Genocide

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Genocide

New Perspectives on its Causes, Courses, and Consequences

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Preface

The Dark Side of Humans

Ton Zwaan

Hardly a day goes by without the international media confronting us with news about mass atrocities, war, civil war, and genocidal events. Given the mass media's penchant for topicality, sensationalism, and the spectacular, the bulk of this news usually remains highly superficial. It may also result in serious misrepresentations, for instance in the recent gross overemphasis placed on terrorism especially by ISIS and other Islamic fundamentalist groups as well as the comparative underreporting of the far more massive, lethal violence of states – for example by the Syrian regime in Syria or by Russia in Ukraine. Often the media only offers its audience snippets and fragments of gruesome realities, which are presented as 'facts'. But the lack of contextualization, continuity in reporting, and sound analysis frequently impede real comprehension and understanding. Therefore, the daily stream of bad news tends to leave the public quite often dumbfounded.

None of these criticisms apply to this book. In the separate chapters, carefully selected and introduced by the editor, a team of young, international scholars make thorough and profound efforts to describe, understand, and explain diverse aspects of the causes, courses, and consequences of genocidal events and processes. To be sure, each case is different from the next one, and it requires specific knowledge to be able to answer the questions these scholars come up with. But any reader who is alert not only to the differences but also the similarities and who is willing to use his/her imagination may also gather valuable comparative knowledge and insights into the nature of genocide and related mass atrocities. Violence between people, individually and especially collectively, belongs to the core of such phenomena. Understanding the manifold preconditions, the workings and the diverse effects of collective violence in and between state-societies is thus essential to gain more insight into mass atrocities and genocide.

One of the most frequently asked questions in this context is how we can understand the callous, ruthless, and cruel ways in which some people may treat other people in situations of war, civil war, and genocide. This question about the dark side of human beings seems to be the most troubling for the general public and many academic specialists alike. It also looms large in the background of this book. A promising starting point in looking for an

answer may be found in the powerful words written by Sigmund Freud in 1930 in his small book on *Civilization and Its Discontents*:

> [M]en are not gentle creatures, who want to be loved, who at the most can defend themselves if they are attacked; they are, on the contrary, creatures among whose instinctual endowments is to be reckoned a powerful share of aggressiveness. As a result, their neighbor is for them not only a potential helper or sexual object, but also someone who tempts them to satisfy their aggressiveness on him, to exploit his capacity for work without compensation, to use him sexually without his consent, to seize his possessions, to humiliate him, to cause him pain, to torture and to kill him... As a rule this cruel aggressiveness waits for some provocation or puts itself at the service of some other purpose, whose goal might also have been reached by milder measures. In circumstances that are favorable to it, when the mental counterforces which ordinarily inhibit it are out of action, it also manifests itself spontaneously and reveals man as a savage beast to whom consideration towards his own kind is something alien.[1]

When Freud wrote these words he was already in his seventies, and his statement might be seen as a general conclusion reached after a long life of studying people and societies. This observation combines valuable psychological insight about people with a clear sociological awareness of the impact of the wider circumstances under which they are bound to live. People are complex beings with often contradictory affects and impulses, and – knowingly or unwittingly – full of ambiguity and ambivalence. They long for acknowledgement, respect, and love. They have a disposition for cooperation; they are constructive; they may like and love each other. But they also possess a disposition for competition and conflict; they may be aggressive and destructive; and they may despise, hate, and destroy each other. Which dispositions, affects, and impulses will dominate and in what sort of combinations largely depends on the larger historical, social, and cultural conditions. Freud suggests that the darker side of people will come to the surface under circumstances in which the mental counterforces which normally act as inhibitions no longer function.

Much could be said about these circumstances, but three suggestions will have to suffice here. First, the capacity of people for empathy and identification with others is limited. Although it can be argued that the

1 Sigmund Freud, *Civilization and its Discontents* (New York: Norton & Co., 1961), pp. 58-59.

'circles of identification' for many people have expanded in the course of the history of humanity, positive feelings towards all others as fellow human beings are still flawed, highly fragile, and vulnerable. Moreover, under general conditions of crisis – serious polarization in and between groups and societies, war, and civil war – such feelings will diminish for many. Instead, desensitization, disidentification, and hate may grow. A second dark side of people resides in their capacity to believe in, or even become hypnotized by, all sorts of unfounded illusions and delusions. One may think here of the grand religious delusions and utopian political ideologies such as national socialism and fascism, communism and nationalism. At the same time, one should also keep in mind the countless conspiracy theories and collective hate-fantasies that flourish in large parts of our present world. Such fantasies impede empathy and often facilitate the third dark side of people: the inclination to use violence instead of milder means to solve existing differences and disputes.

It would be naive to believe that these closely interrelated dark sides of people can easily disappear. But it does not seem naive to believe that empathy between people may be fostered, that hate-fantasies may be disputed, and that the use of violence may be further reined in. The essays in this book, each in their own way, point in that direction.

