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GENOCIDE STUDIES PROGRAM

Grappling with the  
Concept of Genocide

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# **Grappling with the Concept of Genocide**

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Social science literature on genocide is rife with debate about what genocide is, how it should be defined and whether the definition in the Genocide Convention (hereinafter, the Convention) is adequate.<sup>1</sup> Following the debate alone is a Herculean task. Arguably, it continues to the detriment of the larger project -- preventing, punishing and redressing massive violence, and analyzing the causes and consequences of genocide in order to inform the work of practitioners. This paper identifies the major points of contention, assesses them, and suggests several methodological approaches to facilitate future concept construction. As such, this paper aspires to be a ground clearing exercise rather than a project of theory building.

The adequacy of the Convention definition can be assessed only in light of the purposes for which it is to serve. There are two basic reasons for defining genocide; one practical, the other theoretical.<sup>2</sup> Practically, the Genocide Convention defines a crime in order to enable its prosecution and facilitate its prevention.<sup>3</sup> Theoretically, on the other hand, social scientists may find it useful to categorize different phenomena of mass killings according to their causes or consequences, in order to facilitate comparative studies. Similarly, if the Convention definition denotes a conceptually coherent phenomenon that is of interest to scholars, then so much the better. If the Convention definition does not denote a theoretically useful concept then scholars may be better served by an alternative conceptual construct.

### **The Practical Adequacy of the Convention Definition**

Article II of The Genocide Convention defines genocide as:

Any of the following acts committed with the 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 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;

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<sup>1</sup> Convention on the Prevention and Punishment of the Crime of Genocide, (1948), in Basic Documents on Human Rights, ed., Ian Brownlie (Oxford: Clarendon Press, 1992), third edition.

<sup>2</sup> The use of the word “practical” is used in a sense synonymous to “applied”. It is not meant to deride the theoretical endeavor as impractical.

<sup>3</sup> *Nullem crimen sine lege*, or ‘no crime without law, no punishment without law,’ is a basic precept of international criminal law. As such, guilt can not be assigned for acts not considered crimes when committed.

(e) Forcibly transferring children of the group to another group.

As such, genocide is comprised of three elements: (1) the commission of one or more of the five enumerated acts; (2) the direction of the act(s) at one of the enumerated groups; (3) and, the intent to destroy that group, in whole or in part.

Scholars have criticized the Convention definition on various grounds: because it leaves a lacuna in international law, because clauses of the Convention are unclear, and because responses to genocide have been inadequate. The first criticism is untrue. Some have argued that the Genocide Convention leaves lacuna in international law because it does not prohibit acts committed with the intent of destroying a political or social group. In fact, such acts are criminalized elsewhere as crimes against humanity and war crimes. The second criticism is overstated. While unclear provisions of the Genocide Convention have complicated efforts to assess whether specific situations constitute genocide in the past, the crime of genocide is now being prosecuted by the *ad hoc* tribunals for the former Yugoslavia and Rwanda. The third criticism misapprehends the cause of inaction which is a problem of enforcement. I shall now address these criticisms in detail.

Some have argued that because the Genocide Convention does not extend legal protection to individuals in political and social groups there is a consequent lacuna in international legal protection.<sup>4</sup> This is untrue. Killing is criminalized under international law not only in the Genocide Convention, but also as a crime against humanity, and as a grave breach of the Geneva Conventions. Crimes against humanity encompass the following acts committed in a mass or systematic manner: “murder, extermination, enslavement, starvation, or deportation and other inhumane acts committed against any civilian population, and persecution on national, racial, religious or political grounds.”<sup>5</sup> The prohibition of crimes against humanity extends broader legal protection than the Genocide Convention. It criminalizes an equal or a broader range of acts, requires only that they be directed at a civilian population, and does not require the establishment of an intent to destroy the victim’s group. As such, mass killings committed with the intent of destroying a political or social group would clearly constitute a crime against humanity under

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<sup>4</sup> Frank Chalk and Kurt Jonassohn, The History and Sociology of Genocide: Analyses and Case Studies, (New Haven: Yale University Press, 1990), pg., 11; *idem.*, “Redefining Genocide,” in Genocide: Conceptual and Historical Dimensions, ed., George Andreopoulos (Philadelphia: University of Pennsylvania Press, 1994), pp., 49-52.

<sup>5</sup> Steven R. Ratner and Jason S, Abrahms, Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy, (New York, Oxford University Press, 1997), pg. 51. The clause “against any population” is understood to imply that the acts must be of a mass or systematic nature. *Ibid.*, pg 57.

customary international law.<sup>6</sup>

The Geneva Conventions also criminalize a broad range of acts committed by soldiers during war against “persons taking no active part in hostilities.”<sup>7</sup> Common Article 3 of the Geneva Conventions prohibits the following ‘at any time and in any place whatsoever’ with respect to persons not actively involved in hostilities:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are regarded as indispensable by civilized peoples.<sup>8</sup>

As such, most violent acts that soldiers might commit with the intent of destroying a social or political group would constitute war crimes, provided they were committed during an internal or international war, and the state or states in the conflict are parties to the Geneva Conventions.<sup>9</sup>

The adequacy of the Genocide Convention definition has also been disputed on the grounds that parts of it are unclear. There has been debate about whether the “in whole or in part” clause in article II of the Convention implies that killings must be of a particular scale to constitute genocide, and about what constitutes the destruction of a group. The *ad hoc* tribunals have clarified many of these issues in their rulings. The statute of the permanent International Criminal Court will further clarify such questions.

