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### **Lemkins Legacy\***

Aside from his commitment to the Convention on the Prevention and Punishment of the Crime of Genocide from 9 December 1948, Lemkin was working on an interdisciplinary publication on the history of genocide<sup>1</sup>, which was to offer a global perspective on its emergence over the centuries. Owing to this effort, he is recognized not just as the creator of the 1948 Convention, but also the father of genocide studies<sup>2</sup>, which define the crime much more broadly than the convention does. The extant comprehensive materials which Lemkin had been gathering for the purposes of this synthetic account are currently dispersed across a number of archival collections<sup>3</sup>.

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\* The text is the English version of the last chapter of the book *Krajobrazy biograficzne Rafała Lemkina* which did not appear in the English-language edition of the book. See: *Krajobrazy biograficzne Rafała Lemkina*, Instytut Pileckiego, Warszawa 2023.

<sup>1</sup> According to Charlotte Kiechel, he first applied for a grant to write the history of genocide in 1947. He was helped on this project by Gertrude Sladek and Miriam Millirien, as well as Anna May Barbour and an unidentified woman referred to as “Biffy”. See: Ch. Kiechel, *Legible Testimonies: Raphaël Lemkin, the Victim’s Voice, and the Global History of Genocide*, “Genocide Studies and Prevention: An International Journal” 2019, vol. 13, issue 1, p. 43. In the Summary of Activities, 1946 is listed as the date when Lemkin began working on the history of genocide. See: New York Public Library (NYPL), Raphael Lemkin Papers (RLP), “Bio- and autobiographical sketches of Lemkin”, Summary of Activities of Raphael Lemkin, p. 11.

<sup>2</sup> D.J. Schaller, J. Zimmerer, *The Origins of Genocide – Raphael Lemkin as a Historian of Mass Violence*, in: D.J. Schaller, J. Zimmerer (ed.), *The Origins of Genocide. Raphael Lemkin as a Historian of Mass Violence*, Routledge, New York 2009, p. 6.

<sup>3</sup> Tanya Elder counts 55 essays and 21 sets of index cards containing extracts from publications and bibliographic details. See: T. Elder, *What You See Before Your Eyes: Documenting Raphael*

Lemkin is generally considered as a historian specializing in the subject of mass violence, but his approach to historical research is often challenged. He is questioned for his uncritical treatment of sources, which gave him a false impression about the philosophies of the Mayas, Incas, and Aztecs, for his racist outlook on the history of Africa, which arose from his reliance on British sources, and also for certain mysticism, which resonated through his texts in the form of various remarks about love and spiritual resources of mankind.

Dan Stone rightly argues that there is little point in comparing Lemkin's knowledge of the mechanisms governing Nazi Germany with the current state-of-the-art concerning this topic. Drawing upon the documentation of the Nuremberg Trials, he overestimated the role of both Hans Frank and the Wannsee conference<sup>4</sup>. He was not always in a position to verify historical information, or rather explode myths. Akis Gavriilidis points to Lemkin's misrepresentation of the Ottoman conscription system as targeted against the Greeks, as well as to his use of the term *Turkey* with reference to the previous centuries, labeling the Janissaries as the police, and misunderstanding of how this formation was deployed<sup>5</sup>. However, it has to be remembered that these were not errors made by a scholar working in the comfort of his office, but by a lawyer sitting astride an all-absorbing fight for the Convention and academic work (or at least a search for opportunities in this field), who spent his free time plugging away at his prospective books about the history of genocides, an undertaking in which he could only count on assistance in the rare moments of financial security. He frequently had no time to doublecheck the information he received: he simply took it in as long as it aligned with his concept. Gavriilidis speculates that the details about drafting into the Ottoman army were provided to Lemkin by his Greek interlocutors, who had deliberately fed him certain historical myths to advance their political agenda. Consequently, the examples of genocides listed by Lemkin should be treated with caution, but there are no grounds for questioning his general concept of genocide.

There are not many historians who argue that Lemkin appreciated the dynamics and mutability of historical accounts of genocide, and current studies promote a simplified version of his model. Charlotte Kiechel stresses his interest in social and individual psychology, which is evident in the archival notes, and points to his deliberations on the issues of the psychological impact of genocides on the history of mankind, his discussion of the reactions to genocide on the part of both perpetrators and victims, as well as his analysis of its causes and effects. Kiechel foregrounds Lemkin's approach

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*Lemkin's Life by Exploring His Archival Papers, 1900–1959*, in: D.J. Schaller, J. Zimmerer (ed.), *The Origins...*, p. 45. Ryszard Szawłowski quotes a project description prepared for one of the endowments. See: R. Szawłowski, *Rafał Lemkin. Biografia intelektualna*, Wydawnictwo Akademickie „Sedno”, Warszawa 2020, p. 505–506.

<sup>4</sup> D. Stone, *Raphael Lemkin as Historian of the Holocaust*, in: D. Stone (ed.), *The Holocaust, Fascism and Memory. Essays in the History of Ideas*, Palgrave Macmillan, Houndmills–Basingstoke–Hampshire 2013, p. 28.

<sup>5</sup> On Greeks in the Ottoman Empire, see: A. Gavriilidis, *Lemkin's Greek Friends: Abusing History, Constructing Genocide – and Vice Versa*, “Holocaust and Genocide Studies” 2016, vol. 30, issue 3, p. 488–505.

which she labels psycho-cultural, and which consists in studying the perpetrators against a backdrop of culture. This methodology entails distancing oneself from psychological universalism and assuming that the mechanisms of genocide in the West differ from those in other parts of the world. She emphasizes Lemkin's awareness of the fact that playing a crucial part in historical description are testimonies of victims, which are instructive of people's ways of thinking, feeling, and acting. At the same time, she is critical of Lemkin's inability to apply this psychological interpretation to the accounts of the people of Africa<sup>6</sup>. Let us add that the texts which survived Lemkin were often unfinished – due to his lacking in time or strength – and additionally, the authorship of some of them is questionable. Consequently, they are hardly representative of what the final versions would have looked like.