Introduction

Genocide, an Enduring Problem of our Age

Uğur Ümit Üngör

Baniyas is a breezy town of 50,000 inhabitants, perched on the slopes of the mountain range that lines Syria's Mediterranean coast. The town and surrounding countryside is famous for its dates, olives, citrus orchards, and timber, which the region exports to foreign markets. The population of Baniyas mostly consists of middle-class Sunni, Christian, and Alawi bureaucrats and business owners, as well as industrial laborers, whereas the poorer countryside lives off subsistence farming and seasonal labor. In the past two decades, rapid industrialization, the development of the harbor, and the construction of an oil refinery have led to increased air and water pollution. In the summer of 2006, after a month-long tourist trip through Syria, I visited Baniyas and found a cozy and welcoming environment. Whereas the atmosphere in Damascus and Homs had been tense just a week before due to the Israeli assault on Lebanon (the 'July War'), in Baniyas young men were smoking water pipes, joking, drinking tea, and playing backgammon in the cafés along the boulevard. Baniyas seemed enjoyable for the young crowd due to an apparently permissive, secular consensus that gave the coastal town a feeling like any other Mediterranean city. I had a long-held aspiration to move to Syria for a year to learn Arabic. When I left Baniyas in August 2006, I was strongly inclined to return, settle, and follow my ambition. But that never happened.

In Syria, the mass protests called the 'Arab Spring' unfolded quite differently from Egypt or Tunisia. Until March 2011, Syria could still safely be considered part of the non-violent phase of contentious politics. No civil war was pre-determined, and it was entirely possible for the government to avert the catastrophe. In March 2011, a local uprising erupted in the southern town of Deraa as a response to the arrest and torture of fifteen children by the regime. Local authorities responded to the demonstrations by shooting into a crowd of unarmed demonstrators chanting relatively moderate slogans. Social media allowed the images of the protests and violence to spread across the country, sparking mass demonstrations across the country, including very early on in Baniyas. As the protests widened, the government's violent response became more extensive and intensive. This was followed by a period of mass desertion of Syrian soldiers who refused

to shoot at non-combatant demonstrators. A critical transformation was depacification, i.e. the relationship between the state and society crossed the threshold of violence. As desertion increased, clashes began to erupt between the deserters and security forces, and by early 2012, daily protests were eclipsed by the spread of armed conflict. The International Crisis Group argued that "by seeking to force entire communities into submission, they pushed them toward armed resistance; the protest movement's militarization was a logical by-product of heightened repression."[1] The violence escalated at breathtaking speed, and within three years, the body count had exceeded 120,000. The course of the civil war fluctuated like the ebb and flow of the tide: the regime lost territory and the Free Syria Army gained ground in 2012, but the tables turned in 2013, reaching a military and political stalemate and territorial fragmentation. The war devastated economic and civic life, and conditions in some neighborhoods reached Leningradesque dimensions. In 2012, the United Nations Special Adviser on Genocide, the NGO Genocide Watch, and the United States Holocaust Memorial Museum issued warnings to Syria.

Most public discussions during the Syrian uprising and the ensuing escalation of asymmetric and symmetric violence focused narrowly on four issues: exotic atrocities, chemical warfare, foreign intervention, and Islamist terrorism. All of these topics are interesting enough, but none were central to the dynamic of the violence itself. The first issue emerged when the daily killings of dozens of protestors across the country gradually disappeared from the front pages and only specific, remarkable atrocities were reported and received disproportional attention. A good example was the case of Abu Sakkar, a Free Syrian Army commander who cut open the corpse of a Syrian soldier and ripped out his lung and heart, biting in one of the organs. The second issue revolved around the aftermath of the 21 August 2013 chemical attack on the eastern suburbs of Damascus ('Eastern Ghouta'), which killed more than 1,000 people in twelve different localities. Even though the attack killed a fraction of the total number of victims, it received disproportional attention and international public debate. A third question followed from the chemical attack: its aftermath saw increased diplomatic traffic and American preparations for an aerial attack on the Assad regime, foiled by stubborn Russian resistance. The prospect of military strikes against Syria galvanized the British and American public across the political spectrums into demonstrations against intervention. Finally, the involvement of radical

1 International Crisis Group, *Syria's Mutating Conflict* (Brussels: International Crisis Group, 2012), p. 3.

Islamist armed groups such as the Islamic State in Iraq and Syria (ISIS) or Jabhat al-Nusra sparked discussion about the proliferation of terrorism and the supposed threat it posed to European societies. The media's narrow focus on these four topics and the public's short attention span and "compassion fatigue"[2] distracted the international community's attention away from the core issue: the silent but unrelenting regime violence against the civilian population of Syria. What do genocide studies have to offer for a better understanding of the Syrian crisis?

