

# Raphael Lemkin on the Holocaust

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For the moral point of this matter is never reached by calling what happened by the name of “genocide” or by counting the many millions of victims: extermination of whole peoples had happened before in antiquity, as well as in modern colonization. It is reached only when we realise that this happened within the framework of a legal order and that the cornerstone of this “new law” consisted of the command “Thou shalt kill,” not thy enemy but innocent people who were not even potentially dangerous, and not for any reason of necessity but, on the contrary, even against all military and other utilitarian considerations. The killing program was not meant to come to an end with the last Jew to be found on earth, and it had nothing to do with the war except that Hitler believed he needed a war as a smoke screen for his non-military killing operations; those operations themselves were intended to continue on an even more grandiose scale in time of peace. (Hannah Arendt<sup>1</sup>)

Raphaël Lemkin (1901–1959) is, after many years of obscurity, well known today as the man who coined the term “genocide” and whose tireless campaigning led to the framing and adoption of the UN Convention on Genocide in 1948. He is, in other words, remembered as a human rights campaigner and international jurist. As a historian he has been neglected. Yet his work was based on substantial historical scholarship, since only with reference to mass killings throughout history, from ancient times to his own day, was Lemkin able to formulate clearly the notion of “genocide” to his own and, eventually, others’ satisfaction. Lemkin did not restrict the definition of his term so that it referred solely to the murder of the Jews in Nazi-occupied Europe; his interest in the nullification of peoples emerged in his teenage years, around the time of the Armenian genocide.<sup>2</sup> But it was the genocide of the Jews, above all, that provided him with the main impetus for his research and for his campaign to have the crime of genocide incorporated into international law. This article will examine what Lemkin knew about the genocide of the Jews—not yet called the “Holocaust”—as he was writing his book *Axis Rule in Occupied Europe* (1944), and ask to what extent his analysis of the situation as presented in that book and his other writings on Nazi Germany have stood the test of time. Given the size and sophistication of the historiography of the Holocaust, it would be tedious merely to measure Lemkin’s achievement against what scholars now know. Yet I will argue that Lemkin’s insights into the persecution of the Jews under Nazi rule, though partial, were largely accurate

and able to grasp the extraordinariness of what was transpiring in a way that few other commentators managed at the time.

In order to understand the conceptual framework through which Lemkin understood what we now call the Holocaust, a lengthy quotation from *Axis Rule* is necessary. Here Lemkin sets out what is meant by the term “genocide”:

Genocide is effected through a synchronized attack on different aspects of life of the captive peoples: in the political field (by destroying institutions of self-government and imposing a German pattern of administration, and through colonization by Germans); in the social field (by disrupting the social cohesion of the nation involved and killing or removing elements such as the intelligentsia, which provide spiritual leadership—according to Hitler’s statement in *Mein Kampf*, “the greatest of spirits can be liquidated if its bearer is beaten to death with a rubber truncheon”); in the cultural field (by prohibiting or destroying cultural institutions and cultural activities; by substituting vocational education for education in the liberal arts, in order to prevent humanistic thinking, which the occupant considers dangerous because it promotes national thinking); in the economic field (by shifting the wealth to Germans and by prohibiting the exercise of trades and occupations by people who do not promote Germanism “without reservations”); in the biological field (by a policy of depopulation and by promoting procreation of Germans in the occupied countries); in the field of physical existence (by introducing a starvation rationing system for non-Germans and by mass killings, mainly of Jews, Poles, Slovenes, and Russians); in the religious field (by interfering with the activities of the Church, which in many countries provides not only spiritual but also national leadership); in the field of morality (by attempts to create an atmosphere of moral debasement through promoting pornographic publications and motion pictures, and the excessive consumption of alcohol).<sup>3</sup>

It may seem strange at first to see listed side by side the mass murder of population groups and the promotion of pornography and alcohol consumption. For some scholars, it is already unacceptable to mention the mass murder of the Jews in the same breath as that of other groups. Yet, Lemkin employed a logic that is clear in his explanation of what constitutes genocide. Genocide, according to Lemkin, does not simply mean mass murder—this remains a common misconception today; the UN Genocide Convention is quite clear on this point—but can be brought about by various means. “Generally speaking,” Lemkin writes:

genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. . . . Genocide has two phases: one, the destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor.<sup>4</sup>