Since he was studying genocides comparatively, none of them was seen as a template for the others<sup>7</sup>. Lemkin was developing a model in order to describe the behaviors of the perpetrators and the victims holistically and scientifically. He elaborated on this approach in an interview after receiving a West German distinction in December 1955. I do not know if this interview was ever published, but this question is secondary: since the text is part of Lemkin's documentation, this means that he gave it his slant, trying to explain to the reader (and opportunities to that end were increasingly rare) what the history of genocide was intended as, and why its reference point was various groups of people, rather than states:

I advocate the clinical approach to people, not to state. I quarrel with historians because they are more interested in royal marriages and territorial changes and forget the human element. [...] I am trying to project a democratic idea – the study of the people, the development of history through their efforts, not through police, armies or emperors. *The history of genocide* will prove my point<sup>8</sup>.

Lemkin is rather unfairly accused of failing to understand the mechanisms of modern genocide – whose uniqueness was underlined by Zygmunt Bauman – and of focusing on the timelessness of these crimes. The current tendency among sociologists is not so much to reject Bauman's conclusions, as to elaborate them:

Firstly, although Bauman is correct to associate genocide with the process of civilization, he is incorrect to equate civilization with modernity. Secondly, although he is correct to associate genocide with the bureaucratic state and the incapacity of civil society to constrain the state, he overlooks the association between genocide and warfare. Thirdly, although he draws correct

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<sup>6</sup> C. Kiechel, *Legible...*

<sup>7</sup> A.D. Moses, *Does the Holocaust Reveal or Conceal Other Genocides? The Canadian Museum for Human Rights and Grievable Suffering*, in: A.L. Hinton, T. La Pointe, D. Irvin-Erickson (ed.), *Hidden Genocides. Power, Knowledge, Memory*, Rutgers University Press, New Brunswick 2014, p. 27.

<sup>8</sup> M. Bartlett, *By the Way*, "The Christian Century", 18 July 1956, p. 854. See also: NYPL, RLP, "Bio- and autobiographical sketches of Lemkin". This conversation was probably included in Merrill Bartlett's book. See M. Bartlett, *They Stand Invincible: Men Who Are Reshaping Our World*, New York 1959.

and important lessons from the Holocaust about the dangers inherent in modern society, in concentrating his attention on a single, albeit exceptionally important case of genocide, and by associating it with problems of modernity, he misses other important lessons of the Holocaust. These lessons are to be learned from what was not modern in that genocide. They require us to do what Bauman does not: to locate the Holocaust in the more general theoretical consideration of genocide<sup>9</sup>.

The third reservation in particular shows that if Lemkin's concept is flawed in any way, his mistake is a negative view of Bauman's: while Lemkin did not take proper account of how genocide was influenced by modernity, Bauman failed to sufficiently recognize the non-modern aspects of genocide. What Bauman saw as the emanation of modernity Lemkin treated as the return of barbarity and – in the context of the Third Reich – a clinical, scientific method of executing mass murders.

References to mass murders perpetrated by Nazi Germany mean that it is highly unlikely that Lemkin really failed to recognize the significance of modernity. During the interwar period, when he analyzed totalitarian systems, he noticed the extent to which they relied on both a racist ideology and the law:

[...] crime committed by the State in a regime in which a state and party are one, and in which popular control is prevented by the absence of freedom of thought, freedom of expression and free election is, from the point of view of the criminal, the easiest to commit<sup>10</sup>.

Lemkin's analyses of the Soviet and Nazi systems presented setups in which law, too, was invoked for the purposes of an unscrupulous elimination of all those who had been deemed useless.

When Lemkin described the duality of genocide – which was both a timeless extension of historical barbarity and a cold-blooded crime committed under a 20<sup>th</sup>-century system – he was more progressive than Zygmunt Bauman, but merely hinted at those issues, without studying them thoroughly<sup>11</sup>.

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Contemplating not so much the wording of the Convention as his model of genocide, Lemkin was caught between two traditional perspectives on what represented a vital threat: 1. Central-European, in which (after the defeat of Nazi Germany) the evil equated Russian imperialism, now marching hand in hand with Soviet communism, and 2. global, which placed increased emphasis on racism, colonialism, and cultural

<sup>9</sup> M. Freeman, *Genocide, Civilization and Modernity*, "The British Journal of Sociology" 1995, vol. 46, issue 2, p. 208–209. Freeman, in bizarre fashion, links Lemkin's concept with war, even though there are no valid grounds for postulating such connection (as I have repeatedly demonstrated).

<sup>10</sup> D. Stone, *Raphael Lemkin...*, p. 29. According to the author, Lemkin thought of the Third Reich as a system which is, by modern standards, based on political religion.

<sup>11</sup> I agree with Stone's conclusion as to Lemkin's failure to offer a more thorough analysis of these issues. See: D. Stone, *Raphael Lemkin...*, p. 30.

genocide. He vacillated between them, forced to make strategic moves informed by considerations of whether his campaign for the Convention and its subsequent ratification would benefit more from the support of the advocates of the former approach or of the latter. In his choices, he was both Eurocentric and globally-oriented. He thought about the genocide threats in Asia and was worried about the genocidal Chinese policy, especially in Korea, but not just there:

The present huge scramble for Asia carries the germs of genocide, and at the end of the day, its victim will be none other than the white man. [...] The strongholds of the Western World in the South Pacific, such as Australia and New Zealand, may one day need the protection under this law<sup>12</sup>.

Lemkin did not see this threat in a racial perspective, but in terms of ideologically aggressive projects, such as Chinese communism:

The Chinese communists are in fact now continuing the World War II pattern set by the war lords of Japan whose slogans “Asia for Asiatics” formulating this pattern, carried itself the seed and implication of genocide<sup>13</sup>.

