no norms in place against saying things like this. To some degree, this illustrates Lemkin's point. In polite society, you cannot say such things anymore. It is considered crude and rude, and one is shunned. The only political figures who utter such statements, some 80 years after the passage of the UNGC, are professional provocateurs who use these statements to create a sense that they are alternatives to the status quo. Norms matter. Clearly, though, the UNGC did not exactly create the kinds of world-wide anti-genocide norms that Lemkin thought it would. Pensky's observation here sets the stage for Straus' question on whether Lemkin can help genocide studies solve these and other problems with genocide.

Response to Professor Scott Straus: On Culture and the Place of Lemkin in Genocide Studies

The legal definition of genocide is so convoluted and narrow that it is almost impossible to define anything, legally, as genocide, Pensky writes. Yet, the common uses of genocide are so broad that anything can be a genocide. This opens the door for what Moses described as victims' groups appropriating the word genocide to present their experience of oppression as serious and a legitimate concern for global civil society. "What's increasingly hard to locate in this bipolar development," Pensky concludes, "is precisely the sane and motivating middle ground, the promise of law as both expression and enforcement of a global consensus that demands enforceable limits on state power, that motivated both Lemkin and the rest of his cohort in the first place."

I think one possible option for a "sane middle ground" is Straus' formulation of group selective mass categorical violence, which (I think) he most clearly articulates in *The Making and Unmaking of Nations: War, Leadership, and Genocide in Modern Africa*.³⁴

The Problem of Violence

Straus' concept allows us to connect genocide to other forms of group-selective violence and think more broadly about genocide in a way Lemkin first imagined. Lemkin was serious when he told reporters during interviews that he is a member of many nations. Let me say this again, Lemkin believed his definition of nations would include social groups such as people who liked playing particular card games, or belonged to labor unions, or liked certain kinds of art and poetry. I think Straus' conceptualization of group-selective categorical mass violence would correspond almost directly to Lemkin's notion in *Axis Rule* that genocide was the destruction of nations (where nations basically signified any social group). Lemkin's and Straus' formulations, therefore, allow us to talk about genocides of people with disabilities and genocides against political parties, whereas the UNGC does not.

That is important. Today, none of the following would be genocide, legally, because the targeted social groups are not one of the four protected groups:

- An attempt by a state or non-state actor to eradicate LGBTQ+ people from society;³⁵
- An attempt by a political party in power to commit mass murder against opposition party members and eliminate the party;³⁶
- A counter insurgency campaign against terrorists that includes the disappearance, mass torture, and murder of peasants;³⁷ or,
- A campaign by national police to eradicate a country's drug addicts.³⁸

³⁴ While there is no international law against "selective mass categorical violence," readers who are interested to see how Straus operationalizes his concept in the practice of genocide prevention can check out Scott Straus, *Fundamentals of Genocide and Mass Atrocity Prevention* (Washington, DC: US Holocaust Memorial Museum, 2016), accessed September 30, 2022, <https://www.ushmm.org/genocide-prevention/reports-and-resources/fundamentals-of-genocide-and-mass-atrocity-prevention>.

³⁵ Matthew Waites, "Genocide and Global Queer Politics," *Journal of Genocide Research* 20, no. 1 (2018), 44–67; Christina DeJong and Eric Long, "The Death Penalty as Genocide: The Persecution of 'Homosexuals' in Uganda," in *Handbook of LGBT Communities, Crime, and Justice*, eds. Dana Peterson and Vanessa R. Panfil (New York: Springer, 2014), 339–362.

³⁶ Best Van Schaack, "The Crime of Political Genocide: Repairing the Genocide Convention's Blind Spot," in *Genocide and Human Rights*, ed. Mark Lattimer (London: Routledge, 2007), 145–177.

³⁷ Cheng Xu, "Draining the Sea: Counterinsurgency as an Instrument of Genocide," *Genocide Studies International* 12, no. 1 (2018), 6–25.

³⁸ Dahlia Simangan, "Is the Philippine 'War on Drugs' an Act of Genocide?," *Journal of Genocide Research* 20, no. 1 (2018), 68–89.

