

# *The Specter of Genocide*

MASS MURDER IN HISTORICAL PERSPECTIVE

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## *The Study of Mass Murder and Genocide*

ROBERT GELLATELY AND BEN KIERNAN

The twentieth century has been well described as an “age of extremes.”<sup>1</sup> There were two world wars, major revolutions, colonial and anticolonial conflicts, and other catastrophes. All too often mass murder of noncombatant civilians marred these conflicts. The murders were usually state-sponsored or officially sanctioned.<sup>2</sup> Indeed, by midcentury the pattern struck some scholars as so alarming that they began groping for new words to describe it. The Polish jurist Raphael Lemkin introduced the concept of genocide in a small book published during the Second World War.<sup>3</sup> Later he helped prod the United Nations into formulating its Convention on the Prevention and Punishment of the Crime of Genocide in 1948. The convention defined genocide broadly as “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”<sup>4</sup> These acts included killing or causing serious bodily or mental harm to members of the group and also deliberately inflicting conditions on a people such as “to bring about its physical destruction in whole or in part.” The convention condemned measures like the prevention of births so that a people would die out and forcible transfer of a group’s children to another group. Because the Genocide Convention is a good starting point for discussion of the phenomenon, we analyze both its nature and its implications.

In 1945–46 the victorious Allies convened the International Military Tribunal at Nuremberg. These trials were partly justified in law as setting the precedent of holding leaders and other perpetrators responsible for crimes against humanity and war crimes. At about the same time, the

1 The concept is from Eric Hobsbawm, *The Age of Extremes: A History of the World, 1914–1991* (New York, 1994).

2 T. Bushnell et al. (eds.), *State Organized Terror: The Case of Violent Internal Repression* (Boulder, 1991).

3 Raphael Lemkin, *Axis Rule in Occupied Europe* (Washington, D.C., 1944).

4 The text of the convention is reprinted in the Appendix (pp. 381–84).

establishment of the United Nations opened the possibility of creating an international court that could try such crimes as genocide. During the next decades, however, the Nuremberg precedent was something of a dead letter. The International Criminal Court was created only in 2002, opposed by the United States, China, India, and Iraq, among others. Worse, state-sponsored mass murder had even begun to increase toward the end of the twentieth century. New varieties of international crimes came into being during the 1980s and 1990s, encapsulated by the repugnant term “ethnic cleansing.” Though used before, the term was now given new currency.<sup>5</sup>

This book was conceived in the context of continuing reports of genocide, ethnic cleansing, and a wide range of other mass crimes still occurring in various parts of the globe, including East Timor, Rwanda, and the former Yugoslavia. We survey here a wide variety of mass murders and genocidal activities, but we make no claim to have covered all the cases. It is our hope that these studies will contribute to understanding the social, political, and psychological dynamics of the murderous side of the modern world.

Why has it taken so long for many scholars to get seriously involved in genocide research? Throughout the twentieth century individual scholars and survivors wrote and spoke out about the mass crimes against civilians they witnessed. Nevertheless, the sustained study of genocide and other forms of mass murder has been remarkably slow to start, although it accelerated in the 1990s.<sup>6</sup> For example, only fairly recently have most (but not all) specialists agreed that the mass murder of the Armenians by the Young Turks was genocide, perhaps even the first twentieth-century case. The Armenian minority in Ottoman Turkey had been subject to sporadic persecutions over the centuries, and these were stepped up with pogrom-like massacres in the late nineteenth century. With the outbreak of the First World War, the Young Turk government proceeded far more radically against the Armenians. Inspired by rabid nationalism, Turks drove the

5 In Yugoslavia during World War II, Chetnik leaders had proposed “cleansing the lands of all non-Serb elements” and of “all national minorities.” See Norman Cigar, *Genocide in Bosnia: The Policy of “Ethnic Cleansing”* (College Station, Tex., 1995), 18. For a more general examination, see Andrew Bell-Fialkoff, *Ethnic Cleansing* (New York, 1996).