Indeed, although in the 1930s Lemkin used the term “extermination” before he coined his neologism,<sup>5</sup> it was likely, he argued in 1945, that “the machine gun” would be used “as a last resort” rather than as the first instinct of the oppressor.<sup>6</sup> The recent revival of interest in prosecuting genocide has also led courts to interpret the Convention along the same lines.<sup>7</sup> The destruction of human groups, the crime that came to be known as genocide, and the destruction of cultural

and artistic works of these groups, which came to be known as cultural genocide, were originally termed by Lemkin the new crimes of barbarism and vandalism.<sup>8</sup> The latter, to Lemkin's regret, was not explicitly incorporated into the UN Genocide Convention.<sup>9</sup>

Lemkin's definition of genocide, the way in which he helped frame the UN Convention on Genocide, and the subsequent uses to which that convention have been put, are not, however, the main concerns of this article. Bearing in mind his definition, it will analyse Lemkin's writings on Nazism and the Holocaust. Although *Axis Rule in Occupied Europe* was Lemkin's crowning achievement, it is important to note that he wrote several other studies of Nazism: one untitled, full-length manuscript that was envisaged as a section of his projected three-volume history of genocide, published in 1992 by Steven Jacobs; and an unpublished (and probably unpublishable) manuscript, a sketchy first draft entitled "The Hitler case."<sup>10</sup> Each contributes to our understanding of Lemkin's position, and reveals the extent to which his insights adumbrated later historiographical concerns.

Yet Lemkin, it is important to remember, was not writing as a historian. His methodology was not one that would be regarded today as satisfactory for producing significant contributions to the historiography of Nazism and the Holocaust. Rather, he saw his studies as contributions to jurisprudence and international law, in particular to defining and explicating the crime of genocide. In undertaking this task, though, Lemkin necessarily studied and categorized past events in some detail. Even more important, when writing about Nazism in particular, Lemkin was writing about events that were either still ongoing (*Axis Rule*) or were in the very recent past (*TNG, HC*). This makes his achievement in identifying many of the issues that were to become central to later historiography all the more striking. It also means, however, that his writings were not written as historical narratives, nor even as systematic analyses of the nature of the Nazi regime. They are, rather, detailed guides through the mass of evidence compiled at the Nuremberg Trials supplemented by Lemkin's stress on legal matters and his tantalizingly brief comments.

What is immediately striking about Lemkin's interpretation of Nazi genocide—as the epigraph from Arendt indicates—is the fact that law lies at its centre. Law was, unsurprisingly, key to Lemkin's thinking, and most of *Axis Rule* is devoted to setting out the legal framework of the German occupation regime, analysing decrees and the nature of the administration. In his *Thoughts on Nazi Genocide* this insistence on law led Lemkin to overemphasize the importance of Hans Frank, leading Nazi lawyer and later General Governor of Poland (the General Government was the part of central Poland occupied by Germany but not incorporated into the Reich). The space that Lemkin devoted to Frank is understandable in terms of Lemkin's legal approach, but does not accurately reflect Frank's (comparative lack of) importance in the regime, especially where Jewish policy was concerned.<sup>11</sup>

Lemkin's emphasis on Frank is a reminder that he was writing before the mass of historical research on the Third Reich and the Holocaust that exists today.

Unsurprisingly, then, Lemkin did not always get things right. In the same way that the judges at Nuremberg refused to believe that no gassings took place at Dachau, Lemkin was under the impression that Bergen-Belsen was an extermination camp, which it was not. Similarly, he placed more emphasis on the Wannsee Conference of January 20, 1942 than most historians would do today, seeing it—quite understandably—as the moment at which the “final solution” was decided on.

These errors are forgivable, if one considers the fact that Lemkin, like other early scholars of Nazism, relied primarily on the documents gathered at the Nuremberg Trials for his information. These had not yet been examined in the kind of depth that would clarify the nature of the various institutions and decision-making procedures in Nazi Germany. Nor, as courtroom documents, were they arranged in order to facilitate the work of historians. Nevertheless, through his own substantial reading and working through the documents available to him, Lemkin identified a number of key issues. These merit further examination, since they remain central to debates on the nature of Nazism and the Holocaust.