Some scholars argue that Lemkin’s approach was groundbreaking in that he noticed parallels between Nazi and colonial violence<sup>14</sup>. Was it the case that when he wrote about the latter, he was also thinking of the policies advanced by the imperial powers in Central and South-Eastern Europe, including the Russian policy in the incorporated Polish lands?<sup>15</sup>

There are no straight answers to the question concerning the degree to which genocide should be associated with colonialism and slavery. Is the term *cultural genocide* adequate in this context? Lemkin was increasingly convinced that the term *genocide* should apply to the policies carried out both in the course of the colonization of Australia and – critically – North Africa and the French presence in Algeria:

Recent events have intensified genocidal violence in Algeria. Hundreds of thousands of civilians and their families have been forcibly relocated to places resembling concentration camps [...]. This kind of displacements constitutes genocide under Article II(c) of the Genocide Convention<sup>16</sup>.

<sup>12</sup> R. Szawłowski, *Rafał Lemkin. Warszawski adwokat (1934–1939), twórca pojęcia “genocyd” i główny architekt konwencji z 9 grudnia 1948 r. (“Konwencji Lemkina”)* w 55-lecie śmierci, part 3, “Palestra” 2015, issue 9/10, p. 226. A deadly threat facing the Christians in Korea was also discussed by this country’s representative in 1950. See: A. Weiss-Wendt, *The Soviet Union and the Gutting of the UN Genocide Convention*, University of Wisconsin Press, Wisconsin 2017, p. 211.

<sup>13</sup> NYPL, RLP, Public Statements and Interviews, Text of statement by Dr. Raphael Lemkin in his honor by New York region of the American Jewish Congress at the Hotel Pierre, 18 January 1951.

<sup>14</sup> C. Kiechel, *Legible...*, p. 42, 44.

<sup>15</sup> This is what Douglas Irvin-Erickson believes. See: D. Irvin-Erickson, *Raphaël Lemkin and the Concept of Genocide*, University of Pennsylvania Press, Philadelphia 2017, p. 26.

<sup>16</sup> R. Szawłowski, *Rafał Lemkin. Warszawski...*, part 3, p. 226; idem, *Rafał Lemkin. Biografia...*, p. 502.

But Lemkin's assessment of colonialism and his take on slavery differed significantly, and this clearly resulted from how he defined a group, a unit which can be attacked by genocide. Describing Lemkin's approach, William Schabas points to similarities between the premises of the Genocide Convention and the legal principles of the system of protecting minorities after the First World War. This opinion is far from convincing, but it is hard to disagree that Lemkin's group was a unique community, which was nothing like those founded on shared political views or social standing<sup>17</sup>. Of crucial significance to him was the fact of belonging to the *genos*:

The *genos* is [?] a primary and universal institution of mankind, whatever the actual evolution of the "genos" may be, it is clear that mankind spent most of its history within the framework of this social unit. It was here that the original *esprit de corps*, the way of life, the traditions, the forces of cohesion, the solidarity was born. It was also here that the *esprit* of exclusiveness, suspicion, hatred of other groups was bred. [...] This spirit of the "genos" is deeply entrenched in the psychology of mankind<sup>18</sup>.

In order to understand this approach to *genos*, it is necessary to have another look at the description of the place where Lemkin grew up. Running through the lands of the Grand Duchy of Lithuania were ethnic, religious, and linguistic divisions, and membership in one of the groups thus formed was not based on the sense of belonging to any of them. Lemkin chose to profess Jewish religion and Polish nationality. This theme reemerged in his correspondence with the West German authorities in the 1950s, which concerned the ratification of the 1948 Convention. One of the issues raised in those letters was the definition of the group. Lemkin opposed a narrow definition as being inconsistent with his concept, and rather in keeping with the Nuremberg principles. Importantly, he explained what his understanding of such community was:

A national group is not determined by family relations, origins, or religion, but by the willingness of its members to form a nation, or to remain one. The genocide in Eastern Europe, in the Soviet occupation zone, is not an assault on familial or ancestral ties, but on the will of the peoples to retain their national uniqueness. That which defines a group is the community of spirit (*Geist*)<sup>19</sup>.

Lemkin frequently used the word *Geist* in other texts written in German to describe the force which turns a group into a community<sup>20</sup>. Spirit was not its only building block, but it was of crucial importance to Lemkin.

This description is consistent with labeling the actions of colonial states as genocide, as long as they entailed the destruction of the communities which formed

<sup>17</sup> W.A. Schabas, *Genocide in International Law: The Crime of Crimes*, Cambridge 2009, p. 112–113.

<sup>18</sup> NYPL, RLP, "Writings Autobiography", manuscript, chapters 13–14, p. 29a–30a.

<sup>19</sup> P. Madajczyk, *Raphael Lemkin and West Germany's Accession to the Convention on the Prevention and Punishment of the Crime of Genocide*, "Rocznik Polsko-Niemiecki" 2020, nr 28, p. 52.

<sup>20</sup> *Ibidem*, p. 55.

groups founded on the sense of belonging, tradition, and culture<sup>21</sup>. John Docker rightly points to Lemkin's critical attitude to Christopher Columbus and the model of colonial settlement which he originated, and Dirk Moses emphasizes how much Lemkin valued Bartolomé de Las Casas, a Spanish priest and protector of indigenous Americans. Still, Moses correctly frames Lemkin's way of thinking in the context of his times and argues that he did not reject colonialism as such, but only its variant based on violence and failing to usher in law, progress, and civilization. In addition, Lemkin had a mostly one-dimensional perception of the impact of colonial powers' cultures, and did not consider a possibility of cultural coexistence, meaning that the conquered population was facing a choice between assimilation and genocide. He believed that assimilation should be progressing gradually and spontaneously, but it could also lead to the disintegration of less robust cultures. However, the disappearance of nations and races which have exhausted their spiritual and physical potential is different from genocide<sup>22</sup>. Lemkin was obviously right in distinguishing between cultural transformation and cultural genocide.