On 2 and 3 May 2013, Syrian security forces murdered at least 459 unarmed civilians including 106 children in the twin villages of al-Bayda and Ras al-Nabaa, just south of Baniyas.[3] According to a comprehensive field report by the Syrian Network for Human Rights based on survivor testimony and eyewitness accounts of activists, the security forces first cut off all electricity and communications to the village, after which the army indiscriminately shelled the village for several hours. Then, security forces along with paramilitary auxiliaries from neighboring villages, and a pro-Assad militia headed by Mihraç Ural, stormed the village and began systematically killing people.[4] Unarmed civilians were herded together on street corners and shot at close range with semi-automatic firearms, especially Kalashnikovs. The video footage shot by the perpetrators and by the survivors in the aftermath confirm these findings. It shows the perpetrators armed with Kalashnikovs, marching off columns of men with their hands above their heads or behind their backs, moments before their execution. In the video footages, the perpetrators are dressed in military fatigues, triumphant and defiant, strolling through the town, each clearly carrying out a task. They are not particularly emotional and carry out the routine procedures of dragging bodies into a shed and burning houses in an undemonstrative manner. According to one eyewitness, some perpetrators were motivated by sectarian hatred and did chant Shiite slogans and committed passionate atrocities. The victims, all dressed in civilian clothes, are young and old women and men, including very young children and infants.[5] The massacre was accompanied by large-scale looting and burning of the victims' property.

2 Susan D. Moeller, *Compassion Fatigue: How the Media Sell Disease, Famine, War and Death* (London: Routledge, 2002), pp. 221-307.

3 Human Rights Watch, *"No One's Left": Summary Executions by Syrian Forces in al-Bayda and Baniyas* (New York: HRW, 2013).

4 Syrian Network for Human Rights, *Baniyas Massacre: Blatant Ethnic Cleansing in Syria* (London: Syrian Network for Human Rights, 2013).

5 See the video at: http://www.youtube.com/watch?v=9f1KC6floyM.

Why were al-Bayda and Ras al-Nabaa targeted? According to which logic was this massacre carried out? Mihraç Ural (1956), a veteran Turkish left-wing militant hailing from neighboring Antakya province, gave two interviews in the aftermath of the massacre. In an online Arabic-language interview, he argued that he fulfilled his Syrian patriotic duty by assuming responsibility for the "liberation and cleansing of the coast" (*tahrir wa tathir al-sahil*). In a later Turkish-language television interview, he denied his involvement in the massacre, blamed Israel and the West, and censured the Turkish government for undermining Syria's autonomy and sovereignty.[6] As all violent conflicts take on territorial dimensions, this massacre could possibly be explained by looking at the logic of territorial control and settlement patterns. The regime employed indiscriminate shelling and sniping against areas where demonstrations occurred – what it considered 'unreliable territory'. The strategic locations of some villages and towns have made them particularly vulnerable to state violence. The dynamic of the military conflict in the spring of 2012 magnified the strategic importance of the Orontes valley for troop movements and supply lines. This might explain the string of massacres running from Houla (situated directly on the vital Latakia-Damascus road) to Al-Qubeir and Tremseh. The Assad regime could not risk having large opposition villages in this strategic strip between the Sunni heartland and the Alawi coast. Well-placed massacres, as one expert argued, "drive fear into the local populations so that they discontinue their dissidence".[7] But the Baniyas massacre may have been the result of a more nefarious development. The killings on the coast seemed to follow a pattern of destroying Sunni enclaves in the Alawi heartland. Recurring massacres against Sunni communities in areas deemed vital to the regime's interests and survival suggest that the Baniyas massacre may have been an effort of ethnic cleansing in these mixed coastlands.

Genocide and the Structure of This Book

The civil war and genocidal massacres in Syria are nothing special or unique. This relatively small Mediterranean country may have its particular history of Ottoman domination, European colonization, post-colonial instability,

6 For the Arabic interview, see: http://www.youtube.com/watch?v=yoP4rhRjR9I; for the Turkish interview: *Yol TV*, 14 May 2013, 26 September 2013.

7 Stephen Starr, "Shabiha Militias and the Destruction of Syria", in: *CTC Sentinel*, vol. 5, (2012), p. 12.

Cold War dictatorship, and post-9/11 challenges. But inside the minds of individual Syrians and their collective acts of violence, we can discern aspects that appear in many other genocides that occurred in different times and spaces. Syrians do not kill in a historical or cultural vacuum, but neither are they psychologically any different from the Germans on the eastern front, the Cambodian villagers in the killing fields, and the Rwandan peasants on those bloody hills. The themes that run through the chapters in this book, such as ethnic nationalism; 'othering'; totalitarianism; sexual violence; and struggles over truth, justice, and memory have all been relevant to the causes and course of the Syrian civil war.

Genocide can be defined as a complex process of systematic persecution and annihilation of a group of people by a government. In the twentieth century, approximately 40 to 60 million defenceless people have become victims of deliberate genocidal policies. The twenty-first century has not begun much better, with genocidal episodes flaring up in Darfur, the Democratic Republic of the Congo, Myanmar, and Syria. Genocide can best be understood as the persecution and destruction of human beings on the basis of their presumed or imputed membership in a group rather than on their individual properties or participation in certain acts. Although it makes little sense to quantify genocide, it is clear that a genocidal process always concerns a society at large, and that genocide often destroys a significant and often critical part of the affected communities. It also does not make much sense to discriminate between the types of groups that are being targeted: ethnic, religious, regional, political, sexual, etc. It can be argued that genocidal processes are particularly malicious and destructive because they are directed against all members of a group, mostly innocent and defenceless people who are persecuted and killed regardless of their behavior. Genocide always denotes a colossal and brutal collective criminality. For this reason, genocide is a phenomenon that is distinct from other forms of mass violence such as war, civil war, or massacre.