The first of these is what is now referred to as “political religion,” a formula that has been used in recent years (especially since the end of the Cold War and the return to popularity of totalitarianism theory) to explain the appeal of both fascism and communism. It is intended to suggest that what motivated followers of these ideologies was less to do with rational choice and more to do with a kind of need for community and devotion in a modernized world in which “traditional” forms of affiliation had broken down. Anthropologists, and anthropologically-minded historians and philosophers, especially, have indicated how the rituals, structures, and rhetoric of these regimes gave rise to forms of emotional attachment that liberal parliamentary regimes rarely generate.<sup>12</sup> As Lemkin noted: “modern technical means alone do not explain the Nazi enigma. It is an enigma how a highly civilized nation like the Germans could have been led to acquiesce in a regime of oppression and murder” (*TNG*, p 189). And he went on to provide an explanation that accords well with the findings of those who employ the idea of Nazism as “political religion”: “We find a leader, bewitched by his own twisted conviction and an enormous power to bewitch others. We find a small clique of followers, imbued by the same fanatical spirit and willing to execute his orders, and we find a large mass of people who follow blindly or remain indifferent, except for few who either go into exile or underground” (*TNG*, pp 189–190). Even the genocide committed by Nazi Germany could be seen, according to Lemkin, as part of a spiritual or sacred project to revitalize the German *Volk*, or bring about its salvation: “Germany has transformed an ancient barbarity into a principle of government by dignifying genocide as a sacred purpose of the German people.”<sup>13</sup> But he added a more prosaic explanation, one that accorded well with the idea of totalitarianism that was current as he was writing in the 1950s: “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” (*TNG*, p 287).

Having written these words, though, Lemkin appears to contradict them when he goes on to describe the killings themselves. The notion of genocide as a “sacred purpose” does not necessarily imply that its perpetrators act in a frenzy or out of bloodlust,<sup>14</sup> but it still comes as something of a surprise when Lemkin writes that “Almost the most frightening aspect of the Nazi mass murders is the cold, scientific manner in which they were committed” (*TNG*, p 226). With these words, Lemkin appears to anticipate the arguments of the functionalist historians of the 1970s and 1980s, such as Martin Broszat and Hans Mommsen, although the notion of “factory-line murder” was also commonplace in the early studies of the Holocaust. Léon Poliakov, for example, devoted a whole chapter of his pioneering study, *Harvest of Hate*, to “the industry of death,” and opened it by asserting that “German technical genius made it possible to set up an efficient and rationalized industry of death within a few months.”<sup>15</sup> But Lemkin also seems to foreshadow the “ordinary men” debate of the 1990s,<sup>16</sup> noting that “The striking fact emerged at Nuremberg and at the subsequent trials that most of the defendants had come from good homes, had had good education and somehow continued to convey the impressions of normal good citizens. They did not look like fiends and they used the words ‘good’ and ‘bad’ as if they had the same meanings for them as for their listeners” (*TNG*, p 229). This combination of cold-blooded, scientifically-planned mass murder being carried out by men who were in all respects thoroughly unremarkable (save, in a rather circular way, that they were perpetrators of genocide) appears to sit uneasily with the view put forward by Lemkin of Nazism as a radical racist ideology to which its followers adhered as if it were a deeply-held faith. But Lemkin, writing before these historiographical debates that were to follow, provides little in the way of analysis in order to unite these potentially contradictory explanations.

There are other instances where Lemkin anticipates later historiographical concerns. For example, he devoted considerable space to discussing the role of the *Wehrmacht*, a subject that was far from popular at the time he wrote his manuscript *Thoughts on Nazi Genocide*, and which still has the power to provoke strong emotions, as the storm in Germany over the *Wehrmachtsausstellung* recently revealed. Lemkin quotes the infamous directives given by von Reichenau and von Brauchitsch in 1941, and asserts unequivocally that “The Army cooperated closely in the wholesale slaughter of Jews” and that “Even where the *Wehrmacht* did not actually participate in the killings, they assisted by arresting Jews and turning them over to the *Einsatzgruppen*” (*TNG*, p 274). In the 1950s, when most western governments were busy finding reasons to exculpate leading *Wehrmacht* generals leaving them fit to fight the Cold War against the common communist enemy, these were brave words.