6 See, e.g., Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analyses and Case Studies* (New Haven, 1990); Helen Fein, *Genocide: A Sociological Perspective* (London, 1993); George J. Andreopoulos (ed.), *Genocide: Conceptual and Historical Dimensions* (Philadelphia, 1994); Samuel Totten, William S. Parsons, and Israel W. Charny (eds.), *Genocide in the Twentieth Century: Critical Essays and Eyewitness Accounts* (New York, 1995); Kurt Jonassohn with Karin Solveig Bjornson, *Genocide and Gross Human Rights Violations in Comparative Perspective* (New Brunswick, N.J., 1998); Levon Chorbajian et al., (eds.), *Studies in Comparative Genocide* (London, 1999); Israel Charny (ed.), *The Encyclopedia of Genocide* (Oxford, 1999).

Armenians from their homes and massacred them in such numbers that outside observers at the time remarked that what was happening was “a massacre like none other,” or “a massacre that changes the meaning of massacre.”<sup>7</sup>

Although we do not have reliable figures on the death toll, many historians accept that at a minimum between 800,000 and 1 million people were killed, often in unspeakably cruel ways. Unknown numbers of others converted to Islam or in other ways survived but were lost to the Armenian culture. At the time a number of influential people spoke out against these atrocities, most notably the distinguished historian Arnold J. Toynbee, but only in the past several decades have scholars devoted anything like sustained attention to this human catastrophe. Two essays in this volume deal with important aspects of the topic, but much more remains to be said.<sup>8</sup> There is more than enough evidence to suggest that the mass murder of the Armenians was a genocide, as that crime was subsequently defined in the United Nations Genocide Convention of 1948. In this volume we treat this mass murder and other state-sponsored genocides as belonging to the same category of crime. Any surviving perpetrators of the Armenian genocide could certainly have been held to account in an international criminal court – if only international enforcement of the Genocide Convention had not had to wait for the convening of the Ad Hoc International Criminal Tribunals for Yugoslavia and Rwanda in The Hague in the 1990s, or the first permanent International Criminal Court in 2002.<sup>9</sup>

The study of mass murder and genocide took a major turn because of reactions to the atrocities committed by the Third Reich. On the one hand, the number of people killed in the Second World War in Europe as a whole was truly staggering, greater than in all the other wars fought in Europe since 1870. More than half of those killed in the Second World War were civilian noncombatants. In addition to the victims of bombing raids, millions were put to death as part of deliberate Axis plans to kill them because they belonged to groups or nations arbitrarily defined as “enemies.” The wartime killing in Europe could not be pushed aside, as too often happened when mass murder occurred in some distant land. The persecution of the Jews reached genocidal proportions in the heart of Europe. The Nazis even had plans for serial genocides. Had they succeeded, other nations would have been wiped out as identifiable cultures. As Gellately shows in his essay

7 See the remarks of contemporaries cited in Norman M. Naimark, *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe* (Cambridge, Mass., 2001), 37.

8 For a full-scale study and the literature, see Vahakn N. Dadrian, *History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus*, 3rd rev. ed. (Providence, 1997).

9 For a brief account, see “For Crimes of International Law, a Guide,” *Boston Globe*, July 23, 2001.

in this book, survivors would have been exploited as hapless helots. The Japanese also had far-reaching plans in the Pacific, which Gavan McCormack discusses in his essay. In both cases, the plans were stopped before they could be fully implemented. The war crimes of both states were publicized in postwar trials. At Nuremberg in 1945–46, the Nazi murder of the Jews was prosecuted as one of several “crimes against humanity,” but, as a leading historian of the Holocaust puts it, the crimes against the Jews as such “never assumed a prominent place” at Nuremberg.<sup>10</sup> The term “Holocaust” began to be widely used only in the 1960s and later, and sustained professional study of what happened to the Jews began later still.<sup>11</sup>

It is true, however, that the 1948 United Nations convention against genocide was formulated in the shadow of Auschwitz. Lemkin had wanted to criminalize and prosecute what he described as “the criminal intent to destroy or to cripple permanently a human group. The acts are directed against groups, as such, and individuals are selected for destruction only because they belong to these groups.”<sup>12</sup> Nevertheless, for many decades no charges of “genocide” were ever brought, so that in the 1950s and 1960s, when the Genocide Convention was discussed at all, it remained more of a rhetorical than a judicial device for use in the Cold War against the opposing superpower. Soon enough even accusations of genocide faded away.<sup>13</sup>