Genocide is a complex process through and through. First of all, it can be approached from at least three analytical perspectives: macro (international), meso (domestic), and micro (local/individual). The macro level refers to the external, international context: interstate structures and the context of geopolitical power relations that could lead to war. In recent years, an increasing body of research has looked at foreign intervention, wartime alliances, and the influence of the Cold War on the "outbreak" of genocides. For example, Martin Shaw has argued that politics at the international level profoundly influences the domestic level, and increasingly so in the twentieth century. The Cold War exacerbated this existing, structural

problem as the United States and the Soviet Union fought proxy wars and even committed proxy genocides.[8] Harris Mylonas has presented convincing evidence that governments' treatment of minorities is a reflection of their relations with perceived external patrons. This goes a long way in explaining how and why some wars can escalate into genocide but others do not.[9] Genocide scholars have also given much thought to how the international society has reacted to genocide, including the United Nations, the European Union, the OSCE, and NGOs. The picture here is quite bleak: the UN has received harsh criticism in several examinations of its policies in Central Africa,[10] and European institutions are seen as rather vapid and ineffectual in facing the mass violence of brutal regimes on Europe's periphery.[11] Recent examinations of genocide have also looked at the phenomenon from a broader, regional or transnational perspective – including issues such as refugee flows, transmission of ideologies, and interventions.[12]

The meso level consists of all intrastate developments relevant to the genesis of the political crisis and, later, the genocide: the ideological self-hypnosis of political elites, complex decision-making processes, the necessity and logic of a division of labor, the emergence of paramilitary troops, and any mass mobilization for the segregation and destruction of the victim group. How do otherwise neutral and technocratic institutions, organizations, and agencies in a given state and society collaborate in genocide? How do otherwise apolitical families make decisions, conduct business, and comport themselves in a genocidal process? How do coexisting villages and neighborhoods turn on each other? How are city administrations taken over and steered towards genocidal destruction of some of their fellow citizens? Many Holocaust experts have successfully focused on these questions,[13] but in recent research some of their most helpful approaches have been

8 Martin Shaw, *Genocide and International Relations: Changing Patterns in the Transitions of the Late Modern World* (Cambridge: Cambridge University Press, 2013).

9 Harris Mylonas, *The Politics of Nation-Building: Making Co-Nationals, Refugees, and Minorities* (Cambridge: Cambridge University Press, 2013).

10 Adam LeBor, *Complicity with Evil: The United Nations in the Age of Modern Genocide* (New Haven: Yale University Press, 2006).

11 Knud Erik Jørgensen (ed.), *European Approaches to Crisis Management* (The Hague: Kluwer Law International, 1997). See also the fascinating if depressing memoirs of the former Chechen Foreign Minister of the fledgling post-Soviet republic: Ilyas Akhmadov, *The Chechen Struggle: Independence Won and Lost* (New York: Palgrave Macmillan, 2010).

12 See e.g. Mark Levene, *The Crisis of Genocide* (Oxford: Oxford University Press, 2014), 2 volumes.

13 Among the vast literature on this subject, one recent study was Mary Fulbrook, *A Small Town near Auschwitz: Ordinary Nazis and the Holocaust* (Oxford: Oxford University Press, 2012).

cross-polinating cognate fields. For example, Christian Gerlach, in a thorough examination of several cases of genocide, emphasizes the importance of popular participation and initiative and the relative absence or fluidity of state involvement in his set of cases.[14] In a similar vein, Raymond Kévorkian has written a mammoth chronicle of the Armenian genocide, structured by province, using explanatory factors that include the personal whims of the local power holders (governors and district governors), the conduct of local social elites, and structural factors such as proximity to the front.[15] Lee Ann Fujii's study of the Rwandan genocide in two villages sheds light on how the genocide could develop significantly disparate courses due to social stratification, settlement patterns, poverty and unemployment, the population density of the victim group, opportunity structures, and pre-existing conditions of state power. Her use of network analysis will prove useful in the study of future genocides.[16]

The micro level, then, is about the lowest level: how do individuals become involved in the genocidal process, either as perpetrators, victims, or third parties? How can we better understand the changing sociological relationships between the perpetrator group and the victim group? Following Christopher Browning's famous book, *Ordinary Men*, another book that has become one of the cornerstones of perpetrator studies is Scott Straus' *The Order of Genocide* in which Straus dismisses ethnic hatred as the main explanatory factor and instead focuses on ethnic categorization, private interests, coercion, and in-group competition.[17] Comparative research on perpetrators is still in its infancy,[18] but many studies of genocide have convincingly demonstrated the central role of paramilitaries in the perpetration of genocide. Throughout the twentieth century, paramilitaries have been responsible for widespread violence against civilians. Genocidal regimes are thought to spawn paramilitary units as a covert augmentation of state power for special purposes such as mass murder.[19] Although not

14 Christian Gerlach, *Extremely Violent Societies: Mass Violence in the Twentieth-Century World* (Cambridge: Cambridge University Press, 2010).