The scholars I cited for each of these bullet points either bend over backwards to make their case “fit” the legal definition, or they simply use a different definition of genocide. I think “group-selective mass categorical violence” gets us to a better place than the legal definition of genocide because it would let us bring together all these cases.

There is another area where Straus and Lemkin come together. When I re-read *The Making and Unmaking of Nations* before teaching it this summer, I noticed how Straus’ rich descriptions of founding narratives resembled Lemkin’s discussions of the importance of political language in his draft of his unfinished manuscript *Introduction to the Study of Genocide in the Social Sciences*—especially when Lemkin writes about how a population can come to view genocide as a moral good when everyday people start incorporating into their own speech the derogatory language of elites and leaders, who use this language to create support for the wars they want to fight.

Still, there are two areas where Straus departs from Lemkin. The first has to do with what amounts to destruction. Straus considers genocide to be a type of violence—violence that is group selective (as opposed to indiscriminate killing), group-destructive (rather than coercive), and large-scale and sustained. Lemkin considers genocide to be a type of conflict that does not necessarily have to include direct violence. Straus, therefore, is able to zero-in on the way leaders and elites, who direct group specific mass violence, pursue genocide as a policy choice, targeting specific groups whom they view as dangerous, unable to coopt, or uncontrollable. Lemkin is not able to do this. Genocide, for Straus, is therefore an outcome of an escalatory process, which is intertwined dynamically with countless other conflicts in a society or polity. It would follow that genocide prevention, in Straus’ thinking, is about finding openings for de-escalation in the context of these other conflicts.³⁹

When you read Lemkin’s draft manuscripts on genocide and the social sciences, you get the sense that Lemkin would have defined as genocide everything that Straus refers to as the escalatory conflicts that set the stage for genocide. This is a consequence of Lemkin’s notion that genocide was not a type of violence aimed at the destruction of social groups, but a type of conflict aimed at the destruction of social groups that *sometimes* was violent. Therefore, when Lemkin talks about genocide prevention, he is talking about preventing things like mass murder and, at the same time, preventing things like the destruction of a group’s artistic creations and the banning of books. The upside of Lemkin’s formulation of genocide is that it lets us contemplate the wide breath of repression and violence that are involved in long-term systems of oppression, spanning what Johann Galtung termed direct violence, structural violence, and cultural violence.⁴⁰ The downside is that it makes it extremely difficult to think about preventing violence, specifically, because Lemkin presents the causes of genocidal violence as the same as the causes of other forms of genocidal oppression—such as the changing of street names, the expropriation of wealth, the use of derogatory names, or the banning wedding ceremonies.

The Problem of Culture

Finally, Straus points out, one of the fundamental issues that divides genocide studies is the question of culture. I would agree that Lemkin “was not always a clear thinker,” and we are not going to resolve this problem by a deep dive into his thinking. So, let us take a deep dive into his thinking—and let us see how many readers I manage to confuse.

There is this idea out there that the UNGC is important because it protects “culture bearing groups.” But this phrase was not used by the UN delegates and advocacy NGOs until late 1947, when it was used to justify one of many compromises to the definition of genocide. At the time, the UK was close to successfully killing the entire idea of a genocide convention, and the US had just succeeded in establishing a narrative that there were two types of genocide,

³⁹ Straus, *Fundamentals of Genocide and Mass Atrocity Prevention*.

⁴⁰ Johan Galtung, “Violence: Direct, Structural and Cultural,” *Springer Briefs on Pioneers in Science and Practice*, vol. 5 (Berlin: Springer, 2013).

physical genocide and cultural genocide, so they could excise the “cultural” bit from the text of the UNGC under the pretext that “cultural genocide” was less important than “physical genocide” (and thus prevent the UNGC from applying to the forced assimilation of American Indians).

As with most things in politics, philosophical justifications are invented after decisions have been made. The idea that the UNGC should only protect so-called “culture bearing groups” turned out to be a convenient excuse that many delegations used to explain why they cut political groups and economic groups from the list of protected groups. For the US delegation, it was a handy way of justifying why they wanted to remove things related to “cultural genocide” from the UNGC—arguing that if “culture bearing groups” were protected, then there was no need to protect culture.