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<sup>6</sup> While there has been debate about linkage of crimes against humanity to armed conflict, “the trend of decision since Nuremberg appears to have . . . accepted that acts may be deemed crimes against humanity without any link to armed conflict, international or internal.” Ratner and Abrahms, Accountability for Human Rights Atrocities, pg., 57. For a succinct exegesis of international law pertaining to crimes against humanity see, *ibid.*, pp., 45-77.

<sup>7</sup> For a succinct exegesis of international law pertaining to crimes enumerated in the Geneva Conventions see, *ibid.*, pp., 45-77.

<sup>8</sup> For common Article 3 of the Geneva Conventions see, *ibid.*, pp., 311.

<sup>9</sup> Common Article 3 applies to all parties to a conflict within a state that is a party to the Conventions “regardless of their legal status or reciprocity.” Cited in Ratner and Abrahms, Accountability for Human Rights Atrocities, pg 92. It is unclear if there is individual responsibility for violations of Common Article 3 in customary international law. See *ibid.*, pg., 98.

Other scholars impute an absence of international intervention in cases of mass killing to the inadequacy of the definition.<sup>10</sup> This misapprehends the problem. Inaction is a problem of enactment not enstatement. It is rooted in a lack of political will to intervene that is manifest, *inter alia*, in the absence of a mechanism for the enforcement of the Convention, forty seven years after the Convention came into force.

The manner in which the law is encoded in the Genocide Convention may, however, have adverse policy implications. Genocide is popularly regarded as the most abhorrent of crimes. Furthermore, some legal scholars regard genocide as an aggravated crime against humanity.<sup>11</sup> If these perceptions result in responses to genocides that are disproportionate to responses to crimes against humanity, they may result in an undesirable *de facto* protection lacuna for populations subjected to mass violence. Indeed, debates about whether genocide was in fact occurring in Rwanda, the former Yugoslavia, and more recently in Burundi, were central to decisions about the levels and types of appropriate intervention. While the ad hoc tribunals that were established for the former Yugoslavia and Rwanda have the jurisdiction to prosecute crimes against humanity, war crimes and genocide, it is arguably the commission of genocide that prompted the Security Council to create the tribunals. Popular perceptions that genocide is the worst of crimes may also lead survivors of mass killings not understood and prosecuted as genocide with a sense that they have been denied full justice, even if their perpetrators are prosecuted fully for crimes against humanity. However, the wide ratification of the Genocide Convention and its incorporation almost directly into the statute of the permanent International Criminal Court do not augur well for future initiatives to change the legal definition of genocide. The more feasible solution is to advocate for the equal enforcement of the prohibitions against crimes against humanity and war crimes.<sup>12</sup>

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<sup>10</sup>Chalk, *The History and Sociology of Genocide*, pp 11-12; *idem.*, "Redefining Genocide," in *Genocide: Conceptual and Historical Dimensions*, pg., 51; see also, David Hawk, Institute of the International Conference on the Holocaust and Genocide, *Internet on the Holocaust and Genocide* (Jerusalem), 8 (January 1987) pg., 6, cited in *ibid.*

<sup>11</sup> See Nicodeme Ruhashyankiko, Special Rapporteur, Study of the Question of the Prevention and Punishment of the Crime of Genocide, U.N. Doc. E/CN.4/Sub.2/416 (1978) pg., 393. See also, Ratner and Abrahms, *Accountability for Human Rights Atrocities*, "scholars and practitioners of international law often regard genocide as the most heinous international crime," pg., 24.

<sup>12</sup> This orientation assumes that the victims of crimes against humanity and genocide are equally deserving of protection, regardless of whether one crime is held to be more opprobrious. I do not explore, herein, the issue of moral comparability although it is an interesting one. For example, is there a greater obligation to prevent first degree murder than manslaughter? A greater obligation to prevent a genocide than a crime against humanity? What if the latter involves the deaths of 1 million, while the former 500,000?



## The Theoretical Project

Comparative analysis is essential to theorizing about the causality of social phenomenon. “To compare is ‘to assimilate,’ i.e., to discover deeper or fundamental similarities below the surface of secondary diversities.”<sup>13</sup> Good comparison is dependent upon good concept formation - - the construction of fact-finding categories that enable phenomena to be classed as more or less alike in kind. This process of unpacking “decomposes mental categories into orderly and manageable sets of component units.”<sup>14</sup>

Sartori proposes a methodological approach analogous to the creation of a taxonomic hierarchy of successively more general categories:

Comparable means something which belongs to the same genus, species, or sub-species -- in short to the same class. Hence the class provides the ‘similarity element’ or comparability, while the ‘differences’ enter as the species of a genus, or the sub-species of a species -- and so forth.<sup>15</sup>

In some cases, reliance upon concepts with defining characteristics may limit the scope of inquiry in undesirable ways. Alternatively, the conceptual project could be oriented according to a nonclassical framework such as family resemblances or radial categories.