15 Raymond Kévorkian, *Le génocide des Arméniens* (Paris: Odile Jacob, 2006).

16 Lee Ann Fujii, *Killing Neighbors: Webs of Violence in Rwanda* (Ithaca, NY: Cornell University Press, 2009).

17 Scott Straus, *The Order of Genocide: Race, Power, and War in Rwanda* (Ithaca, NY: Cornell University Press, 2006).

18 One notable exception is Olaf Jensen & Claus-Christian Szejnmann (eds.), *Ordinary People as Mass Murderers: Perpetrators in Comparative Perspective* (New York: Palgrave Macmillan, 2008).

19 Among the vast literature on this subject, mostly on Latin America, see: Alex Alvarez, "Militias and Genocide", in: *War Crimes, Genocide, & Crimes against Humanity*, vol. 2 (2006),

strictly an academic work, a recent gem that has immensely elucidated perpetrators are Joshua Oppenheimer's twin documentaries *The Act of Killing* and *The Look of Silence*. Both shed light on the ordinary Indonesians that were activated and vastly empowered in death squads by the Suharto regime for the special purpose of mass murder in 1965.[20]

Viewed in its coherence, these three contextual layers are not simply piled on top of each other; instead, the largest contexts are often preconditions for the smallest ones. Without the macro context of interstate crisis, there cannot be an internal radicalization of the political elites; and without that radicalization, the violent measures against the victims would not be taken and countless individual perpetrators would not murder innumerable individual victims in micro situations of killing. In other words, we should not look solely at the complexity of each level in itself, we must also bear in mind the relevant connections between the three levels.[21]

Second, the temporal complexity of genocide is possibly *the* major concern in genocide studies. How do genocidal processes begin, develop, and end? Mass violence of the scale that unfolds in genocidal societies generally develops through three fairly distinct phases: the pre-violent phase, the phase of mass political violence, and the post-violence phase. The pre-violent phase is often rooted in a broader economic, political, and cultural crisis that vexes the country internally and aggravates its external relations with neighboring states. Such a crisis between political groups and social movements can polarize into non-violent confrontations such as mass protests, boycotts, or strikes. At the local level, it can be characterized by fragile, even hostile, but still non-violent coexistence between political or ethnic groups. Occasionally, however, a local pogrom or a political assassination can occur, and often the state can gradually become engaged in a low-intensity conflict. The main precondition for extreme violence such as massacres or genocide is (civil) war. During wars, violence is exercised on a large scale, first exclusively between armies in legally sanctioned military hostilities but later potentially also in illegal paramilitary operations against civilians.

The transition from crisis to mass violence is often a point of no return where serious moral and political transgressions occur in a rapid process

1-33; Bruce Campbell, *Death Squads in Global Perspective: Murder with Deniability* (New York: St. Martin's Press, 2000).

20 Joshua Oppenheimer (dir.), *The Act of Killing* (2012); *The Look of Silence* (2014).

21 Jacques Semelin, *Purify and Destroy: The Political Uses of Massacre and Genocide* (London: Hurst, 2007).

of violent polarization. Comparative research on mass political violence demonstrates that, once unleashed, it can develop its own dynamic and become nearly unstoppable by internal forces – reaching 'relative autonomy'. This dynamic consists of a routinization of the killing and a moral shift in society due to mass impunity. Two other key variables are the political elite's decision-making and the organization of violence. The first is often conducted in secret sessions, develops in shocks, and becomes visible only retroactively, when the victims are killed. Indeed, violent conflict exposes the criminology of violent political elites, who often begin operating as an organized crime group with growing mutual complicity developing among them. Second, the organization of the violence is another major analytical category to be examined. The violence is often carried out according to clear and logical divisions of labor: between the civil and military wing of the state, but also crucially between the military and paramilitary groups. The killing process has the dual function of at once annihilating the victim group and constructing the perpetrator group. The destruction of the Other is the validation of the Self.

Finally, the transition to a post-genocidal phase often overlaps with the collapse of the violent regime itself. The main perpetrator groups within the regime will attempt to deny their crimes, while traumatized survivor communities will mourn and demand justice or revenge. In this phase, these groups often struggle to propagate their own memory of the conflict by attempting to straitjacket the complexity of the conflict into a single, self-serving view. The term 'transitional justice' often proves to be a wishful concept: sometimes a fragile democracy develops, and sometimes a different dictatorship takes over. In either case, impunity has proven to be the rule and punishment the exception in post-violence societies. This is a genuine dilemma because often an enormous number of people are involved in crimes, and there are often no clear, premeditated, written, and circulated orders of particular massacres. The direct victims and often even their offspring can continue to suffer for years, even decades. The best example of the obdurateness and irreversibility of genocide's consequences is the Turkish-Armenian conflict. A full century after the 1915 genocide, relations between the two groups are hostile: the countries have no proper diplomatic relations, the diasporas in Europe and North America often clash, and within Turkey the Armenian community lives in apprehension, even fear.