At the same time, the term “culture bearing groups” allowed humanitarian advocates to also claim victory in what was otherwise a defeat. Lemkin went along for the ride and adopts this phrase “culture bearing groups,” using it in his writings between 1947 and 1948 (we can still find it in Lemkin’s writings published in 1949). This phrase then gets locked into received scholarship, especially by scholars who take the *travaux préparatoires* at face value. From here, the phrase “culture bearing groups” takes on a life of its own in genocide studies. It is likely here to stay. I think this is unfortunate.

If Straus is asking me, personally, if political groups (or other so called “non-culture bearing groups”) should be considered within a rubric on genocide—then my answer is “yes.” Let me explain. I do not think there is such a thing as culture-bearing groups because I do not think there is such a thing as “cultural groups” in the first place. Likewise, I do not think that any particular group can have one culture, nor do I think individuals can be reduced to culture, and I certainly do not think “a culture” can be represented by any individual.

If readers are now accusing me of obliterating the concept of culture and turning it into a completely meaningless word, that would be a fair but inaccurate accusation. I think the concept of culture, as with the concepts of race and ethnicity, and even the concept of identity, are steeped in the history of Western modernity. These are not universally accepted or transhistorical ideas (even though scholars who use these concepts apply them universally and transhistorically in their academic work). This is why, during genocide prosecutions the ICTR, the Cambodia war crimes tribunal, and national courts of Argentina all had to try and figure out what really makes a group an ethnic, national, or religious group. These ideas have histories, and I am always suspicious of attempts to naturalize these concepts and turn them into universal human categories.⁴¹

Our word “culture” in contemporary English comes from the Middle English usage denoting the cultivation of land. Middle English borrowed it from the Latin verb *cultura*, meaning “to grow” (which is why we use the word culture to describe the growing of bacteria in yogurt and lab plates). This turned into our current understanding of culture—in the sense of “manifestations of human intellectual achievement regarded collectively” especially in “the customs, arts, social institutions, and achievements of a particular nation, people, or other social group”—because of the influence of the German Romantic philosopher, Johann Gottfried Herder. Herder viewed human societies as having their own unique transhistorical traits, or cultures, that could grow and flourish over time if nurtured properly, or wax, then wane, and die but never mix (Herder was reviled by Lemkin, who accused the 19th century philosopher of

⁴¹ If I were challenged on this, I would cite Scott Straus, *The Order of Genocide: Race, Power, and War in Rwanda* (Ithaca: Cornell University Press, 2006). Yes, Straus uses the category of ethnic group to describe Hutu and Tutsi groups, when the term doesn’t fit neatly into the schema of Bantu languages. However, Straus shows us that what he calls “ethnicity” or “ethnic conflict” is different in Rwandan local contexts than “ethnicity” and “ethnic conflicts” elsewhere. This is what allows Straus to demonstrate quite clearly that ethnicity drops into a background condition of the genocide, even though Western observers are primed to see ethnicity as the primary condition. For Straus, fear, insecurity, and intra-ethnic intimidation (and their local variations) matter much more—and even here these are conditioned by Rwanda’s state effectiveness, geography, and population density.

setting the stage for Nazism, despite having some good ideas such as cultural tolerance that the Nazis ignored).

If I am forced to associate myself with a definition of culture, then I will pick what Clifford Geertz termed the “webs of meaning” in which we are all suspended. But if we define culture the way Geertz defines culture, then “destroying” a culture is impossible and the entire logic of genocide as cultural destruction is non-sensical (however, that does not stop the perpetrators of genocide from thinking that they want to destroy a culture, and then causing a whole bunch of suffering and harm as they try to carry out this non-sensical task).

Straus thus asks me: “Should groups marked by a disability be considered protected groups under the Convention? Should regional groups or gender groups? Do these groups have a culture? I conclude from the book that Lemkin was not clear on these questions.”