The criteria of genocide were not met in the case of African Americans, neither during the period of slavery, nor later, when they were subject to discrimination and segregation on account of skin color. This is because this group did not form a community based on the principles contained in the Convention, and the policy toward them was intended to keep them in a position of subjugation (which obviously entailed violation of human rights), but not to destroy them as a group or to exterminate them, and it is only the latter scenario that would have been genocidal<sup>23</sup>.

Thus, it appears that the main controversy surrounded racial segregation, which Lemkin witnessed in the United States. According to him, it did not belong to the sphere of genocide and should be addressed by human rights campaigns, while the merging of those two realms was the deadliest threat to the 1948 Convention. A few days after the document entered into force, he argued:

Moreover, several organizations, which are especially interested in the human rights project, classified genocide as a part of human rights. This is a dangerous confusion because the human rights project deals with discrimination which might happen also in democratic countries, while genocide deals only with mass destruction, annihilation, extermination which happens only and mostly under totalitarian regimes. Politically, such a confusion is dynamite, and

<sup>21</sup> In this context, it is worth noting a proposal that studies concerned with Native Americans should not treat them as one racial community, but analyze the histories of the individual tribes instead. See: B. Madley, *Reexamining the American Genocide Debate: Meaning, Historiography, and New Methods*, "The American Review" 2015, vol. 120, issue 1, p. 132.

<sup>22</sup> Anthony Dirk Moses believes that Lemkin was influenced by works of anthropologist Bronisław Malinowski. On doubts as to Lemkin's approach to the issues of African Americans and colonialism, see: A.D. Moses, *Raphaël Lemkin. Culture, and the Concept of Genocide*, in: D. Bloxham, A.D. Moses (ed.), *The Oxford Handbook on Genocide Studies*, Oxford University Press, Oxford 2010, p. 26–28; J. Docker, *Raphaël Lemkin, Creator of the Concept of Genocide: a World History Perspective*, "Humanities Research" 2010, vol. 16, issue 2, p. 55.

<sup>23</sup> In that sense, Lemkin described slavery as genocide in the system created by the Mongols. See chapter: *Slavery as Physical Genocide*, in: R. Lemkin, *Lemkin on Genocide*, ed. S.L. Jacobs, Lexington Books, Lanham 2012, p. 326.

a doom for the Genocide Convention. Human rights are identical with civil rights and civil rights mean filibuster<sup>24</sup>.

The surprising part is the association of genocide exclusively with totalitarian states, but the core of the argument remained unchanged. Linking genocide to human rights violation would have voided the Convention, after the previous failed attempts to block its passing and ratification, and certain human rights organizations in the United States were taken advantage of precisely to make that happen.

Aside from the threats posed by Sovietism and totalitarianisms in general, an increasingly hot topic – both internationally and in the United States – was that of the connection (posited in a largely politicized fashion) between genocide on the one hand, and colonialism, slavery and slave trade, racial segregation, and the plight of the indigenous Americans (The American Indian Movement)<sup>25</sup>, on the other. Native Americans were openly told that they had to adopt the Western ways and either assimilate or be destroyed. Lemkin planned two chapters in his history of genocides which would be devoted to Native Americans and the policies toward the indigenous peoples implemented in Canada and Australia (Tasmania), as well as those advanced by Great Britain and France in their colonies. This landscape presents an intersection of various actions, which tally with the definition of genocide (both under the Convention and, more broadly, in Lemkin's model) to very different degrees.

However, Lemkin's impact on this discussion was marginal. Although the opponents of racial segregation had little political success at first, references to the term *genocide* and the awareness that it had to be prevented became part of the narrative about the history of colonialism and the situation of African-Americans. In a sense, this was a reprise of the Nuremberg scenario, where the term and the concept created by Lemkin were the subject of much debate and controversy, but how they were employed and defined was out of his hands<sup>26</sup>. These discussions have continued ever since.

The opponents of treating slavery as a form of genocide argue that this is a deliberate action, and that the slave traders had no intention of destroying particular African communities, since they were of no interest to them whatsoever. Additionally, the plan to use the continent's inhabitants as cheap labor ruled out their extermination,

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<sup>24</sup> NYPL, RLP, Public Statements and Interviews, Text of statement by Dr. Raphael Lemkin in his honor by New York region of the American Jewish Congress at the Hotel Pierre, 18 January 1951. Filibuster is a strategy of blocking proposed legislation by a minority, despite the existence of a majority to adopt it.

<sup>25</sup> On this connection, see: D.E. Solomon, *The Black Freedom Movement and the Politics of the Anti-Genocide Norm in the United States, 1951–1967*, "Genocide Studies and Prevention: An International Journal" 2019, vol. 13, issue 1, p. 139–140.

<sup>26</sup> A. 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: An International Journal" 2019, vol. 13, issue 1, p. 144–172. The author states that "Lemkin had little influence on the application of his concept in the Nuremberg trials between 1945 and 1949", adding that "[b]uilding on the research of recent years, my working hypothesis is that Lemkin had virtually no influence on the course of these processes – although the concept of 'genocide' did". Ibidem, p. 144.



even if allowances were made for collateral damage due to harsh transportation and working conditions. Moreover, it is problematic to classify the system of slavery as genocide, since this would entail the assumption that slaves were a homogeneous social group, whose close-knit relations were founded on the community of culture, religion, language, or ancestry, whereas they only began to form such group in the following centuries, once they had become a certain social class, which was, however, determined by their shared history and status in the American society, rather than by common ancestry.