In the past two decades or so, a conjuncture of events has sparked renewed concern about genocide, mass murders, and grave human rights abuses of all kinds. The American public in particular grew far more attentive to the Holocaust beginning in the mid-1970s with a gradual introduction of Holocaust Remembrance days and other forms of commemoration.<sup>14</sup> By the latter 1980s various cities had opened Holocaust museums, and in 1993 the United States government dedicated a new U.S. Holocaust Memorial Museum. By that time scholars around the world were engaged as never before in the study of the Third Reich. Historians and jurists alike began to see patterns in state-sponsored mass murders, so that during the past two decades, just as the study of the Holocaust greatly increased, so too can we see many more studies of various cases of mass murder and human rights abuses.

10 Michael R. Marrus, *The Holocaust in History* (Hanover, 1987), 4.

11 For numerous relevant contributions, see Michael Berenbaum and Abraham J. Peck (eds.), *The Holocaust and History: The Known, the Unknown, the Disputed and the Reexamined* (Bloomington, 1998).

12 Cited in Andreopoulos, *Genocide*, 1.

13 See Peter Novick, *The Holocaust in American Life* (Boston, 1999), 101.

14 Israel introduced a Holocaust Day of Remembrance on April 7, 1959. Such a day was introduced in the United States in 1979. See James E. Young, *The Texture of Memory: Holocaust Memorials and Memory* (New Haven, 1993), 270–72.

The attention of the West to mass murder of all kinds was also fueled from the 1960s and 1970s onward by reports of the systematic mass murder and genocide committed by the Suharto regime in Indonesia and East Timor, and by the Pol Pot regime in Cambodia.<sup>15</sup> These cases, the worst postwar mass murders in Asia, heralded a new chapter in the modern history of genocide. In this book, Leslie Dwyer and Degung Santikarma analyze the wave of killings that swept the Indonesian island of Bali in 1965. From Africa came news of other mass murders, such as those in Burundi in 1972 and in Ethiopia from 1974, which Edward Kissi's chapter compares with those in Cambodia. A major turning point was reached in 1994 with the genocide in Rwanda. Initial reports of what was happening were downplayed until investigators brought out the truth, alas, mainly after the genocide had been brought to an end by Rwandan opposition forces. Robert Melson discusses the Rwanda case here. Those events, and hardly less horrific conflagrations in East Timor (again) in 1999, Bosnia in 1991–95, and elsewhere, helped to stimulate far more concern about mass murder and human rights abuses in our contemporary world. In this volume John Taylor examines what happened in East Timor from 1975 to 1999 as a case of counterinsurgency leading to genocide. Jacques Semelin looks at events in the former Yugoslavia in the 1990s and develops the concept of "mass crime" to include killings, destruction, deportation, and other large-scale persecutions. In his comparative chapter, Kiernan draws attention to some common ideological themes behind these diverse twentieth-century tragedies, stressing land-related issues – territorial expansionism and a preoccupation with cultivation – along with widely studied factors such as racism and religious prejudice.

Recent research into the history of mass murder and genocide has also been fueled by evidence from the archives of the former Soviet Union after its demise. For a long time, many Europeanists had been blind to the gravity of the human rights abuses committed over generations in the Soviet Union since the Russian Revolution. Plenty of news circulated from the 1930s about the fates of the kulaks ("rich peasants") and Ukrainians. Thanks to perestroika and the new openness in the 1980s, and certainly after 1991 when the USSR dissolved before our eyes, research by historians in newly (if still only partly) opened Soviet archives brought out more stories that could not be denied or brushed aside. We are finally learning the full scope of what happened in the Soviet Union, not only in the 1930s, but during

15 Robert Cribb (ed.), *The Indonesian Killings, 1965–1966: Studies from Java and Bali* (Clayton, Australia, 1990); Ben Kiernan, *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975–79* (New Haven, 1996).

the war itself, and even well into the postwar era. We would point to the milestone studies recently published by historians in France like Nicolas Werth, who provides us here with an up-to-date account of the mass murders committed in the Soviet Union under Stalin.<sup>16</sup> Several other Western scholars have also made important contributions to the history of these events.<sup>17</sup> Together they show beyond a shadow of a doubt that even though some officially sponsored murder campaigns in the USSR did not always lead to genocide – as defined by the United Nations Convention – in a number of cases there was systematic mass murder of many millions. Certain peoples in the multinational Soviet Union were “ethnically cleansed,” others persecuted to the point where their cases could (now) be prosecuted under the convention. The implications of these recent studies must be considered by anyone trying to account for mass murder in the twentieth century.