Together, the above approach generates a dynamic model that has three analytical dimensions and three temporal dimensions. It is primarily a political-sociological model: its focus is centered on the power relationships between groups of people, especially between perpetrators and victims

but also within the perpetrator group – between high-ranking architects and low-ranking killers. But this is also an explicitly historicizing approach in which genocides are seen, fundamentally, as *processes* with a beginning, development, and end. How that process has functioned in different genocides is the main focus of this book. The three sections follow the developmental model of the genocidal process, and the contributions are written with a conscious awareness of the complexity of modern genocides.

Genocide and the Content of This Book

The Center for Holocaust and Genocide Studies (CHGS) in Amsterdam was established in 2003 as a center combining academic research, university teaching, and public awareness. Many such research centers with this particular focus (and name) already existed in the United States, and the trend to look beyond the Holocaust to other genocides and explore commonalities was beginning to yield fresh insights. From the first year of its inception, the CHGS offered a unique Master's program in 'Holocaust and genocide studies', which, by 2015, had educated over 200 graduate students from a range of disciplinary backgrounds: history, anthropology, sociology, political science, media studies, international law. For their graduate theses, the majority of these graduate students conducted primary research on one case of genocide, including for example oral history, ethnography, and archival investigation. Several students won impressive awards with their research and pursued an academic career; others continued their work dedicated to a more practical type of work in NGOs or government; and most kept a connection to this wretched topic in one way or another. This book offers some of the fruits of the large pool of excellent research successfully conducted by these young researchers.

In the growing, interdisciplinary field of genocide studies, much useful research has been conducted into the evolution of separate genocides such as the destruction of Ottoman Armenians in 1915, the Holocaust, and the genocides in Cambodia from 1975-79, Rwanda in 1994, and Bosnia during the Yugoslav civil wars. Much is known on specific aspects of genocidal processes as well. There is a body of research on the turn from a fairly "normal" civic society to a persecutory society, the motives of the ordinary killers, the power and effect of charismatic leaders, the gender aspects of violence, etc. As fast as the scholarship on mass violence is developing, much of it has been purely historical and rather inward-looking, also in terms of geographic or temporal specialization. This book departs from this trend by

crossing over disciplines and bringing together a range of insights in a single volume. There are shortcomings to any edited volume, such as diverging vocabularies, approaches, and specializations. But the value of this approach is that it tries to challenge governing conventions in the scholarship through primary research, and it unites analogous but not near-identical cases and types of genocide. The objective is to make a modest contribution to the scholarship on mass murder by bringing together an interdisciplinary collection of studies.

The first section deals with the pre-genocidal phase, which can encompass a variety of processes that contribute to societal polarization and radicalization. Chapter 1, written by political scientist Diana Oncioiu, examines comparatively genocidal impulses in Serbian and Romanian nationalism. It aims to answer how and why nationalism became the central element in shaping political elites' perceptions of minorities, politics, and religion. Oncioiu bases her analysis on the hitherto relatively unstudied writings of Romanian and Serbian nationalist intellectuals. She concludes that even though ethnic characteristics prevailed in Romania and Serbia throughout the long and arduous process of nation formation, it was only during the comprehensive crises of 1940-1945 and 1985-1995 that ethnic nationalism triggered genocidal policies. The chapter offers the best of comparative history by examining similarities, differences, parallel biographies, and analogous structures. The twin questions of how and why 'ordinary people' are capable of committing extraordinary evil remains one of the core issues in genocide studies. Christoph Busch contributes to this debate in his chapter on the origins of perpetrator behavior. His criminological perspective focuses on key factors that recruit, motivate, and incite especially individuals but also small groups to commit acts of collective violence. Busch develops a model of transitions that influences involvement in a continuum of destruction and Otherization. He emphasizes the interactions within and between the individual level and the group level that shape the bounded rationality needed to perpetrate mass murder. Kjell Anderson's criminological perspective in chapter 3 complements Busch's chapter by developing the concept of 'state deviancy' and expanding the perpetration of mass murder from the individual to the group. Genocide is not only a *mass* process (in that many people are simultaneously involved in it) but also a *collective* process (in that many people form various structures in committing it). Anderson examines some of the foundational legal and criminological concepts relating to genocide to examine how sovereignty can be used by states to sanction benign and malevolent acts. The relative

autonomy from external interference that sovereignty bestows on states produces a profound paradox: state power is needed to bring an end to genocide, yet it is state power itself that can be the cause of genocide.