My responses: Yes, I think they should be included. Do they have “a culture”? Maybe, but that should not matter. And, finally, yes, Lemkin was not clear.

I would advocate for any group-specific categorical violence to be considered genocide. This frees us from the symphian task of trying to figure out what groups are truly human universal types of groups, and it saves us from the yucky project of trying to rank groups in importance. Given the diversity of human social life across time and around the world—from hunter-gather societies and nomads to whatever you would call the global network of pre-teens who play Minecraft—I do not think we can actually name any kind of social group that is truly universal. But we know that humans do form social groups. So, why not just say, as Straus and Lemkin do, that genocide is an attempt to destroy any social group? That way we can be sure our concept of genocide would also apply to some hellish hypothetical attempt to obliterate video game players as a group.

The Problem of Culture in Lemkin’s Thought

If we are talking about culture in Lemkin’s thought, things get messy. First, Lemkin did see cultural destruction as integral to genocide. But he did not call the destruction of culture genocide, except when cultural destruction was used as a means of destroying a nation. Why? Because he thought culture was the thing that held nations together.

Confused yet?

Let us go deeper. Lemkin also says the loss of a culture can be a good thing if the culture is antiquated and does not meet the needs of a nation in the modern world. Across his writings on Latin American and African cases, Lemkin often considers the disintegration of culture as progress, not genocide, because he thought cultural change was necessary for saving nations that were colonized. In fact, Lemkin says, the point of preserving the basis of cultural diversity is so we can allow people to experience different cultures and therefore be inspired to change their own nations’ cultures.

Confused yet?

Now, at the same time, Lemkin does not consider it a bad thing if national groups cease to exist either. Remember, he defines nations as just about any social group we can think of. Therefore, nations are always coming and going and changing. What Lemkin wants to prevent is *intentional* efforts to destroy nations, because he sees this type of oppression as an assault on the world’s cultural diversity, and a lack of cultural diversity leads to deprivations, hardships, and suffering of all kinds.

Confused yet?

Lemkin clearly understood, as Straus writes, that perpetrators destroyed groups, or attempted to, in part through the destruction of intellectuals, religion, language, arts, and symbols. But, as Straus points out, a central argument for the need for a UNGC concerned the intrinsic value of groups as expressed through culture. However, Lemkin never offers a definition of culture—besides saying that culture is what holds nations together.

Then, Lemkin gives us a pastiche of popular anthropological theories of his day to explain how culture holds nations together (without ever defining culture). He starts off borrowing from the Polish Anthropologist Bronisław Malinowsky, then slowly borrowing from

Ruth Benedict. But he does not seem to understand these two Anthropologists have very different understandings of what culture is, what it does, and how you can know culture. This is a problem if culture rests at the center of your theory of genocide, and you are arguing that nations should be protected in order to protect their unique culture. It is an unworkable system. What is more, this makes Lemkin feel like a conservative communitarian, reducing individuals' selves to the sum of their identities, and locating the good of individuals lives in cultural communities (which he cannot define, by the way, but he still *feels* it is there). I think this speaks to Moses' point that Lemkin repudiated the Nazi biological conception of race only to have embraced a cultural version of this same idea.

Things get even more confused when Lemkin allows his definition of nations to blend into his definition of culture. This prevents Lemkin from thinking clearly about the relationship between social groups and culture. As a result, Lemkin cannot articulate a clear theory of why he thinks genocide is such a bad thing—beyond self-evident claims that genocide causes people to suffer and destroys cultural diversity. Straus asks, therefore: "At one level, the point resonates—cultures are a source of diversity. But what does this really mean? What is a group's culture? Can a group be said to have a culture? Lemkin's views continue to strike me as being not being especially sophisticated on this question."