Thus only in recent years has the new field of genocide studies come into being. This development has led in turn to the investigation of hitherto little-known or long-denied cases of mass murder and genocide. One such case, what happened in Guatemala, is detailed in this volume by Greg Grandin. The full story of the U.S. aid to killer regimes in Chile and El Salvador, on the other hand, has yet to be written.

As historians, sociologists, anthropologists, political scientists, and others get involved in a new field like this, one that is remarkably complex, it is not surprising that they adopt multifaceted approaches and different “models” of explanation. In this volume we offer a multiplicity of theoretical approaches. It is worth briefly sketching out some of the main ones. We point to the diversity and mention several disputes, even among contributors in this volume, but we do not try to resolve them here.

#### THEORETICAL POSITIONS

The basic question in all studies of mass murder and genocide is, Why is an “enemy” – however defined – “exterminated”?<sup>18</sup> Scholars from various fields have taken many different routes in trying to answer that question, but two main approaches stand out. One suggests that genocide, like war, massacre, mass rape, and other such atrocities, is anything but new and hardly

16 See Stéphane Courtois et al., *The Black Book of Communism: Crimes, Terror, Repression*, trans. J. Murphy and M. Kramer (Cambridge, Mass., 1999).

17 See, e.g., Terry Martin, “The Origins of Soviet Ethnic Cleansing,” *Journal of Modern History* 70 (December 1998): 813–61.

18 Courtois et al., *The Black Book*, 747.

an invention of the twentieth century. These scholars insist that such horrors have occurred throughout history in all parts of the world.<sup>19</sup> Mass killings are as old as time. We certainly can find many examples in history, during war, imperial conquest, religious unrest, social upheaval, or revolution, when widespread death and destruction were deliberately inflicted upon a foe, including innocent civilian noncombatants. As we detail here, even “extermination” was a familiar concept before 1900.

Nevertheless, if this first group of scholars tends to underline continuities in the human condition as explaining the recurrence of mass murder, another group emphasizes change over continuity. In this book, Omer Bartov, Marie Fleming, and Eric Weitz focus on the specific modernity of genocide. In their essays here they insist that there is something very new about many (if not all) of the twentieth-century mass murders, such as those inflicted on the Armenians or the Jews. Many of us would agree with the point made by Isabel Hull in her essay in this volume. On the basis of what happened to the Herero tribe in German South West Africa before the First World War, she argues that the vastness and totality of recent genocides or “final solutions” aimed at what she terms “problem populations” is such that they can be pursued only by an institution like the modern state. For her the question is, Under what conditions do governments and their agents decide on the utterly utopian goal of totally destroying a “problem population”? In German South West Africa, the representatives of the state on the spot began to move well beyond a “war of pacification.”<sup>20</sup> Long after the Herero were any real threat, the local German military commander issued an extermination order. Hull suggests that there were links between the kind of behavior that emerged in early twentieth-century German Africa and the Nazi “final solution to the Jewish question,” but her thesis is not of a simple continuity from Africa to Auschwitz.

The link between European imperialism and mass murder can be found in older literature.<sup>21</sup> Yet there is a need for basic research on many other parts of Africa and Asia. Developments there need to be integrated into our studies of more modern cases of mass murder. Just how we can do this remains for another book. In this volume, Elazar Barkan offers an account of the genocides of indigenous peoples, which has become a controversial topic.

19 See, e.g., Chalk and Jonassohn, *The History and Sociology of Genocide*.

20 For this phraseology, see Trutz Von Trotha, “‘The Fellows Can Just Starve.’ On Wars of ‘Pacification’ in the African Colonies of Imperial Germany and the Concept of ‘Total War,’” in Manfred F. Boemeke et al. (eds.), *Anticipating Total War: The German and American Experiences, 1871–1914* (Cambridge, 1999), 415–35.