A family resemblances approach derives its label from the fact that a human genetic family shares attributes to varying degrees, “as contrasted to non-family members who may share few of them.”<sup>16</sup> This method of categorization may be methodologically useful when a number of cases display high degrees of similarity with one another but do not all share one attribute. Such an approach has entailed the use of ideal types to which specific cases are referenced.<sup>17</sup>

Radial categories rely upon the identification of a central category that “functions as a gestalt, in that it is constituted by a bundle of traits that are learned together, understood together, and most

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<sup>13</sup> Giovanni Sartori, “Concept Misformation in Comparative Politics,” *The American Political Science Review*, December 1970, pg., 1035. This prescient article has helped me to clarify many of the issues discussed herein.

<sup>14</sup> *Ibid.*, pg., 1038.

<sup>15</sup> *Ibid.*, pg., 1036.

<sup>16</sup> David Collier and James Mahon, “Conceptual Stretching Revisited: Adapting Categories in Comparative Analysis,” *American Political Science Review*, December 1994, pg., 847.

<sup>17</sup> See, for example, Dahl’s model of democracy in *Polyarchy: Participation and Opposition*, (New Haven: Yale University Press, 1971).

quickly recognized when found together.”<sup>18</sup> Subcategories are formulated in reference to the gestalt. Each subcategory shares defining attributes with the central category although not necessarily with each other – “hence the term radial which refers to this internal structure.”<sup>19</sup> For example, a primary category might be conceived as motherhood, consisting of being female, contributing the egg from which the foetus is formed, giving birth to the child, being the wife of the father, and nurturing the child. Arguably none of these elements are intrinsic to motherhood and a person possessing one or more of them may legitimately be classified as a mother, even though that person might so qualify according to the possession of traits that another ‘mother’ might lack.

Poorly defined categories result in fact misgathering, thereby reducing discriminating power. Ideally categories should be constructed so that they are mutually exclusive and jointly exhaustive. For example, a concept created to differentiate causal variables would be weakened if it categorized as different a phenomenon that was causatively the same, or grouped phenomena that were teleologically similar but causatively different. Similarly, a family resemblance model that failed to identify a common gene and thereby drew the boundaries of family incorrectly, or a radial model that failed to identify parts of the gestalt would both be incoherent (e.g., with the result that motherhood was conceived without the constant of a child).

Furthermore, the study of some phenomena may be of limited utility. Whether the taxonomic, family resemblance, or radial framework is applied, the category itself should be justified through an examination of the underlying analytic relationship among the attributes that are taken to be significant (e.g., intent to destroy one group the same as intent to destroy another.)

Comparisons may move along a ladder of abstraction. A concept can be broadened by diminishing the attributes or properties that define it. “The larger the class, the lesser its differentiae (i.e., the defining attributes of the class); but those differentiae that remain, remain precise.”<sup>20</sup> Conversely, the smaller the class, the more the differentiae. For example, an abstract comparative endeavor is an examination of fruits; a low level of abstraction would be an analysis of red apples. The former will reveal many of the commonalities and differences of fruit providing a broader base of knowledge. The latter, will provide much more specific information about the distinctiveness of red apples *vis a vis* other fruits and their differences *vis a vis* one another.

Comparative historical analysis can be conducted in three ways.<sup>21</sup> Firstly, it may be used to

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<sup>18</sup> Collier and Mahon, “Conceptual Stretching Revisited,” pg., 848.

<sup>19</sup> *Ibid.*, pg., 848.

<sup>20</sup> Sartori, “Concept Misformation in Comparative Politics,” pg., 1041.

<sup>21</sup> The intensive examination afforded by case studies can be central to the comparative method by illustrating the applicability of a theory or for building or improving existent theories.

demonstrate that a theory applies in multiple cases. Second, comparison can be used to identify the unique features of particular cases and determine their effect on similar social forces. Third, comparative historical analyses can be used to make causal inferences about macro-level structures and processes.<sup>22</sup> The latter is particularly useful as it avoids endogeneity by allowing for the inclusion of cases in which a phenomenon did not manifest itself, thereby facilitating the further isolation of dependent variables. This method might facilitate the realization of the ancillary agenda of some scholars of genocide who seek to elucidate preventive strategies.

### **The Theoretical Inadequacies of The Convention Definition**

Many scholars of genocide seek to understand its causality. Reliance upon the Convention definition for this purpose is undesirable as the Convention may not delineate a causatively distinct phenomenon.<sup>23</sup> Ideally, definitions are constructed for theoretical coherency through inductive analysis. The Convention definition, in contrast, reflects a process of negotiation in which delegates pursued a variety of political interests.<sup>24</sup> Similarly, the main paradigm that guided the drafting of the Convention was the Holocaust; insofar as the definition reflects aspects of the Holocaust that are not general elements of similar phenomena it is undesirable. Reliance upon legal definitions for theoretical analysis is also problematic as the law is not amended and does not evolve to ensure theoretical coherency.

The Convention definition of genocide excludes the wilful destruction of political and social groups. This is potentially problematic since the dependent variables for genocide as defined by the Convention may be the same, in some cases, for the commission of acts (a) through (e) enumerated in Article II of the Convention, directed with the intent of destroying a social or

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See, Arend Lijphart, "Comparative Politics and the Comparative Method," *The American Political Science Review*, volume 65, 1971, pp., 691-693.