But other scholars believe that the transatlantic slave trade was a genocide, because the victims were bought and sold, and then tortured and killed, which resulted in the extermination of entire communities in Western Africa. By extension, they attach the label of genocide to the plight of North American Indians:

In recent years, the term “genocide” has been used to describe the United States’ actions against the Native Americans during the four centuries after Columbus landed. Conservative estimates suggest that nearly 12 million Native Americans were exterminated, often in mass killings or forced death marches during which they were starved, beaten, and killed. Some scholars also include the systematic removal of Native Americans from their homeland, the subsequent destruction of that land, various practices of enslavement, and forcible removal of children from their families as further tools used in the genocide on American soil<sup>27</sup>.

The former Indian land was settled by the colonizers, who believed that the process of modernization necessitated the annihilation of indigenous societies. To them, the forced settlements of nomadic groups and the persecutions of hunters’ communities were a necessary contribution to the advancement of their country. Christian missionaries were advised to instill in their charges the European ethical values and the colonial working ethos. That way, together with European officials, they were complicit in so-called cultural genocide<sup>28</sup>.

A well-balanced assessment was offered by Dirk Moses, whose conclusion is worth quoting in its entirety:

The answer is that governments in the metropolis came under intense pressure from the frontier periphery, and sometimes were prepared to entertain “final solutions” to the “Aboriginal problem”. Instead of arguing statically that the colonization of Australia was genocidal *tout court*, or insisting truculently that it was essentially benevolent and progressive, it is analytically more productive to view it as a dynamic process with genocidal potential that could be released in circumstances of crisis. The place to look for genocidal intentions, then, is not in explicit, prior statements of settlers or governments, but in the gradual evolution

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<sup>27</sup> S.J. Scholz, *Genocide*, in: D.K. Chatterjee (ed.), *Encyclopedia of Global Justice*, Springer, Dordrecht 2011, p. 388. For a similar assessment, see: D. Irvin-Erickson, T. La Pointe, A.L. Hinton, *Is Slavery Genocide?*, in: A.L. Hinton, T. La Pointe, D. Irvin-Erickson (ed.), *Hidden...*, p. 13.

<sup>28</sup> D. Schaller, *From Lemkin to Clooney: The Development and State of Studies*, “Genocide Studies and Prevention: An International Journal” 2011, vol. 6, issue 3, p. 250. Let us add that a debate has been ongoing (although it began after Lemkin’s death) as to whether the Israeli policy toward the Palestinians falls under the definition of genocide formulated in the Convention.

of European attitudes and policies as they were pushed in an exterminatory direction by the confluence of their underlying ideological assumptions, the acute fear of Aboriginal attack, the demands of the colonial and international economy, their plans for the land, and the resistance to these plans by the Indigenous peoples<sup>29</sup>.

Moses' assessment concerns colonization, and is in principle consistent with that formulated by Lemkin, who believed that forcing American Indians to give up their traditional hunting lifestyle in favor of farming was not in itself cultural genocide. In his opinion, this term could apply if, and only if, "no adequate measures were taken to facilitate the change from nomadic to agricultural life; in other words, when the Indian was left landless and foodless as a result of cession and warfare"<sup>30</sup> – which was an actual strategy practiced until the end of the 19<sup>th</sup> century.

Let us add that the authors who use such terms as *genocidal potential*, *genocidal massacre*, or *genocidal moment* seem to be employing evasive tactics, since the term *genocide* (this is my opinion, and also that of Dirk Moses') denotes a holistic process. A massacre of the population at a single location is not a genocide unless it is part of a systemic policy. Thus, it is somewhat confusing to argue that a certain process was not genocide, but consisted of a genocidal element or genocidal potential.

It has become increasingly popular to claim that the policy of genocide toward African Americans is not just a problem of the past. The main argument is that genocide – albeit indirect – is effected through discrimination, adverse living conditions, and restricted access to healthcare and educational opportunities, which lead to high mortality of infants, poverty, poor level of education, and high crime rate, the latter mostly affecting other members of the group discriminated against. In this context, particular emphasis is put on crime as a catalyst of self-destructive processes inside the group (intragroup violence, alcohol and drug abuse). A broader definition of intent under this perspective also covers a negligent failure to avert threats, which are not planned, but can be predicted. A distinction is made between a genocidal state and a genocidal society: in the latter, state institutions ostensibly protect innocent people, but in reality, an entire group is subject to ruthless destructive pressure, which stems from the very nature of this society<sup>31</sup>.

<sup>29</sup> A.D. Moses, *Genocide and Settler Society in Australian History*, in: A.D. Moses (ed.), *Genocide and Settler Society. Frontier Violence and Stolen Indigenous Children in Australian History*, Berghahn Books, New York 2004, p. 34. According to Dirk Moses, "[t]he term *genocide* is used to refer to two phenomena in Australian history: frontier violence, mainly in the nineteenth century, and the various policies of removing Aboriginal children of mixed descent from their families, mainly in the twentieth century". Ibidem, p. 16. The employment of the term *genocide* with reference to the history of Australia remains controversial, see: ibidem, p. 19.

<sup>30</sup> Qtd. in: T.M. Butcher, *A "Synchronized Attack": On Raphael Lemkin's Holistic Conception of Genocide*, "Journal of Genocide Research" 2013, vol. 15, issue 3, p. 262. Butcher notes that it is not clear if this assessment was formulated by Lemkin or by somebody who helped him in his work on the history of genocide.

<sup>31</sup> This argumentation is developed by Robert Johnson and Paul Leighton. See: R. Johnson, P.S. Leighton, *Black Genocide? Preliminary Thoughts on the Plight of America's Poor Black Men*, "Journal of African American Men" 1995, vol. 1, issue 2, p. 3–21.