21 See, e.g., J. A. Hobson, *Imperialism, a Study* (1902; Ann Arbor, 1965); Hannah Arendt, *The Origins of Totalitarianism* (1951; New York, 1973).

It is not always important to get bogged down on the question of whether or not these premodern or early modern mass murders can or cannot be defined as genocide. Although we again suggest the UN legal definition as a starting point, we need to move beyond definitions to study all such events in order to uncover their underlying dynamics. Mass murders in past centuries, however, should be seen as much more than mere antecedents to what happened in the twentieth century. It is not particularly useful to suggest that human nature – whatever that is – “explains” these horrors. We can study long-term trends, precursors, and antecedents but also look at differences. Why do some conquests and conflicts turn to mass murder, and others not? We also need to ask, as Glenda Gilmore has pointed out, both why there was no genocide aimed at the blacks in the United States, and why African Americans were nevertheless more concerned than most whites at the Nazi persecution of the Jews.<sup>22</sup>

The issues about continuities and changes in the history of mass murder and genocide are not going to be resolved any time soon, and there is no good reason why they should be. There is plenty of room for discussion and for varying approaches and different methods.

A common goal of all researchers is to piece together who ordered the killings to commence in any given case. If in the twentieth century these mass murders were usually state-sponsored or at least officially sanctioned, who made the decisions? What were their motives? These questions are particularly relevant if we want to hold leaders responsible for genocide or other grave human rights abuses before international courts. The problem for historians and jurists is that leaders and their agents try, usually with considerable success, to cover up their crimes and to destroy the evidence. Moreover, some states continue to deny crimes, including cases of mass murder and even genocide, committed by their predecessors. They also limit access to their archives and even persecute or threaten researchers. When scholars are finally granted access to archives, they often find that evidence has been “laundered” or destroyed. So reconstructing the decision-making process is often no easy task.

Those scholars who focus mainly on the leaders of the mass murders adopt a “top down” or “intentionalist” approach. There are a number of intentionalist essays in this volume. They posit that leaders, and particularly

22 Glenda Gilmore, “‘An Ethiop among the Aryans’: African Americans and Fascism, 1930–1939,” paper to an international colloquium on Comparative Genocide, Barcelona, December 7–10, 2000. The colloquium was held by the Genocide Studies Program (Yale University) and the Center for Holocaust and Genocide Studies (Clark University) and sponsored by the Harry Frank Guggenheim Foundation.

dictators who intend to carry out mass murder, are more or less capable of bringing about their wishes, both using force and mobilizing sufficient support by winning converts to their cause. The argument is that without key decisions or orders from the top, without the role of a Hitler or a Pol Pot, to name two examples, the genocides now identified with their regimes would not have happened. It is therefore critical to study the emerging pre-occupations and ideologies of such unusual figures and their small close-knit circles, in order to be able to identify, predict, and prevent future outbreaks of extreme violence.

Another group of scholars represented in this volume, while not disagreeing with the importance of leaders, is interested in the implementation or enforcement process. They adopt a “bottom-up,” sometimes called “functionalist” or, more accurately, an “interactive” approach. They investigate how the intentions or orders of leaders – often located in distant capital cities – were translated into reality. These scholars argue that it is insufficient to point to the will or orders of the dictator to account for how the orders get followed. Jay Winter argues in his essay on World War I here that the consent of the broad masses of the people was somehow crucial and that this consent was not created or manufactured by a proverbial Big Brother “from above.” As he puts it, “The truth is more frightening: the Great War provided much evidence of the propensity for populations to generate internally a commitment to carry on a war of unprecedented carnage.” According to Gellately, the same point holds with regard to the Nazi regime in the Second World War. He suggests that the persecution of social outsiders between 1933 and 1939 won more support for Hitler’s regime than it lost, and that the early successes in the Second World War turned Hitler into Germany’s most popular leader of all time. That support encouraged Hitler to launch his campaigns of mass murder.