<sup>22</sup> See, Theda Skocpol and Margaret Somers, "The uses of comparative history in macro social inquiry," in *Social Revolutions in the Modern World*, ed., Theda Skocpol (Cambridge: Cambridge University Press, 1994).

<sup>23</sup> The Convention definition may also be unsuitable for studies concerned with the consequences of genocide, as non-genocidal killings may have the same or similar consequences.

<sup>24</sup> These objectives included the desire by some states represented in the drafting committee to avoid the criminalization of acts they had already committed, or might commit, and a desire to ensure global ratification of the treaty. The exclusion of political and social groups can be attributed to this. See for example, Matthew Lippman, "The 1948 Convention on the Prevention and Punishment of the Crime of Genocide: Forty-Five Years Later," *Temple International and Comparative Law Journal*, Spring 1994.

political group.<sup>25</sup> Thus, some genocides and some non-genocides may be causatively similar. The Convention definition may also subsume several causatively distinct phenomena that are teleologically similar. For instance, some genocides may have occurred in the context of war while others in the context of social revolution.

As an example, legal experts have asserted that there is *prima facie* evidence that the Khmer Rouge committed genocide against Cham, Vietnamese, Buddhist Monks, Chinese, and Thai.<sup>26</sup> More than one million ethnic Khmer also died, approximately fifty percent as a result of execution; hundreds of thousands of others died from starvation, physical exhaustion and disease caused by inadequate food, poor sanitation, the denial of basic medical care and forced labor.<sup>27</sup> The circumstances in which many of the Khmer died are similar to the manner in which non-Khmer perished, and arguably would constitute genocide if the Convention definition included social and political groups. Similarly, they are a part of the same social phenomenon that resulted in the genocide.

### **The Inadequacies of Alternative Definitions of Genocide**

Much of the literature on genocide is occupied with arguing about the implications and shortcomings of particular definitions of genocide and creating alternatives. Many of the definitional endeavors seem to have taken the process of constructing a definition as a starting point for delineating which cases are relevant, rather than proceeding inductively from case studies. This seems to misconstrue the reason for defining a concept in the social sciences.

If one is studying causation, the concept should describe the phenomenon being studied, not introduce a set of criteria to be deductively substantiated by selected cases. The relevant question is not, “was what occurred in Rwanda in 1994 genocide?”, but rather, “how do we understand the violence in Rwanda, and how is it similar to what happened in Bosnia, or Turkey, or Iraq, or all three?”

Furthermore, many of the definitions of genocide proffered are conceptually incoherent due to methodological flaws which reduce the explanatory power of the theories that rely upon

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<sup>25</sup> The awkwardness of this sentence is telling. Reliance upon a laundry list of acts in order to determine social structural causes is probably misguided. The enumerated acts might be used more helpfully as signs and symptoms of the phenomenon rather than criteria that establish its occurrence.

<sup>26</sup> Ratner and Abrahms, Accountability for Human Rights Atrocities in International Law, pp., 243-265; see also, Ben Kiernan, The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79, (New Haven, Yale University Press, 1996), pp 460-465.

<sup>27</sup> Kiernan, The Pol Pot Regime, pp., 456-460.

them. Most attempts to define genocide display one or more of four methodological flaws.<sup>28</sup>

### *Normativism*

The most pervasive flaw in theoretical works that grapple with the concept of genocide is normativism -- the construction of concepts on the basis of normative values. On the one hand, normative theories of genocide are constructed with the stated purpose of guiding theoretical inquiry. On the other hand, they are constructed to encompass all individuals and groups that the definer deems worthy of protection or victim status; a patently political purpose. Unless the two incidentally coincide, one or both are compromised.

Genocide has cachet. Labelling an egregious event 'a genocide' is the clearest way of attracting attention and indicating moral outrage. Scholars of genocide have criticized social commentators for debasing the term genocide by using it to express disapproval for issues as diverse as dieting and abortion.<sup>29</sup> Ironically, some scholars who vaunt the sanctity of the term genocide are themselves guilty of broadening the Convention's definition to further their own normative agenda. Absent a deontological basis for a prohibition against genocide, which none of these scholars substantiate, their definitions are based upon personal conceptions of justice that are neither legally swaying nor theoretically impressive.<sup>30</sup>

Fein acknowledges the normative trap at the outset of her book: "most definers have normative or prescriptive agendas; we are activated by what we feel genocide should encompass -- often not wishing to exclude any victims."<sup>31</sup> However, she constructs 'a new sociological definition' to "conform to the implicit universalistic norm [in the Genocide Convention] and a

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<sup>28</sup> Herein, I rely only upon the more prominent theoretical works as illustrative examples. For the broader debate see, Helen Fein, Genocide: A Sociological Perspective, (London: Sage Publications, 1993); Chalk and Jonassohn, The History and Sociology of Genocide, pp., 12-27; and Leo Kuper "Theoretical Issues Relating to Genocide," Frank Chalk, "Redefining Genocide," Israel Charny, "Toward a Generic Definition of Genocide," and Helen Fein, "Genocide, Terror, Life Integrity, and War Crimes: The Case for Discrimination," all in Genocide: Conceptual and Historical Dimensions.