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Originally, the most serious frictions occurred during attempts to establish the mutual relations between genocide and the Holocaust, and between genocide and the problems of colonialism and slavery. Then, another controversy arose: a comparative analysis of genocides versus a comparative analysis of the communist and fascist systems and ideologies. Providing a political-scientific background were fierce historical-political arguments, which intensified in the 1980s, following publications by Ernst Nolte (1923–2016) and Stéphane Courtois (\*1947). The former was a German philosopher, historian, researcher of totalitarianisms, and respected expert on the history of fascism, who formulated a hypothesis that National Socialism and its atrocities were a reaction to the challenges and threats generated by the Bolshevik revolution. Thus, he located the origins of evil in Soviet Russia and shifted the focus away from the fascist crimes. Courtois is a French historian specializing in the history of the communist system, and one of the authors of *The Black Book of Communism*<sup>32</sup>, a publication in which a group of researchers describe the crimes committed under the communist systems. Both Nolte and Courtois, as well as other authors writing about communist crimes, faced the accusations of relativizing fascist atrocities and the Holocaust.

Eric Weitz recalled that when he began his comparative studies in genocides in the late 1990s, he was accused precisely of relativizing the Holocaust or recreating *The Black Book of Communism*<sup>33</sup>. References to this publication are particularly important, since employing the word *genocide* as an umbrella term for the crimes committed under the fascist and communist systems drew opposition from many historians, some of whom still take issue with this terminology. Jean-Louis Panné used the example of French historian Jacques Sémelin, who refused to accept attaching the “genocide” label to the communist crimes, which he referred to as mass crime. He argued that the term *genocide* was employed as a vague designation for a great number of crimes, committed under very different historical circumstances. He rejected a single term which also encompassed the communist crimes<sup>34</sup>.

Since the 1990s, the field of comparative genocide studies has been taking shape, with Rudolf J. Rummel’s *Death by Government* being of particular significance. Rummel focused on qualitative analyses<sup>35</sup>, but further research by other scholars followed<sup>36</sup>. The comparative method has refined the perspective on the Holocaust,

<sup>32</sup> M. Kramer (ed.), *The Black Book of Communism: Crimes, Terror, Repression*, trans. J. Murphy, Harvard University Press, Cambridge MA, 1999.

<sup>33</sup> E.D. Weitz, *A Century of Genocide. Utopias of Race and Nations*, Princeton University Press, Princeton–Oxford 2005, p. 10.

<sup>34</sup> J.-L. Panné, *Raphael Lemkin and Raul Hilberg: About a Concept*, in: A. Bieńczyk-Missala, S. Dębski (ed.), *Rafał Lemkin: A Hero of Humankind*, The Polish Institute of International Affairs, Warsaw 2010, p. 110–114.

<sup>35</sup> R.J. Rummel, *Death by Government: Genocide and Mass Murder Since 1900*, Transaction Publishers, New Brunswick–London 1994.

<sup>36</sup> G. Heinsohn, *Lexikon der Völkermorde*, Rowohlt Verlag, Hamburg 1998, p. 41–42. Further studies carried out in this period also discussed there.

which – although still tragically significant – is no longer seen as exceptional or unparalleled. In 2012, Alexander L. Hinton suggested the term *critical genocidal studies*, pointing to major progress which has taken place in this field since the 1990s<sup>37</sup>. Presently, historians are not merely interested in a comparative or global description of genocides, but also in placing them in a broader context of the last couple of centuries (including Europe’s global expansion and the structural conditions of modernity<sup>38</sup>) and in joining discussions on this subject in other disciplines. I will not be detailing the genocide studies’ state-of-the-art, nor describing attempts to work out a definition of genocide that would be better than the one contained in the Convention. Analyses of these distinct topics can be found e.g. in publications by Lech Nijakowski<sup>39</sup>.

Bearing in mind the long way which they have come, let us have a look at one more aspect of genocide studies. Lemkin’s concept should become the departure point for analyzing the Second World War genocides, with the Holocaust being the only one of these to have been included in the canon of genocidal studies. Describing said canon, Alexander L. Hinton distinguished its circles, i.e. the prototype – the Holocaust; the 20<sup>th</sup>-century core – the Holocaust, the Armenians, Cambodia, Rwanda, Bosnia, Darfur (in the 21<sup>st</sup> century), and indigenous peoples as a whole; the second circle – East Pakistan, the Kurds, Guatemala, the Herero, Kosovo, Carthage, settler genocides, and the Ukrainians in the Soviet Union; and the periphery – Indonesia, Argentina, “specific cases of indigenous peoples”, Assyrians and Greeks, Burundi, East Timor, Maoist China, and the Democratic Republic of the Congo. Seeing as Nazi Germany’s eastern policy did not make that list, it is worth asking the question which Hinton asks himself:

Why, we must ask, is it that certain cases of genocide are forgotten? [...] But we also need to consider why we focus on certain cases and topics and what sorts of inclusions and exclusions ensue. What is left invisible to us and what can we do to cast light on what has formerly been opaque? Given the inevitable politicization of our topic, how might we be influenced by given interests and agendas? Why, we need to ask, are certain cases forgotten, remembered, recognized, or even intentionally hidden or written out of history?<sup>40</sup>

That the Polish scholars go back to Lemkin when they study the Nazi and Soviet occupational policies in the Polish lands during the Second World War does not mean

<sup>37</sup> A.L. Hinton, *Critical Genocide Studies*, “Genocide Studies and Prevention: An International Journal” 2012, vol. 7, issue 1, p. 4–15. He argues that some of the historians who were the pioneers of genocide studies moved into this discipline from Holocaust studies, because they were attracted by the comparative approach.

<sup>38</sup> E.D. Weitz, *A Century...*, p. 12.

<sup>39</sup> L. Nijakowski, *Rozkosz zemsty. Socjologia historycznej mobilizacji ludobójczej*, Wydawnictwo Naukowe „Scholar”, Warszawa 2013; idem, *Ludobójstwo. Historia i socjologia ludzkiej destrukcyjności: popularne wprowadzenie*, Iskry, Warszawa 2018; B. Machul-Telus, U. Markowska-Manista, L. Nijakowski (ed.), *Krwawy cień genocydu. Interdyscyplinarne studia nad ludobójstwem*, Impuls, Kraków 2011; eidem (ed.), *Krwawy cień genocydu*, part 2: *Ludobójstwa – pamięć, dyskurs, edukacja*, Książka i Prasa, Warszawa 2017.