Scholars often disagree in their assessments of the motives of the face-to-face killers in the field. A number of essays in this volume adopt an interactive approach and focus both on what happened at the local level and, at the same time, look at the interactions between those “above” (the leaders) and “below” (those who either do the killing or collaborate in some way with the killers). These approaches, as well as a number of recent publications devoted to mass murders, strongly suggest that it is important to investigate, along with the thinking and policies of the leaders, the social and historical background of all kinds of mass crimes.<sup>23</sup>

23 See Christopher R. Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York, 1992), and Daniel Jonah Goldhagen, *Hitler’s Willing Executioners: Ordinary Germans and the Holocaust* (New York, 1996).

Several accounts of recent mass murders in Africa indicate that one factor that leads to escalation, is a breakdown of previous relationships between emerging perpetrators and victims. In Rwanda, for example, close-knit bonds, even reaching into families over many decades, suddenly were torn asunder. When we turn to such cases, the question that arises is, Why did the killers start? Why did Hutus turn against their erstwhile Tutsi neighbors, even family members? Was it merely the case that both Hutus and Tutsis took over the discourse of their former colonial masters?<sup>24</sup> Was this another postcolonial legacy? Had they lived in greater harmony before Belgians strengthened ethnic distinctions in the latter part of the nineteenth century? Were the killers so easily manipulated and misled by such messages? Kissi, in his discussion of Ethiopia, maintains that tribal or racial animosities may have deep roots, but he also shows how a modern revolutionary regime can choose different approaches.

The “models” we once used to explain the behavior of the killers may now need rethinking. It turns out that even in the Holocaust, certainly the most widely investigated genocide of the twentieth century, our understanding of just who did the killing and why has changed dramatically in the past decade. Although the Nazi SS were key perpetrators, and the most important killing sites were specifically designed death camps, perhaps as many or more people were killed outside the camps. Mass killing certainly took place in “modernized” death camps but also in hands-on, face-to-face encounters.<sup>25</sup> These new studies suggest how “ordinary” people became caught up in the killing. Jan Gross shows, in his book on Jedwabne, what even the citizens of this little Polish town did. They murdered every one of their Jewish fellow citizens, apparently mostly for personal gain. They did so in unimaginably cruel ways, with neither restraint nor much involvement by the German occupation forces. That victims (under the Third Reich, these included the Poles) could also be perpetrators, was demonstrated beyond doubt in Jedwabne.<sup>26</sup>

Recent research has pointed to the importance of focusing more on the victims in our accounts of mass murder. But by definition most victims are dead and unable to testify, and this makes it easier for the perpetrators not only to try to cover up their crimes, but also to erase the history, culture, and even the language of the victims. Whole communities, many of them going

24 See, e.g., Philip Gourevitch, *We Wish to Inform You That Tomorrow We Will be Killed with Our Families* (New York, 1998), 54–55.

25 See Browning, *Ordinary Men*, and Goldhagen, *Hitler's Willing Executioners*.

26 Jan Gross, *Neighbors: The Destruction of the Jewish Community of Jedwabne* (Princeton, 2000).

back for centuries, are wiped off the face of the earth as if they had never existed. We must research these lost people, even though it is difficult to reconstruct what happened in the vortex of the killing process. When we are lucky, we can talk to survivors, hear their testimony, but all too often little or nothing remains. Dori Laub has reminded us in thoughtful essays how important it is to study the surviving victims, and even their children. The experience of coming close to death, being confined or threatened or forced to witness horrific crimes, constitutes for many a trauma requiring years to heal and exerts a powerful influence on their actions and on future generations.<sup>27</sup>

A number of scholars have written about gender issues in genocides, but it is clear that this work is only beginning.<sup>28</sup> The great majority of the perpetrators of mass murder (even serial killers) are male. That finding has led some feminist writers and others to suggest that genocide has been a specifically male proclivity, and some of them have gone on to develop gender-specific theories of evil. From the few studies we have, however, it would seem that under certain circumstances some women are as capable as men of perpetrating horrific crimes and human rights abuses.<sup>29</sup>

The gender of the victims, it has to be said, often did not count for much, especially if the perpetrator's intention was total annihilation. Notably in the Holocaust, there was (supposedly) a strict taboo on sexual relations between Germans and the Jews, and in Cambodia, between peasants and former city dwellers. More recently, though, mass rape formed part of ethnic cleansing operations in the former Yugoslavia. The appalling accounts of the treatment of Muslim women at the hands of Serb forces in Bosnia-Herzegovina seem to indicate that state-sponsored mass rape really was something new and that it carried a genocidal intent. Catharine MacKinnon goes so far as to assert that mass rape of this kind was "a form of genocide directed specifically at women."<sup>30</sup> In Bosnia-Herzegovina and several other areas (like Bali) covered in this volume, mass rape was employed consciously or systematically with the intent of destroying a group.