<sup>29</sup> See for example, Fein, "Genocide, Terror, Life Integrity, and War Crimes," in Genocide: Conceptual and Historical Dimensions, pg., 95.

<sup>30</sup> While the Convention definition is also normative, it has been ratified by 97 states, and the prohibition against genocide is a *jus cogens* (peremptory) norm of international law.

<sup>31</sup> Fein, Genocide: A Sociological Perspective, pg., 8. Although I spotlight Fein's shortcomings, her work is one of the better attempts to grapple with the concept of genocide.

sense of justice, embracing the right of all non-violent groups to co-exist.”<sup>32</sup> Chalk too notes, “when defining a field of research, the needs of social scientists and historians differ from those of international legal authorities.”<sup>33</sup> Yet, he also falls prey to the normative trap sacrificing methodological integrity on the grounds that

whichever definition of genocide scholars choose will have important implications for the measures we can take to predict and prevent genocides. . . Acceptance of the UN definition for our research on the history and sociology of genocide implied continuing the traditional silence in the social science literature about the assault on certain victimized social groups of the past.<sup>34</sup>

### *Concept stretching*

The second major flaw of theoretical approaches to genocide is concept stretching. A concept has extension and intension. The extension of a concept is the class of things to which it applies; the intension of a concept is the set of properties that define the class. Concept stretching occurs when a concept is extended without reducing its intension. A general concept represents a collection of specifics. A stretched concept, on the other hand, results in a generality “which cannot be underpinned, out of its indefiniteness, by specifics [and is] conducive only to vagueness and conceptual obscurity.”<sup>35</sup>

Democide, “the intentional government killing of an unarmed person or people,” is a general concept.<sup>36</sup> It comprises a wide range of killings with a few properties in common

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<sup>32</sup> *Ibid.*, pg., 24. Fein’s own orientation is further revealed by her criticism of Chalk’s definition of genocide for its *practical* shortcomings: “The specification of ‘one-sided mass killing’ implies a numeric threshold or ratio of victims which may obscure recognition of the earlier stages of genocide.” pg., 13. She also faults a definition of genocide for failing to differentiate between intent and motive as the Genocide Convention does, without ever substantiating that the Genocide Convention denotes a coherent framework for her theoretical endeavor; see pg., 53.

<sup>33</sup> Chalk, “Redefining Genocide,” in Genocide: Conceptual and Historical Dimensions, pg., 49.

<sup>34</sup> *Ibid.*, pg., 50.

<sup>35</sup> Sartori, “Concept Misformation,” pg., 1041; see also *idem.*, “Comparing and Miscomparing,” *Journal of Theoretical Politics*, 3(3) 1991; Collier and Mahon, “Conceptual Stretching Revisited.”

<sup>36</sup> R. J., Rummel, Death by Government, (New Brunswick: Transaction Publishers, 1994), pg., 36.

(intentional killing, a government perpetrator, and unarmed victims). A broad concept such as this might serve as the broad classificatory grid for the genus, radial, or familial category in which genocide is situated.<sup>37</sup> While the insights a broad concept such as democide provide into specific forms of killing are general, this is its useful function.<sup>38</sup>

Chalk defines genocide as “a form of one-sided mass killing in which a state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator.”<sup>39</sup> While Chalk intends to delimit a specific phenomenon, his definition inadvertently stretches the concept of genocide to encompass a variety of phenomena. For example, in eastern Burma, the Burmese Army is engaged in the brutal suppression of Karen nationalists, with the apparent intent of destroying the group of people associated with it. According to Chalk’s conceptual framework, a genocide is occurring in Burma.<sup>40</sup> Similarly, Chalk’s concept could include a genocide of taxi drivers, or the population of a refugee camp sharing a common political purpose that a government finds threatening. As such, the Holocaust and small scale massacres of political opponents of a regime, phenomena that are causatively and qualitatively distinct in many ways, are categorized together in a conceptual container that was originally meant to be of the most restrictive variety.

Kuper stretches his concept of genocide by including the “atomic bombing of the Japanese cities of Hiroshima and Nagasaki by the United States and the pattern bombing of Hamburg and Dresden by the Allies as genocide.”<sup>41</sup> His rationale can be understood to be the same as Chalk’s, that is, the intent to destroy a political group (i.e., those supporting the Axis war alliance), however

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<sup>37</sup> Alternatively, one might wish to start with killings more generally in order to gain insights into the psycho-social dynamics that are involved.

<sup>38</sup> Studies concerned with the societal consequences of mass killing may require an altogether different concept than those concerned with causation, as the consequences of causally different phenomena of mass killings might have the same societal consequences. Fein overlooks this point, assuming that “the specific causes and consequences of destroying real collectivities,” are the same. See, “Genocide, Terror, Life Integrity, and War Crimes,” in Genocide: Conceptual and Historical Dimensions, pg., 99. Similarly, Fein proposes that her concept of genocide is suitable to explain radically different phenomena. Genocide: A Sociological Perspective, pp., 101-103.