The chapters in section II deal with mass murder proper. Sociologist Alex de Jong's painstaking examination of the inner dynamics of the Communist Party of the Philippines sheds light on how intra-elite competition and radicalization can generate violent impulses that may radiate outward. For Nazism and Stalinism this has been researched quite thoroughly, and De Jong's chapter fits well within the global history of communist crimes. De Jong explores how the dynamic of paranoia within the conspiratorial CPP sparked a collective anxiety and atmosphere of denunciation. He also concludes that not only radical ideology per se but also the search for ideological purity functioned as a major impulse for political violence in the Philippines. Even though the Filipino case never reached genocidal proportions, this dynamic within the political elite was certainly prone to it. Chapter 5, written by historian Sandra Korstjens, stays in Southeast Asia and investigates a thoroughly genocidal communist regime, the Khmer Rouge. The chapter discusses the heart of the matter, namely the Khmer Rouge's organization of mass murder during its catastrophic four-year rule in Cambodia. Based on recently translated regime documentation and her own interviews, she argues that the development of the killings depended on the definition of the 'enemy', of which she identifies four distinct categories. This original contribution corroborates the emerging consensus in genocide studies that the victim group does not have to be 'real', merely imagined in the perpetrators' fantasy. Karpinski and Ruvinsky's chapter on sexual violence in the Nazi genocide is based on a detailed analysis of recently declassified primary documents and focuses on an understudied theme in Holocaust studies: the Nazi perpetrators' crimes of sexual violence against not only women but also men. According to the two historians, sexual violence during the Nazi genocide occurred because concepts of masculinity and femininity were reconstructed. The Nazi regime redefined masculinity by emphasizing the heterosexuality, vitality, and militarization of all men. The chapter also examines how Nazis justified having sex with Jews despite strict racial laws.

The chapters in section III attempt to unravel the tangle of the post-genocidal phase in three different countries. The aftermath of genocides offers a wide variety of subjects to study: conflicts over memory, narrative, and identity; forms of transitional (in)justice, punishment, and impunity. The Yugoslav wars of dissolution saw at least four genocidal episodes: against the Krajina Croats, against Bosnian Muslims in general, against the

Dalmatian Serbs, and against the Kosovo Albanians. The collective memory of these conflicts is hotly contested, especially in hopelessly divided Bosnia and Herzegovina. Based on thorough fieldwork, historian Laura Boerhout assesses how and why various groups in that fledgling state employ narratives of victimhood. She concludes that this trend results in different forms of denial concerning their own culpability during the war, while at the same time excluding the victimhood of others. Whereas Serbs in the Republika Srpska tend to equivocate when it comes to crimes against Muslims, in the Federation of Bosnia and Herzegovina there is a clear inclination to sacralize and prioritize Muslim suffering. Every genocide generates countless perpetrators that have to be dealt with once the killing campaign stops. Rwanda is one of those few cases in which large numbers of perpetrators were arrested by a new government. Anthropologist Suzanne Hoeksema's chapter deals with the way the Rwandan government has interned some of these perpetrators in camps and subjected them to *ingando*, or 're-education' that will supposedly lead to re-integration. Her in-depth interviews with both perpetrators and re-educators demonstrate a firm belief on the part of Rwandan officials that the perpetrators are redeemable, that Rwanda is reconcilable, and that the Rwandan Patriotic Front's political transition has been successful. Hoeksema thus revises the myth that the RPF government is merely carrying out blind revenge. Finally, the last chapter, similar to the first, is a comparative study. Historian and international law scholar Thijs Bouwknegt analyzes how transitional justice and history have taken quite different paths in the aftermaths of the Rwandan genocide and Sierra Leone civil war. Bouwknegt examines how legal findings relate to the production of knowledge and the construction of historiography in the context of mass atrocities in the two cases. The chapter is based on a close examination of the legal trials of Théoneste Bagosora and Charles Taylor. It details how prosecutors at the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) struggled to unveil the rationales behind the Rwandan genocide and civil war in Sierra Leone, and offers an understanding of how these discrepancies come about and impact the historical record. As the chapters offer more than enough food for comparative thought, the last word is to Professor Philip Spencer of Kingston University. He offers a comparative synthesis of the chapters and proposes topics for future research.

Part I
Causes of Genocide

1 Ethnic Nationalism and Genocide

Constructing "the Other" in Romania and Serbia

Diana Oncioiu

In cases of extreme forms of violence, there is a pattern: there is "us" – the superior, almighty us – and there is "them", the inferior, dangerous "them" who must be eliminated. My intention is not to reduce genocide to something simplistic but rather to underline, or more precisely to raise, a significant question: how does someone become "the other", the deadly enemy who pose such a great threat to one's identity, security, and purity? In what circumstances does such a situation occur? In the twentieth century, particular groups in Romania and Serbia who have been identified as the enemy, the threat, or simply the dangerous "other" have been subjected to policies of discrimination, exclusion, and in the end extreme mass violence. In both cases, Romania and Serbian leaders justified their genocidal policies with nationalist arguments – to protect and preserve national identity and the uniqueness of the nation (supposedly based on religion or ethnicity). In order to understand why and how "the other" was constructed, it is important to look at nationalism, the main "provider" of characteristics, labels, and stereotypes in describing the enemy. The next chapter by Busch provides a further, more conceptual illustration of this process.