<sup>40</sup> A.L. Hinton, *Critical...*, p. 13.

his deification or uncritical adoption of his views<sup>41</sup>. Recognizing the necessity of constant critical evaluation of Lemkin's concept, let us invoke John Docker and his approach to new genocide studies, which he would like "to be comparative, to explore relationships between genocide and situations of settler colonialism in world history, and to be open to new approaches and perspectives"<sup>42</sup>.

It is also necessary to distinguish the legal definition provided under the Convention – through the prism of which the entire field is often seen – from genocide studies. This by no means implies the marginalization of the 1948 document. I have already commented on the political and legal circumstances of its adoption, which were responsible for restricting the definition of genocide, as well as on the significance of taking account of elements important from the legal perspective, such as the unequivocalness of the terms adopted, the presence of the perpetrator's intent, and enabling the prosecution to present crime evidence in court. Let us recall how problematic it still is to determine the character of the Katyn crime on the strength of the Convention's wording<sup>43</sup>.

The genocides of the Second World War should be studied as part of the populational policies – both positive and negative – whose goal was to reshape the demographic structure of the occupied lands. German occupation consisted in both the extermination of the conquered people (negative policy), and the settlement of Germans and fostering their natural growth (positive policy)<sup>44</sup>. Lemkin suggested the division of genocide into three types, two of which have occurred in modernity: 1. ethnocide, i.e. the destruction of culture and the concurrent assimilation, rather than extermination, and 2. genocide, i.e. the obliteration of culture and physical extermination. To be sure, this is not an exhaustive typology, but it is significant

<sup>41</sup> B. Meiches, J. Benvenuto, *Between Hagiography and Wounded Attachment: Raphaël Lemkin and the Study of Genocide*, "Genocide Studies and Prevention: An International Journal" 2019, vol. 13, issue 1, p. 9.

<sup>42</sup> J. Docker, *The Origins of Violence. Religion, History, Genocide*, Pluto Press, London 2008, p. 14.

<sup>43</sup> In the summary of her article, Patrycja Grzebyk writes: "In order to classify the Katyn massacre as genocide, it is necessary to prove that the Polish officers, non-commissioned officers, and civilians were murdered by the Soviets with a view to destroying a national group", and concludes that this is not the case, since the victims were selected on account of their membership in a particular social, rather than national, group. Consequently, Poland has little chance of emerging victorious from the legal controversy over the Katyn massacre. See: P. Grzebyk, *Katyn: A Dubios Qualification*, "The Polish Quarterly of International Affairs" 2011, vol. 20, issue 4, p. 56.

<sup>44</sup> I. Haar, *Polityka ludnościowa w Generalnym Gubernatorstwie. Polityka narodowościowa wobec Żydów i polityka osadnictwa a inicjatywy regionalne i centralne*, "Pamięć i Sprawiedliwość" 2009, nr 1 (14), p. 155–175. As early as at the end of 1939, German experts, "on the basis of a model of positive and negative selection, suggested the integration of persons suitable for labor and Germanization, and the exclusion of the Jewish families. The Jews were deemed to be asocial elements. Similarly to the Polish leadership echelon, they were subject to 'special treatment'. [...] Demographers recommended downsizing the Polish 'nation to a fraction of the entire population'. [...] All this was a means to solving, by way of genocide, the problem of both the Jewish population and the Slavic majority". Ibidem, p. 159–160.

because of the perspectives it adopts. In line with this breakdown, the Holocaust is seen as one of the historical genocides, which was the most radical, since its racial aspect ruled out (with very few exceptions) any form of assimilation. However, in this view, it would be (despite its distinctiveness) comparable to others, which effectively precludes using the term *uniqueness*<sup>45</sup>. On the other hand, the more variegated Soviet policy was more of an ethnocide.

We do not see genocide as an intentional action of particular persons. It has been repeatedly pointed out how difficult it is for a historian to rely on the category of intent, which is unsuited to analyzing the actions of the authorities and the military, and is moreover differently defined under different legal systems<sup>46</sup>. I shall make two preliminary assumptions at this point:

1. “Genocide almost always develops out of violent conflict or as part of a process of demographic or political re-ordering, and thus should be viewed as part of those processes, rather than as a completely separate phenomenon”<sup>47</sup>.

2. Genocide is a process whose effectuation and the resulting victims are the responsibility of the entire state apparatus, which is acting with direct intent. In this perspective, the SS was part of the state apparatus, and was intricately connected to other elements of the system, which had evolved from apparent legality immediately after the Nazis seized power to full-blown genocide<sup>48</sup>. While the dominant view is that genocide is indeed committed by the state, not by individuals, Franciszek Ryszka’s analysis is more comprehensive in that it studies the structures perpetrating genocide as embedded in the state system.

In line with the trend obtaining since the 1990s, the genocide in the Polish lands has to be a subject of a comparative analysis. Leo Kuper’s classical *Genocide: Its Political Use in the Twentieth Century* is of little use here, in that it is focused on internal genocides, which are not related to warfare<sup>49</sup>. Meanwhile, in order to describe these crimes as part of the occupation policy, a more comprehensive set of notions is necessary than that provided for by the 1948 Convention, and one that would combine

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<sup>45</sup> Most Polish researchers of the Holocaust hold the opposite view. Jacek Surzyn remarked in 2020 that “the scholars believe in the uniqueness of this crimes and, consequently, in its special position in the history of mankind”, an opinion that seems to imply that these scholars have failed to take account of what is already a long and rich tradition of genocide studies. Surzyn himself puts down the uniqueness of the Holocaust to the fact that this is an instance of genocide which was carried out successfully. See: J. Surzyn, *Holokaust jako ludobójstwo wyjątkowe*, “Narracje o Zagładzie” 2020, nr 6, p. 61–79.