<sup>39</sup> Chalk and Jonassohn, The History and Sociology of Genocide, pg., 23.

<sup>40</sup> While many of the Karen nationalists are insurgents, and as such excluded from Chalk’s definition, many of the victims of the killings are defenseless civilians.

<sup>41</sup> Leo Kuper “Theoretical Issues Relating to Genocide,” in Genocide: Conceptual and Historical Dimensions, pg., 33; see also, Genocide: Its Political Use in the Twentieth Century, (New Haven: Yale University Press, 1981), pp., 14, 17, 34-35, 45-46, 50, 55, 91-92, 102, 139, 174).

his exclusion of other civilian victims of war appears to be indicative of faulted logic.<sup>42</sup>

Chalk further stretches his definition of genocide by including historical examples that predate the state. States figure as a significant variable in contemporary cases of mass killing, either as the perpetrator or a force with which non-state actors must grapple. In this sense, genocides in Rwanda and the former Yugoslavia are historically bounded phenomena, distinct from the killings in Melos in 478 B.C., and Carthage in 150 B.C.<sup>43</sup>

### *Misclassification*

Misclassification is the grouping of phenomena that are fundamentally different on the basis of one point of commonality. Wallimann and Dobkowski expand the definition of genocide beyond the domain of intentional killing to include “structural violence and the anonymous forces that dominate modern man.”<sup>44</sup> Similarly, Barta defines a genocidal society as “one in which the whole bureaucratic apparatus might officially be directed to protect innocent people but in which a whole race is nevertheless subject to remorseless pressures of destruction inherent in the very nature of society.”<sup>45</sup> In so doing, both create a concept of death that includes both unpredictable and unintentional deaths and intentional killings.

### *Degreeism*

Degreeism is “the abuse (uncritical use) of the maxim that differences in kind are differences in degree.”<sup>46</sup> Thomson and Quets propose “A sociological definition of genocide as a continuous multidimensional variable [with] a theoretical range from none to total. . . Genocide is the extent of destruction of a social collectivity by whatever agents, with whatever intentions, by purposive actions which fall outside the recognized conventions of legitimate warfare.”<sup>47</sup> In so doing, the concept is extended to any act that undermines a collectivity including state policies that promote monolingualism. Fein rightly notes, “if both the US and France (states which do

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<sup>42</sup> See in particular, *idem.*, “Theoretical Issues Relating to Genocide,” pg., 33.

<sup>43</sup> Chalk and Jonassohn, *The History and Sociology of Genocide*, pp., 65-194.

<sup>44</sup> Isodor Wallimann and Michael Dobkowski, eds, *Genocide and the Modern Age*, (New York: Greenwood Press, 1987), xvii-xviii.

<sup>45</sup> Tony Barta, “Relations of Genocide: Land and Lives in the Colonization of Australia,” in *Genocide and the Modern Age*, pp., 238-239.

<sup>46</sup> Sartori, “Comparing and Miscomparing,” pg., 248.

<sup>47</sup> John Thompson and Gail Quets “Redefining the Moral Order: Towards a Normative Theory of Genocide,” New York, Columbia University (mimeo), 1987 pg., 1, 11, cited in Fein, *Genocide: A Sociological Perspective*, pg., 16.



uniformly promote or tolerate bilingual education) are in the same class (of perpetrators) as Nazi Germany and the USSR, we have a construct good for nothing.”<sup>48</sup>

### **Ascribed or Attributed Group Membership?**

Both the Convention and alternative definitions of genocide include the intent to destroy one or more groups as a central feature of the phenomenon they describe. This raises larger questions of how the term “group” and its “destruction” are to be understood.

Fein’s concept of genocide is limited to collectivities in which member’s affiliation “may be outcomes of election or ascription, conscience or inheritance.”<sup>49</sup> She rejects Chalk’s concept in which the “group and membership in it are defined by the perpetrator.”<sup>50</sup> According to Fein, the latter is indicative of state efforts “to control people whom state agents expect to remain as members of the state [whereas] genocide is a means to eliminate a group of people from the state.”<sup>51</sup> She argues that

the victims of genocide are usually members of *real* groups, whether conceived of as collectivities, races or classes, who acknowledge their existence. . . Had there not been an actual Jewish community with its own institutions, German authorities could not have defined and enumerated Jews, for there was no objective indicator of their alleged criteria of Jewishness – race– which divided ‘Jews’ and ‘Aryans’ categorically [emphasis added].<sup>52</sup>

Fein’s reasoning is erroneous in two ways. Given the lack of any objective basis for determining group membership, and the labile and transactional nature of group identity, establishing the reality of a collectivity, in order to establish that a genocide has occurred, is likely to be a rather frustrating and unfruitful endeavor.<sup>53</sup> Furthermore, Fein’s assertion that there is no

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<sup>48</sup> *Ibid.*, pg., 17.

<sup>49</sup> Fein, Genocide: A Sociological Perspective, pg., 24.

<sup>50</sup> Chalk and Jonassohn, The History and Sociology of Genocide, pg 23.

<sup>51</sup> Fein, Genocide: A Sociological Perspective, pg., 14.