In another instance, Lemkin refers to a subject that has only very recently been investigated in detail by historians: the plunder of Jewish property. Historians have for decades written about the economic isolation of the Jews in Germany, and have discussed in outline the process of “Aryanization.” But recently there have been studies of Aryanization on a local level that reveal the extent of complicity of ordinary citizens (in buying goods at “Jew markets,” for instance).<sup>17</sup> Similarly,

the continent-wide scale of the robbery of Jewish-owned art and property has come under close scrutiny of late.<sup>18</sup> Key to this enormous process of robbery, which was a Europe-wide and not solely a German effort, was the *Einsatzstab Rosenberg*, an outfit that has only been researched in any detail very recently by historians such as Martin Dean and Frank Bajohr. In the chapter of *TNG* entitled “Losses” (again, note the legal framework), Lemkin noted the importance of this unit. Although Lemkin clearly knew little about it and offers little information other than the fact of its existence, he nevertheless showed that he was able to identify certain aspects of the Nazi genocidal machine—by virtue of the fact that he was interested in processes other than simply killing—that have started to occupy historians only in the post-Cold War context of understanding the massive complicity that underwrote what previously was seen as solely a German undertaking. Lemkin noted in the context of the *Einsatzstab Rosenberg* that “Side by side with the extermination of ‘undesirables’ went a systematic looting of artworks, books, the closing of universities and other places of learning, the destruction of national monuments” (*TNG*, p 299). Again, it is because Lemkin had a concept of cultural genocide that he was as sensitive to these aspects of Nazi occupation as he was to the mass murder they committed.

There are then several themes in Lemkin’s work that connect with recent trends in the historiography of the Holocaust: the “return of ideology”; the role of the Wehrmacht and agencies other than the SS in the genocide; the theft of Jewish property across Europe; Nazism as a “political religion”; the genocide of the Jews being only one aspect of Nazi ambitions where “population policy” was concerned; the links between Nazi genocide and other genocides. But it is the last two that mark Lemkin’s real achievement as a historian of the Holocaust.

On population policy, the favour with which Lemkin’s work is currently viewed is soon explained. Lemkin set out quite clearly that Nazi genocide was one of the most clear-cut examples of stated intention that one could hope to find: “Seldom in history has a murderer so cynically announced his intentions as did the Nazis. With them, murder was neither defense nor did they try to masquerade it in any way. They intended to do away with the Jews, the Gypsies, the ‘inferior’ races like the Poles and other Slavs—with the exception of the strong, dumb workhorses” (*TNG*, p 154). But he understood what we know as the Holocaust only in the broader context of Nazi demographic plans: “The Nazis were out to eliminate not only groups of people like the Jews, but to destroy all the inhabitants of an area, along with all their cultural manifestations, in order to create ‘space’ for their own people” (*TNG*, p 168); “Genocide was not restricted to extermination of the Jewish people or the Gypsies. It was applied in different forms to Yugoslavia, to the non-German inhabitants of Alsace-Lorraine, to the people of the Low Countries and of Norway. The technique varied from nation to nation, from people to people. The long-term aim was the same in all cases” (*TNG*, p 171). The example of the Holocaust, then, which many scholars see as unique, suggested to Lemkin by contrast not only that mass killing is not the only way to carry out genocide but also that “genocide” rather than “mass killing” is the more helpful category. Thus he subsumed the attacks on the various occupied people of

Europe under that term, without seeing the different approaches to those peoples taken by the Nazis as of prime importance.<sup>19</sup> Nazi policies as a whole led Lemkin to argue, at the very start of *Axis Rule*, that “The picture of coordinated German techniques of occupation must lead to the conclusion that the German occupant has embarked upon a gigantic scheme to change, in favour of Germany, the balance of biological forces between it and the captive nations for many years to come” (*AR*, p xi).

The most significant aspect of his analysis of Nazi genocide is the fact that at every turn Lemkin does not distinguish between the fate of the Jews (“the Holocaust”) and that of other victims of Nazism; rather, he sees Nazi genocidal policy as a unitary phenomenon, although he does distinguish between “racial genocide” such as characterized the genocide of the Jews and the Gypsies, and “national genocide,” as was committed with the aim of acquiring Polish, Russian, and Ukrainian territory (*HC*, pp 1–2). For example, when discussing the establishment of extermination camps and slave labour plants Lemkin notes that “These two plans were inconsistent because a Jew consigned to the gas chamber was a worker lost and because the conditions in which slave workers were forced to live ensured that they would not be fit to work for very long.” Lemkin does not see the fate of the Jews as somehow “special” or separate from broader Nazi ambitions of reshaping Europe’s demography through radical measures of extermination, expulsion and forced resettlement. Similarly, Lemkin devotes considerable space to the fate of Soviet POWs under the Third Reich (*TNG*, pp 99–102) and civilians (*TNG*, pp 102–110).