27 Dori Laub, *Psychoanalysis and Genocide: Two Essays*, Genocide Studies Program (New Haven, 2002); Ilany Kogan, *The Cry of Mute Children: A Psychoanalytic Perspective of the Second Generation of the Holocaust* (London, 1995).

28 See, e.g., Adam Jones, "Gendercide and Genocide," *Journal of Genocide Research* 2, 2 (June 2000): 185–211; "Gendercide," special issue, *Journal of Genocide Research* 4, 1 (March 2002); and the Gendercide Watch website <<http://www.gendercide.org>>.

29 For a brief introduction, see Joanna Bourke, *An Intimate History of Killing: Face to Face Killing in Twentieth Century Warfare* (London, 1999), 294–333. For specific cases, see Gudrun Schwarz, *Eine Frau an seine Seite: Ehefrauen in der SS-Sippengemeinschaft* (Hamburg, 1997), 99–227.

30 Catharine A. MacKinnon, "Crimes of War. Crimes of Peace," in Steven Lukes et al., *On Human Rights: The Oxford Amnesty Lectures 1993* (New York, 1993), 83–109, at 88.

Mass rape is not unknown in history, even in recent times, and to mention a prominent example, was so pronounced in eastern Germany under the invading Soviet armies at the end of the Second World War, that whole villages of women, from young girls to grandmothers committed suicide by throwing themselves in rivers in order to avoid the marauding soldiers.<sup>31</sup> That chapter in the history of mass rape did not end in mass murder of the surviving women, but it was accompanied by many other human rights abuses, including banishment to Siberia.<sup>32</sup>

In more recent conflicts in the Balkans as well as in Asia, however, rape has been used not just as revenge, “reward” for the soldiers, or as random acts of sexual violence. Rape in some instances is no longer an “eternal” accompaniment of war but has come to be used as a systematized weapon of domination. Such strategic uses of organized mass rape seem new, and we can see how it functioned in several countries, particularly in Europe in 1945 and 1946, when it was used to terrorize certain ethnic groups into leaving their homes in search of safety.<sup>33</sup> Attacking women and even young girls was not only another way of shaming the men who may have fled, but it also dehumanized victims and made it easier to kill them. Even when these actions did not result in mass murder, the intention was at times genocidal in the sense that the aim was either to destroy the “problem population” as a living social or ethnic entity or to undermine its biological future.

As the Dwyer and Santikarma essay on Bali in this volume shows, it is often difficult to study these atrocities, because the survivors do not want to talk about what happened. Rape is enveloped by social taboos in all cultures, and many victims of mass rape do not want to discuss it for fear of being victimized yet again, perhaps even by their own families.

#### LEGAL AND ANALYTICAL CONCEPTS

##### *The Intent of the Perpetrator*

Legally, genocide is the most serious crime. It is considered an “aggravated” crime against humanity, for an important reason. The 1948 UN Genocide Convention requires the proven intent of the perpetrator to destroy a human

31 See Norman M. Naimark, *The Russians in Germany: A History of the Soviet Zone of Occupation, 1945–49* (Cambridge, Mass., 1995), 69–140.

32 See Freya Klier, *Verschleppt ans Ende der Welt: Schicksale deutscher Frauen in sowjetischen Arbeitslagern* (Munich, 2000).

33 See Naimark, *Fires of Hatred*, 108–38, for an examination of how rape was used by Poland and Czechoslovakia to terrorize native Germans into leaving these countries at the end of the Second World War.

community – “the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.” Other crimes against humanity and war crimes do not require proof of such intent, merely of the criminal action itself, such as mass murder.