<sup>52</sup> *Ibid.*, pg 14

<sup>53</sup> On the social construction of race see, UNESCO Statements of Race and Race Prejudice (Paris: UNESCO, 1950, 1951, 1964, 1967); Ashley Montagu, Man’s Most Dangerous Myth: The Fallacy of Race (New York: Oxford University Press, 1974; on the fluid nature of ethnic identity see, E. R. Leach, Political Systems of Highland Burma: A Study of Kachin Social Structure (London: The Athlone Press, 1970); Liisa Malkki, Purity and Exile: Violence, Memory, and National Cosmology among Hutu Refugees in Tanzania (Chicago: The University of Chicago

objective indicator with which to identify a group that is not a collectivity overlooks the fact that history is full of instances in which *criteria have been created to serve as objective essentialist criteria* for defining and determining membership in racial, ethnic, national, religious, social and political groups. Perpetrators of mass killings are intent on destroying enemies as they define them. They enjoy a level of power disproportionate to that of their victims and are in a position to construct and impose categories that are determinative not only of who gets killed, but how others define a collectivity, and often how the collectivity comes to define itself.<sup>54</sup>

Furthermore, contrary to Fein's assertion, the central project of many, if not all, 'genocidal efforts' is to control. The killing that is a part of 'genocide' is not simply "a means to eliminate a group of people [i.e., a collectivity according to Fein] from the state."<sup>55</sup> It is about eliminating perceived and real enemies, penetrating the social structures and cultures of collectivities, instilling fear in the populace, and reaping the benefits that are to be had through the creation, or further alienation, of an out-group and the discrimination and persecution of its members.<sup>56</sup> In some cases, a sustained effort to physically annihilate the members of a group or groups may arise. Nonetheless, this destruction is still about control.

### **Group Destruction**

The normative framework created by the Genocide Convention has profoundly shaped the approach of social scientists studying the phenomenon that has come to be labeled genocide. Central to their theoretical approaches is the notion that an intent to destroy one or more groups is

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Press, 1995).

<sup>54</sup> On the racialization of political enemies as the other see Kiernan's discussion of Khmer bodies with Vietnamese minds, in The Pol Pot Regime. Generally, see, Paul Starr, "Social Categories and Claims in the Liberal State," in Mary Douglas and David Hull, eds., How Classification Works (Edinburgh: Edinburgh University Press, 1992) and Kai Erikson, "On Pseudospeciation and Social Speciation," in Genocide, War, and Human Survival, ed., Charles Strozier and Michael Flynn (London: Rowman & Littlefield Publishers, 1996); on the power of the state to impose categories and make them stick, see James Scott, Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed, (New Haven: Yale University Press, 1998).

<sup>55</sup> Fein, Genocide A Sociological Perspective, pg., 14.

<sup>56</sup> In this regard, many 'genocides' might best be understood as social revolutions -- "rapid, basic transformations of a society's state and class structure, accompanied and in part accomplished through popular revolts from below." Skocpol, "Explaining Revolutions," in Social Revolutions. On the uses of race to achieve national cohesion see, Anthony Marx, Making Race and Nation: A Comparison of South Africa, The United States and Brazil (New York: Cambridge University Press, 1998).

the defining feature of the phenomenon they are studying. In fact, this ontological approach may obfuscate the analytic endeavor and distract scholars from other ways of conceptualizing the phenomenon they are studying.

In many instances of 'genocide' it appears that the perpetrators had a greater capacity to destroy the groups targeted for destruction than they used. In some cases, this may be the result of social forces that penetrate and structure the state or insurgency limiting or moderating the ability or desire to carry out 'genocidal' practices.<sup>57</sup> In other cases, one might question whether the intent to destroy a group was indeed an overriding objective of the perpetrator or if that intent was falsely imputed as a consequence of the ontology of the viewer, or even his desire to label the atrocious acts as a crime of the most reprehensible nature. Indeed, it may be particularly difficult to make sense of the thoughts of those who are responsible for murdering thousands or hundreds of thousand of people. This problem of incommensurability may be a reason in itself for avoiding the conceptual framework of genocide.<sup>58</sup>

It might be pertinent to ask, "Is this phenomenon best understood as an attempt to destroy the group, or rather extreme persecution of a group which may entail both real efforts to kill its members and ideology about its destruction?". What is it that is being destroyed: the group or its members? Is it being destroyed or just altered so that it is more malleable? It may be useful to ask what it is about "the intent to destroy" that is interesting? Perhaps, the ability to so completely exclude the perecuted from the bounds of societal protection that it can be persecuted so brutally.

Legally, the intent to destroy a group, "in part", is sufficient to constitute the crime of genocide under the Convention.<sup>59</sup> However, this legal term of art may stretch the notion of destruction in

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<sup>57</sup> Peter Evans, Embedded Autonomy, (Princeton: Princeton University Press, 1995); Poulantzas, Political Power and Social Class, (London: New Left Books, 1973); Joel Migdal, Atul Kohli, and Vivienne Shue, (eds.), State Power and Social Forces: Domination; Joel Migdal, Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World, (Princeton: Princeton University Press, 1988).

<sup>58</sup> On the undesirability of methods of analysis that require the measurement and interpretation of subjective mental states see, Theda Skocpol, "Explaining Revolutions: In quest of a Social-Structural Approach," in Social Revolutions in the Modern World; pp., Gary King, Robert Keohane, Sidney Verba, Designing Social Inquiry: Scientific Inference in Qualitative Research, (Princeton: Princeton University Press, 1994) pp., 109-112.