Lemkin’s picture of the Holocaust, then, was one that was based on immensely detailed knowledge of the occupation regimes, especially their legal frameworks. He relied heavily on official Third Reich publications, such as the *Reichsgesetzblatt* (Reich legal code) and corresponding publications from German-occupied and Axis lands, such as the Romanian *Monitorul oficial* or Vichy France’s *Journal officiel de la République Française*. Many of the characteristics of Nazi rule that Lemkin identified have become key to the historiographical debates that have raged ever since. But perhaps Lemkin’s most original contribution, and one that is really only now being appreciated, is his inclusion of the murder of the Jews in a wider policy for the demographic reshaping of Europe. Historians such as Götz Aly, Debórah Dwork and Robert Jan Van Pelt have shown the extent to which the genocide of the Jews was part of a broader plan for the “resettlement” of ethnic Germans and the expulsion or murder of millions of Slavs, as encapsulated in the *Generalplan Ost* (General Plan East). Where Lemkin does not adumbrate contemporary concerns is in his failure to see the attack on the Jews as driven by a radical ideology. Rather than seeing racism as central to Nazism, he argued, in the manner of Franz Neumann, that “race theory served the purpose of consolidating internally the German people” (*HC*, p 2).<sup>20</sup> Today historians accept that the murder of the Jews was not the full extent of the Nazis’ ambitions, but they understand that there are good reasons why the Jews were targeted first and most tenaciously, and equally that the Jews held a special place in the Nazi *Weltanschauung*. Nevertheless, Lemkin’s contribution to the historiography of

the Holocaust lies in his incorporation of the genocide of the Jews in the broader framework of Nazi population policy. As he noted at the start of *The Hitler Case*, “The Nazi plan of Genocide was related to many peoples, races, and religions, and it is only because Hitler succeeded in wiping out six million Jews, that it became known predominantly as a Jewish case” (*HC*, p 1).

Lemkin wrote more about the Holocaust than about any other genocide. But it is vital to bear in mind that, just as he did not separate the fate of the Jews from that of Nazism’s other victims, so he did not single out the genocide of the Jews as falling into a separate category (as some historians today distinguish “Holocaust” from “genocide”). His comments on the Holocaust make sense only in the light of Lemkin’s detailed studies of other genocides, from examples in antiquity to the annihilation of the indigenous Tasmanians to Armenia. Indeed, these earlier genocides provided Lemkin with a conceptual framework for understanding German actions: that of colonialism. Given the extent to which scholars today are pursuing the links between colonialism, genocide, and the Holocaust, it is striking to read Lemkin writing decades ago that

Nazi Germany embarked upon a gigantic plan to colonize Europe, and since there are no free spaces local populations had to be removed in order to make room for Germans. Nazi Germany did not have a fleet to protect overseas colonial possessions. Moreover Germany had never [sic] good experiences in the past with overseas colonization. It was thus much simpler to colonize the European continent. (*HC*, p 1)

He placed more emphasis on Alfred Rosenberg than many other historians did or still do (for the obvious reason that he, like Frank, was not the real wielder of power in the Nazi empire), and noted especially Rosenberg’s imperialist ambitions. Lemkin had a personal connection to the Holocaust in a way that he did not with the other events he studied; this, the extremity of the Holocaust, and the simple facts of where and when he wrote mean that the Holocaust loomed large in his oeuvre. But it did so in order that Lemkin could formulate a broad theory and definition of genocide, in which the Holocaust served as a prime example, not as an exception. Numerous scholars have raised objections to Lemkin’s and, subsequently, the UN Convention’s definition of genocide—for being both too narrow and too broad—but in this context it suffices simply to note that for Lemkin the genocide of the Jews illustrated not a “unique” occurrence but a phenomenon that had a long and ignoble history.