<sup>46</sup> J. Cox, *To Kill a People. Genocide in the Twentieth Century*, Oxford University Press, New York–Oxford 2017, p. 8–9.

<sup>47</sup> *Ibidem*, p. 11.

<sup>48</sup> Franciszek Ryszka formulated this assessment by analyzing the breakdown of the Wannsee conference participants according to their affiliation to the several state institutions. To me, however, his conclusion as to the intricate connection between state administration and the machinery of death is universal. See: F. Ryszka, *Państwo stanu wyjątkowego*, Wrocław–Warszawa–Kraków–Gdańsk 1974, p. 322, 344.

<sup>49</sup> L. Kuper, *Genocide: Its Political Use in the Twentieth Century*, Yale University Press, New Haven–London 1982.

the factors enumerated therein under with those listed by Lemkin in his unfinished study on genocides. This would allow for an analysis of the Second World War genocides, which were ideologically motivated and entailed the exclusion of certain groups (racial, national, or social) from the contemporary system of values.

Staying open-minded in research means consulting Lemkin's model in order to gain a better insight into the occupation of the Polish lands and its consequences, as well as to address the questions concerning its historical background, genocidal techniques, the attitudes of the perpetrators, the employment of ideology and propaganda as tools of rationalizing crime, the reactions of victims and outsiders, and the ramifications of genocide. This list of interrelated factors illustrates that the genocides in the Polish lands were a dynamic and fluid process. John Docker accurately points out that under Lemkin's model, in which these crimes are defined as a coordinated action against a particular group of people, they cover

cultural, political, social, legal, intellectual, spiritual, economic, biological, physiological, religious, psychological and moral considerations, and impact on health, food, and nourishment, family life, care of children, and births as well as deaths. Such actions involve consideration of the honor and dignity of peoples, and the future of humanity as a world community<sup>50</sup>.

It is crucial to emphasize the significance of culture and cultural conflicts – which are seen as some of the basic driving forces behind genocides – as well as of vested interests and issues of the moment<sup>51</sup>. I have made repeated mention of how important culture was to Lemkin, who stressed it as early as 1933, in his Madrid conference paper. The crime of vandalism was actually not a distinct category, but an especially potent strategy of destroying a particular group of people in order to clear the way for the imposition of new cultural patterns. This observation holds true for both the German and Soviet policies. Following the publications by Karl Mannheim and Florian Znaniecki, vandalism and barbarity – just as genocide and totalitarianism – were recognized as social processes aligned with aspirations to further particular political interests<sup>52</sup>. In the Polish research tradition, the economic aspect was mostly neglected, and has only recently attracted closer scholarly attention. In the perspective in question, the occupiers intend to erode the foundations of national community, which are necessary for people's continued involvement in various spheres of the nation's life:

In the absence of a clear narrative axis or frame, all that was left, stranded in a vacuum, was the recognition of the significance of the Master Plan for the East (*Generalplan Ost, Generalsiedlungsplan*), the studies of which owe a great deal to Polish historiography. The Plan should be analyzed from two angles. First, it is a myth – somewhat vague and indeterminate – which contributed to the shaping of the Nazi ideology, and the Nazis' way of thinking about "the East". Second, with regard to its practical implementation, it should not be viewed in dogmatic terms, but rather as something dynamic and fluid, seeing as its

<sup>50</sup> J. Docker, *The Origins...*, p. 15.

<sup>51</sup> *Introduction to the Study of Genocide*, quoted in: A.D. Moses, *Does the Holocaust...*, p. 279.

<sup>52</sup> F. Znaniecki, *Upadek cywilizacji zachodniej*, Wydawnictwa Uniwersytetu Warszawskiego, Warszawa 2013, p. 132 ff (original edition: 1921).

effectuation was informed by the developments on the frontline, economic situation, growing demographic problems, power struggle in the Nazi halls of power, etc. Consequently, we are not looking at a straightforward and steady advancement of a genocidal intent – an approach suggested by lawyers – but at a much more complicated process. However, it is impossible to describe the German occupation policy without taking account of its practical and mythical essence, which was to shake up the ethnic composition of the lands located to the east of Germany<sup>53</sup>.

Let us add that Lemkin was also interested in the implications of genocide, as evidenced by a comprehensive account of this issue attached to his 1958 Nobel Peace Prize nomination documents. The wording of some fragments implies that Lemkin either had a hand in preparing these documents, or mostly wrote them himself. The list of negative consequences named continued hatred between the respective groups of victims and perpetrators, the issue of refugees and the economic strain on the sheltering countries, as well as the “barbarization of genocidist nations” and its adverse effect on education and culture<sup>54</sup>.

**Keywords:** Raphael Lemkin, history of genocide, Second World War, critical genocidal studies, cultural genocide

*English translation by Maciej Grabski, PhD*

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<sup>53</sup> This is a key paragraph from my article in which I elaborate this assessment. See: P. Madajczyk, *Polskie badania nad historią niemieckiej okupacji Polski w latach II wojny światowej*, in: R. Łatka J. Wołczański, D. Zamiatała (ed.), *Wokół Kościoła i władzy. Studia dedykowane ks. prof. dr. hab. Zygmuntowi Zielińskiemu w 90 rocznicę urodzin*, Instytut Pamięci Narodowej, Warszawa 2022, p. 234–245.

<sup>54</sup> NYPL, RLP, “Bio- and autobiographical sketches of Lemkin”, Summary of Activities of Raphael Lemkin, p. 13–14. Lemkin’s involvement is hinted at by the description of the Convention’s opponents, its wording being reminiscent of his style from some publications in which he discussed the same persons.



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