What is “intent” to destroy a group? There are two different views on this. The everyday meaning tends to confuse intent with “motive.” If a colonial power, motivated by conquest of a territory, or a revolutionary regime with the aim of imposing a new social order, in the process destroys all or part of a human group, does that constitute genocide? Not according to most popular definitions of intent. But in criminal law, including international criminal law, the specific motive is irrelevant. Prosecutors need only prove that the criminal act was intentional, not accidental. A conquest or a revolution that causes total or partial destruction of a group, legally qualifies as intentional and therefore as genocide whatever the goal or motive, so long as the acts of destruction were pursued intentionally. In this legal definition, genocidal intent also applies to acts of destruction that are not the specific goal but are predictable outcomes or by-products of a policy, which could have been avoided by a change in that policy. Deliberate pursuit of any policy in the knowledge that it would lead to destruction of a human group thus constitutes genocidal intent. In international law, then, “genocide” describes *both* deliberate mass extermination campaigns specifically motivated by fear or hatred of a victim group, as in the Nazi Holocaust, *and* destruction of human groups pursued for more indirect or political purposes, such as the Indonesian military conquest of East Timor or the Khmer Rouge utopian communist revolution. Of course, there remain important social and political distinctions between these cases, but the legal category of genocide includes them all.

The term “as such” in the UN definition, added to the convention text as a late political compromise, presents thorny legal problems. How are we to interpret this term as it appears in the phrase “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”? Does “as such” refer to the preceding word “group,” meaning the destruction of people as a communal group, but not necessarily destruction of individual members? The convention is positive on this. “Killing members of the group” is only the first of the convention’s list of five acts, any of which constitute genocide when committed with intent to destroy a group. The fifth, “forcibly transferring children of the group to another group,” for instance, may destroy a communal group by dispersal without killing any of its individual members. For this reason the Australian Aborigines were recently held to have suffered genocide up to 1970, as a result of the policy of forcibly

removing children from their parents to “breed out the colour.”<sup>34</sup> Perhaps 50,000 Aboriginal children were placed with white Australian families explicitly “for the absorption of these people into the general population.” Australia’s Human Rights and Equal Opportunity Commission’s 1997 report, *Bringing Them Home*, concluded that “between one in three and one in ten indigenous children were forcibly removed from their families” between 1910 and 1970. The commission described this forcible removal as a breach of Article II (e) of the 1948 Genocide Convention.<sup>35</sup>

This finding was legally correct, though controversial. Popular perceptions of “genocide” often do not encompass nonlethal destruction of a group, even when intentional. Nor would a colloquial definition encompass acts of destruction motivated by proclaimed positive or humanitarian purposes, such as removing children purportedly to provide better care for them. Legally, both do constitute genocide. The destruction of the group “as such” is in each case pursued with intent. Applying a more colloquial definition of genocide here would deny victims a remedy to which they are legally entitled.

Or does “as such” mean destruction of individual members *because of* their membership of the group? This would entail some form of discriminatory practice. What if all groups are treated similarly, as in Cambodia where everybody was occasionally served small pieces of pork in the compulsory communal mess halls? That might not seem discriminatory. But is it not discrimination against Muslims to force *them* to eat the pork, on pain of death? Or does the law require proof of a test case of a non-Muslim who refused to eat pork and was *not* executed? That Muslims be killed “as Muslims” – rather than as recalcitrants who refused to eat what they were served?<sup>36</sup> Here again, the legal definition of “intent” comes into play. A policy of total national conformity, even if enforced without discrimination, will predictably lead to destruction of minority ethnic or religious groups, “as such.” Relentless pursuit of such a policy constitutes, in law, genocidal intent.

The same may be said of a policy of conquest such as the Indonesian occupation of East Timor. Does intent to destroy a group “as such” require

34 Quoted in Robert Manne, “In Denial: The Stolen Generations and the Right,” *Australian Quarterly Review* 1 (2001): 38–40. See also Raymond Evans and Bill Thorpe, “The Massacre of Australian History,” *Overland* (Melbourne), no. 163 (winter 2001): 21–39.

35 Ronald Wilson, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Human Rights and Equal Opportunity Commission (Sydney, 1997), 275.

36 See the exchange between Ben Kiernan and Michael Vickery in the *Bulletin of Concerned Asian Scholars* 20, 4 (October–December 1988): 2–33; 22, 1 (January–March 1990): 31–33; and 22, 2 (April–June 1990): 35–40.