However, Lemkin was of course not the only person writing on the genocide of the Jews at this time. Although, as many historians have noted, the first decade or so after the war was marked by a striking silence on the issue where professional historians were concerned—in contrast to the efforts of survivor groups to produce memoirs and *Yizker-Bikher*, or mainstream society to find ways of not talking about it—there were nevertheless some attempts made to open a scholarly discussion of what was naturally still a raw and emotionally-debilitating open wound. Indeed, Lemkin himself relied heavily on the works of some of these scholars, such as Max Weinreich and Joseph Wulf, in his own research.

For example, the publications of the New York-based Institute of Jewish Affairs are proof that it was possible, from the late stages of the war onwards, to produce balanced and clear assessments of what was occurring under Nazi rule without underestimating the extent of the catastrophe. Gerhard Jacoby's 1943 discussion of the occupation of the Czech lands is a case in point. Like Lemkin, Jacoby relied heavily on a legal framework in order to make sense of what was going on. And he did not shrink from portraying the extent of the Jews' suffering. Much of the book is taken up with a sophisticated rendering of the gradual process of the appropriation of Jewish property and the deprivation of the Jews' legal existence in Bohemia and Moravia, leading step by step to the "complete physical extinction" of the Jews, "in full accord with the example of Germany itself."<sup>21</sup> Jacoby provides an in-depth analysis of the decrees and various offices involved in this process and notes the "legal" organization of a "racial state": "The Nazi masters of the Protectorate did not neglect the final steps of liquidating the Jews of Bohemia–Moravia 'legally', as well as in fact." But he finally also notes the inevitable failure of the racial principle for ordering society: "The racial caste state could not form the basis of an organized society; Nazism could accomplish only organized annihilation."<sup>22</sup> In 1943 this understanding of the centrality to Nazism of race and law as intertwined principles was quite an original insight. Lemkin was not the only one to make it.

Nor was he the only one to articulate with clarity what was happening to the Jews, and why. It has been well established that in the liberal democracies, the idea that the Jews were being exterminated was hard to grasp, both because of the history of World War I terror propaganda, and because (according to some historians) the targeting of particular groups for no reason other than their membership of that group ran counter to the "liberal imagination." The publications of the IJA sought to dispel these comforting thoughts, and to drive home the racist principles on which Nazism lay, and the consequences to which this state-initiated racism had led. In his study of the persecution of the Jews, Boris Shub, the editor of the IJA, spoke in a most unambiguous way about the annihilation of the Jews, and argued that "Only about 8 percent of the Jewish dead [of 3,000,000] have fallen in actual warfare. The other died because they were Jews." And he put forward a description that comes close to Lemkin's notion of "cultural genocide":

Finally, for the 3,300,000 who may still be alive, even the spiritual consolation of their faith and their way of life has been ruthlessly assaulted. Their schools have been closed down, their libraries, museums and other cultural treasures plundered, their synagogues destroyed or desecrated. And with each day of continuing war, the threat of total extermination, so often voiced by Hitler and his lieutenants, comes closer to fulfilment.<sup>23</sup>

After the war too, the foundations were laid for later Holocaust historiography, by the pioneering works of Philip Friedman, Gerald Reitlinger, Léon Poliakov, Joseph Tenenbaum, Samuel Gringauz, and others. In this respect, Lemkin was not the only trailblazer. But all of these other scholars identified a Jewish tragedy and not a general Nazi policy of genocide of which the Holocaust was part.

Lemkin was of course quite correct to note that the Nazi assault on the Jews was only one part of the occupation regime, albeit “one of the main objects of German genocide policy” for they “are to be destroyed completely.”<sup>24</sup> The extent of the persecution of Romanians, Poles, Yugoslavs, Russians, Serbs and other nationalities by the Germans is horrifying and has rightly become a significant part of the historiography of the Second World War. Where Lemkin challenges contemporary orthodoxy is in his implication that the notion of a “Holocaust” as a specifically Jewish tragedy makes no sense, because the genocide of the Jews was just one aspect of a broad Nazi demographic plan based on extreme racial fantasies. Most historians of the Holocaust would probably respond by noting that Lemkin’s portrayal does not sufficiently indicate the depth of feeling, the passionate belief, held by the leading Nazis, that the Aryan struggle against the Jewish *Gegenmensch* held the key to Germany’s redemption. As early as 1935 Aldous Huxley noted that “in Nazi Germany, the *sacramentum*, or oath of allegiance, has taken on all the religious significance it had in Rome under the Empire. The dictator’s name and title, like those of the emperor, are used liturgically, as though they had the force of magic spells.”<sup>25</sup> Central to this Nazi *Heilsgeschichte* were the Jews, for their force was the one thing in the way of the Germans attaining salvation.