<sup>59</sup> Many social scientists have regarded the destruction of a group's culture as part of the process of group destruction. Prohibitions against certain forms of cultural expression and the destruction of cultural institutions such as places of worship may indeed be part of the process of penetrating a group and persecuting its members. However, focusing on the destruction of a culture, as such, seems like a misguided undertaking given the dynamic nature of culture and its non-reified nature. The extension of this notion to a genocide to include social groups, for

ways that are impractical to the social scientist. If the intent to destroy a group is understood in a strict sense, as an intent to annihilate all members, then some 'genocides' may not be about destroying groups at all, since they did not attempt to eradicate the entire group.

### **Situating the Academic Endeavor**

Charney is vituperative about the definitional debate. 'Definitionalism' he states is

a damaging style of intellectual inquiry based on a perverse, fetishistic involvement with definitions to the point at which the reality of the subject under discussion is "lost," that is, no longer experienced emotionally by the scholars conducting the inquiry, to the point that the real enormity of the subject no longer guides or impacts on the deliberations."<sup>60</sup>

While Charney seems to conflate an objective theoretical approach, which is desirable, with the detachment of some scholars from real world problems, the two need not go hand in hand. His larger point is a valid one. Academics need not, and arguably should not, divorce themselves from practical endeavors, particularly if they are studying human tragedy. What is important is that they delimit their practical and the theoretical endeavors so that they do not interfere with one another.

Genocide is a term of art in international law; that is a term having a verifiable content. While the legal definition of genocide may not denote a causatively distinct phenomenon, employing an alternative definition, no matter how precise theoretically, may stretch the concept of genocide in ways that hinder practical responses to genocide. The work that academics produce should be useful to practitioners and to victims. Using a definition of genocide that differs from that used by the United Nations, human rights practitioners, governments and other international institutions will confuse communication between these actors and academics and may confound the ability of academics to see their work applied practically. If it is established that the exclusion of political and social groups renders the Convention definition of genocide of limited utility to social scientists, a new term can be employed rather than constructing a competing definition. It seems counter-productive, however, to further clutter the carefully constructed legal definition of genocide, which is slowly emerging as a useful tool for prosecuting the crime of genocide and lobbying preventive action.

Academics can contribute to efforts to prevent, and redress the crime of genocide, as enstated in the Genocide Convention in practical ways. For example, The Cambodia Genocide

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example against a class in a communist revolution, is revealing. Stripping the bourgeoisie of its wealth then may be a genocidal act as it is depriving them of a major facet of its 'culture'. Cite studies in Century of Genocide. 120, East Timor

<sup>60</sup> Charney, "Toward a Generic Definition of Genocide," in Genocide: Conceptual and Historical Dimensions, pg., 91.

Program at Yale University has assisted Cambodian nationals in the compilation of information on the atrocities of the Khmer Rouge, facilitated the location of mass grave sites, and provided training to government officials to facilitate national efforts to hold the Khmer Rouge accountable for the atrocities they committed.<sup>61</sup> Academics can also contribute to illuminating the factors that enable the crime of genocide to occur and its consequences.<sup>62</sup>

Similarly, academics need not circumscribe their work in accordance with the Convention definition. Efforts can be devoted to preventing, redressing and understanding mass killings that are not genocides. However, just as states may be inclined to pay greater attention to genocides, so too may academics. The normative pull of the word genocide and the material resources its study attracts may lead to a disproportionate focus on genocides, to the detriment of larger theoretical and practical endeavors concerned with massive violations of human rights.<sup>63</sup> The boundaries of academic inquiry should not be determined by ideological definitions allowing the “ masses of bodies that are not to be qualified for the definition of genocide [to be] dumped into a conceptual black hole, where they are forgotten.”<sup>64</sup>

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<sup>61</sup> For an argument that uses empirical evidence to substantiate that the crime of genocide occurred in Iraq, see, Human Rights Watch/Middle East, Iraq's Crime of Genocide: The Anfal Campaign Against the Kurds, (New Haven: Yale University Press, 1995).

<sup>62</sup> See for example, Samuel Totten, William Parsons, Israel Charney, Century of Genocide: Eyewitness Accounts and Critical Views, (New York: Garland Publishing, 1997).

<sup>63</sup> For example, doctoral students at Yale were heard discussing the advantages of choosing a dissertation topic that focused on a country in which genocide had occurred rather than a country with severe human rights problems such as South Africa, as they could then qualify for a doctoral fellowship offered by the Genocide Studies Project.

<sup>64</sup> Charny, “Toward a Generic Definition of Genocide,” in Genocide: Conceptual and Historical Dimensions, pg., 92. Charney argues that “The definition of genocide adopted in law and by professional social scientists must match the realities of life, so that there should be no situation in which thousands and even millions of defenseless victims of mass murder do not ‘qualify’ as victims of genocide,” *ibid.*, pg., 64; an endeavor which I have argued is neither desirable or likely to be effective. Again, I agree with Charney’s larger point while taking issue with his prescribed solution.