I think Straus' point is the right point to make. Let me sketch out Lemkin's system. Pay attention to the circular logic that arises in points 5 and 6:

1. Nations are basically any social group.
2. Culture is what holds the nation together.
 - Lemkin talks about the culture of lawyers, the culture of the ancient Assyrians, the culture of gamblers, the culture of magazine readers, and so forth.
3. Destroying culture is one way you destroy a nation (because a nation needs a culture to be held together).
4. Destroying a nation always results in the loss of that nation's culture.
 - i.e., a genocide against the Jazz nation results in the destruction of Jazz culture.
5. Destroying culture is bad because it causes individuals from targeted nations much suffering, as their social world becomes more and more impoverished.
 - i.e., the destruction of Jazz culture deprives people of the Jazz nation of Jazz culture.
 - Did you spot the circular logic right there? Lemkin's system is a closed loop, which any social scientist or theorist will tell you results from an inability to create clear definitional boundaries between key concepts.
6. Destroying nations is bad because it causes cultural loss, and cultural loss impoverishes world civilization (our collective humanity) of that culture's gifts.
 - More circular reasoning.
7. Therefore, nations should be protected so we can preserve cultural diversity and thereby give every individual in the world an opportunity to join new nations, if they want, or enjoy the fruits of their contact with other nations, which can inspire new ideas and new ways of looking at the world.
8. Genocide, by destroying nations, makes the world less culturally diverse, and therefore leads to intellectual and artistic stagnation and prevents cultural change.

- Points 7 and 8 are self-evident, and implied by the circular logic of points 5 and 6.

As Max Pensky said on a Zoom call with me a few weeks ago, Lemkin was most certainly not a philosopher and constantly tied himself into knots when he tried to wade into theory. This is one such knot. There is no getting out of this one (it is circular logic after all!).

What Place Should Lemkin Have in Genocide Studies?

Lemkin certainly belongs in the pantheon of major 20th-century human rights figures. But Lemkin should not be turned into a sacred founder-figure of genocide studies. I think we can look to Lemkin to understand what was at stake as the meaning of genocide changed. For example, Daniel Feierstein has used Lemkin's ideas to place genocide into a sociological framework that is sensitive to the relationship between group specific mass violence and other social conflict processes.⁴² I find that a fruitful endeavor.

Relatedly, I think that reading Lemkin can help genocide scholars understand what is at stake if we adopt the legal definition of genocide without understanding how the UNGC drafting process changed the meaning of the term. And, Lemkin's writings can be a source of critical reflection, pointing genocide scholars towards new lines of research. For example, genocide scholars have all but forgotten Lemkin's writings on economics and conflict. Reading Lemkin's writings before *Axis Rule* can help us ask why genocide studies has ignored questions of economics for decades. I think one possible reason is that any hint of a connection between economic conflict and group destruction was scrubbed from the UNGC, as the Soviets and Americans wanted to reserve a right to wage war on economic groups and to conduct economic warfare. This set in motion a long pattern of genocide scholars overlooking the intersection of economics and group destruction, under an assumption that genocide was a national, racial, ethnic, religious, social, cultural, and even political phenomenon—not economic.⁴³

Final Thoughts

I have gone on too long. In my defense, I needed to reply thoughtfully to four provocative and careful reviews of my work—in a way that would allow people who have not read my book to follow along.

Sarah, Dirk, Max, and Scott: I have read and admired your work over the years. Thank you for all your contributions to our field. I have appreciated this opportunity to take up your questions, and I hope our readers find this exchange worthwhile.

⁴² Daniel Feierstein, *Genocide as Social Practice: Reorganizing Society under the Nazis and Argentina's Military Juntas* (New Brunswick: Rutgers University Press, 2014).

⁴³ See Charles H. Anderton and Jurgen Brauer, eds., *Economic Aspects of Genocides, Other Mass Atrocities, and Their Preventions* (Oxford: Oxford University Press 2016). The editors' introduction explains (politely) that the academic literature on the economic aspects of genocide has been all but non-existent up until the publication of their volume. Anderton and Brauer then chart a path for how we can bring economic thinking—and the discipline Economics—into genocide studies. For what it is worth, I have always felt Mark Levene's two-volume *The Crisis of Genocide* (Oxford University Press, 2014) stands out in the field because he takes seriously questions of economic history and economic thinking to explain how genocide becomes integral to 20th century global political economy, and the economies of nation states as the international system turns into a global system. Levene, too, has to leave the UNGC definition behind in order to get there.