But this is of a different order of analysis. The “metaphysical” position held by the Jews in Nazi ideology certainly differentiated them from Nazism’s other victims. But from the legal point of view of prosecuting a criminal regime for committing crimes against humanity, there is no difference between the death of a Jew and a Catholic Pole. Whether or not the treatment of the occupied territories of eastern Europe constitutes genocide or not is debatable; there seems little evidence that the Nazis intended to seek the destruction of the Poles or Ukrainians as such, as opposed to reducing their numbers and leaving the remaining population in the position of slaves. But there is plenty of evidence for the commission of cultural genocide; after all, Hitler, Himmler and Frank were agreed that the Poles—like other Slavic populations—should not be in a position to do more than write their own names and make basic calculations. Given the current historiographical trend that sees the Holocaust as on a continuum (albeit an extreme variant) with earlier, especially colonial genocides, and given our understanding of the Nazis’ grand population policy plans, Lemkin’s challenge—to view the genocide of the Jews not as *sui generis* but as one, if unusually significant, part of Nazi genocide, and as one, albeit extreme variant of genocide—remains to be satisfactorily addressed by historians of the Holocaust and by comparative genocide scholars.

## Notes and References

- 1 Hannah Arendt, “Personal responsibility under dictatorship” (1964), in Jerome Kohn, ed., *Responsibility and Judgment* (New York: Schocken Books, 2003), p 42.
- 2 See Steven L. Jacobs, “Raphael Lemkin and the Armenian genocide,” in Richard G. Hovannisian, ed., *Looking Backward, Looking Forward: Confronting the Armenian Genocide* (New Brunswick: Transaction, 2003), pp 125–135.

- 3 Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, DC: Carnegie Endowment for International Peace, 1944), pp xi–xii.
- 4 Lemkin, *Axis Rule*, p 79.
- 5 Henry R. Huttenbach, “From the Editor: towards a conceptual definition of genocide,” *Journal of Genocide Research*, Vol 4, No 2, 2002, pp 172–173.
- 6 Raphaël Lemkin, “Genocide—a modern crime,” *Free World*, Vol 4, 1945, online at: [www.preventgenocide.org/lemkin/freeworld1945.htm](http://www.preventgenocide.org/lemkin/freeworld1945.htm)
- 7 For example, in the case of the Bosnian Serb Nikolai Jorgić, the Federal Constitutional Court of Germany (*Bundesverfassungsgericht*) said that “the statutory definition of genocide defends a supra-individual object of legal protection, i.e. the social existence of the group [...] the intent to destroy the group [...] extends beyond physical and biological extermination [...] The text of the law does not therefore compel the interpretation that the culprit’s intent must be to exterminate physically at least a substantial number of the members of the group.” Cited in William A. Schabas, “National courts finally begin to prosecute genocide, the ‘crime of crimes’,” *Journal of International Criminal Justice*, Vol 1, No 1, 2003, p 58.
- 8 Raphaël Lemkin, “Acts constituting a general (transnational) danger considered as offences against the law of nations” (1933), online at: [www.preventgenocide.org/lemkin/madrid1933-english.htm](http://www.preventgenocide.org/lemkin/madrid1933-english.htm) (originally written in French and presented in absentia at the International Conference for the Unification of Criminal Law, Madrid, October 1933); idem, “Genocide as a crime under international law,” *American Journal of International Law*, Vol 41, No 1, 1946, pp 145–151.
- 9 As Lemkin wrote in his unpublished autobiography, “Totally unofficial man” (1958), “I defended it [i.e. cultural genocide] successfully through two drafts. It meant the destruction of the cultural pattern of a group, such as the language, the traditions, the monuments, archives, libraries, churches. In brief: the shrines of the soul of a nation. But there was not enough support for this idea in the Committee. . . . So with a heavy heart I decided not to press for it.” Cited in John Docker, *Raphael Lemkin’s History of Genocide and Colonialism* (Washington, DC: United States Holocaust Memorial Museum, 2004), p 3. See also Schabas, “National courts,” pp 58–59; Matthew Lippman, “A road map to the 1948 Convention on the Prevention and Punishment of Genocide,” *Journal of Genocide Research*, Vol 4, No 2, 2002, pp 183, 189.
- 10 Steven L. Jacobs, ed., *Raphael Lemkin’s Thoughts on Nazi Genocide: Not Guilty?* (Lewiston: Edwin Mellen Press, 1992), henceforth referred to in the text as *TNG*. Raphaël Lemkin, “The Hitler case” (unpublished ms), henceforth referred to in the text as *HC*. I am very grateful to Steven Jacobs for providing me with a copy of “The Hitler case.”
- 11 For the most recent work, see Martyn Housden, *Hans Frank, Lebensraum and the Holocaust* (Basingstoke: Palgrave Macmillan, 2003). For a good discussion of law in the Nazi racial state, see Claudia Koonz, *The Nazi Conscience* (Cambridge, MA: Belknap Press of Harvard University Press, 2003), Chapter 7.
- 12 As, for example, in the writings of Lucie Varga, Eric Voegelin, Bronislaw Malinowski, Norbert Elias, and Eric Wolf. For a discussion, see Dan Stone, *Responses to Nazism in Britain, 1933–1939: Before War and Holocaust* (Basingstoke: Palgrave Macmillan, 2003), pp 37–42; idem, “Nazism as modern magic: Bronislaw Malinowski’s political anthropology,” *History and Anthropology*, Vol 14, No 3, 2003, pp 203–218.
- 13 Lemkin, “Genocide—a modern crime,” p 3.
- 14 See Dan Stone, “Genocide as transgression,” *European Journal of Social Theory*, Vol 7, No 1, 2004, pp 45–65.
- 15 Léon Poliakov, *Harvest of Hate* (London: Elek Books, 1956 [orig. French 1953]), p 182.
- 16 That centres on Christopher R. Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: HarperCollins, 1992) and Daniel Jonah Goldhagen, *Hitler’s Willing Executioners: Ordinary Germans and the Holocaust* (London: Little, Brown, 1996). For a discussion of the sub-discipline of “perpetrator studies” that this debate has engendered, see Jürgen Matthäus, “Historiography and the perpetrators of the Holocaust,” in Dan Stone, ed., *The Historiography of the Holocaust* (Basingstoke: Palgrave Macmillan, 2004), pp 197–215.
- 17 For a discussion, see Frank Bajohr, “Expropriation and expulsion,” in Stone, ed., *The Historiography of the Holocaust*, pp 52–64.
- 18 See, for example, Avi Beker, ed., *The Plunder of Jewish Property during the Holocaust: Confronting European History* (New York: New York University Press, 2001); *Confiscation of Jewish Property in Europe, 1933–1945: New Sources and Perspectives: Symposium Proceedings* (Washington, DC: United States Holocaust Memorial Museum, 2003).
- 19 See *TNG*, Chapter 3, pp 153–176.
- 20 Franz Neumann, *Behemoth: The Structure and Practice of National Socialism* (London: Victor Gollancz, 1942). Neumann argued (p 107) that “racism and Anti-Semitism are substitutes for the class struggle. . . . The internal political value of Anti-Semitism will, therefore, never allow a complete extermination of the Jews. The foe cannot and must not disappear; he must always be held in readiness as a scapegoat for all the evils originating in the socio-political system.”

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- 21 Gerhard Jacoby, *Racial State: The German Nationalities Policy in the Protectorate of Bohemia–Moravia* (New York: Institute of Jewish Affairs of the American Jewish Congress and World Jewish Congress, 1943), p 220.
- 22 Ibid, pp 244, 269.
- 23 Boris Shub, ed., *Hitler's Ten Year War on the Jews* (New York: Institute of Jewish Affairs of the American Jewish Congress, World Jewish Congress, 1943), pp 301, 302.
- 24 Lemkin, *Axis Rule*, pp 78, 81.
- 25 Aldous Huxley, "Emperor-worship up to date" (1935), in David Bradshaw, ed., *The Hidden Huxley* (London: Faber and Faber, 1994), p 193.