Instead of defining the nation simply as an "imagined community",[1] the outcome of "standardized homogeneous high cultures supported by central power structures",[2] the "one of many traditions invented by

1 In his book, Benedict Anderson emphasizes a cultural perspective of the nation to which he gives an imaginary nature. For him, the nation is an artifact, an imagined political community. The imagination of the nation was made possible by three events: the decline of the belief that there is a sacred text that irrevocably embodies truth; the decline of the belief that "society was naturally organized around and under high centers-monarchs"; and the development of the idea of "homogeneous, empty time". These historical happenings were accompanied by print-capitalism, which played a significant role in the development of print-languages. The print-languages laid the foundations for national consciousness in three ways: they created unified fields of exchange and communication that went beyond Latin; they built up the image of antiquity necessary to the idea of the nation; and they created languages of power different from the older administrative vernaculars. Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (London, New York: Verso, 1991)

2 Ernest Gellner offers a sociological perspective on the nation. According to Gellner's thesis, nations can be defined in terms of will and culture. "Nations are definable when general social

political elites",[3] or constructing the idea of the nation around the concept of *ethnie*,[4] I have decided to approach the topic in terms of a process, the process of nation formation. In my opinion, subjectivists are idealistic, and their thesis not only underestimates the power and the constraints of the concepts they are analyzing but also fails to address nations outside of the Western civilization. At the same time, objectivists do not succeed in seeing nations as dynamic processes, as entities that change and develop continuously. The concept of the 'nation formation process' attempts to solve these shortcomings by emphasizing, first and foremost, that we are dealing with a long-term process that never ends. It is a gradual process in the sense that it does not affect various classes in society at the same time. And third, it is ambivalent: there are periods in which, besides national identification, other identities (regional, class, religious, or family) will compete or interfere with national identity. Within this process, five aspects are relevant: integration, the spread of a standardized culture, identification with the nation, the nation as a political body, and nation formation as a process of inclusion-exclusion. This chapter focuses on the latter two phases.

In terms of timelines, this chapter refers to Greater Romania established between the First World War and the Greater Serbia project of Slobodan Milosevic. In this phase, nationalism was no longer an intellectual or middle class affair; it became a mass movement. Nationalist ideas were turned

conditions have led to standardized homogeneous high cultures supported by central power structures and spread among populations". For Gellner, it is nationalism that engenders nations and not the other way around: "it invents nations where they do not exist"... O'Leary Brendan, "On the Nature of Nationalism: An Appraisal of Ernest Gellner's Writings on Nationalism", *British Journal of Political Science*, Vol. 27, No. 2 (Apr., 1997): 191-222.

3 For Eric Hobsbawm, nation is a recent concept, "the product of historical, particular, inevitably local and regional experiences". He distinguishes between two concepts of the nation: democratic-revolutionary and nationalist. For the former, the central concept is sovereign citizenship, while for the latter political entities that contain the formula state-nation-people have to be created. Eric Hobsbawm in John Hutchinson and Anthony Smith, *Nationalism* (Oxford: Oxford University Press, 1994), 76-83, 177-184.

4 Anthony Smith defined the nation as "a named human community residing in a perceived homeland, and having common myths and a shared history, a distinct public culture and common laws and customs for all members". He identifies two types of ethnic communities in pre-modern times: lateral and vertical, which explain the different routes by which nations have been created. In the first case, modern nationhood is achieved through the bureaucratic state, while in the second case national autonomy is obtained through a secular intelligentsia who fights against a hostile state. John Hutchinson and Anthony Smith, *Nationalism,* 113-122, 147-154. Having also the ethnic element at the core of his thesis, John Armstrong argues that modern nations are the product of a "longer cycle of ethnic resurgence and decline over the *longue duree*"... John Hutchinson and Anthony Smith, *Nationalism,* 132.

into policies; nationalism became the ideology of the leaders who, once in power, had all the mechanisms necessary to implement genocide. The ideas and concepts that were developed in the first three phases of the process of nation formation, plus the context of war and internal crisis, were the necessary conditions for constructing the image of "the other" as "something" that had to be eliminated.

First Phases in the Process of Nation-Formation in Romania and Serbia

Conquered, occupied, and contested for centuries by various empires, Romanians and Serbs struggled to establish what they considered to be the real Romanian and Serbian states. Their collective awareness was triggered by religion, language, and historical boundaries. These characteristics made them aware that they were part of a social group and, most importantly, made them feel they were somehow "unique" within the region they lived. Romanians spoke a Latin language in an area dominated by Slavic people, while Serbs were Orthodox Christians surrounded by Catholic and Muslim neighbours. The ethnic characteristics on which the collective awareness emerged in the fourteenth to seventeenth century were put forward in a systematic, scientific way by historians, poets, and the clergy in the eighteenth century. At a time when Romania and Serbia were part of multinational empires, its citizens enjoying few or no rights even though they represented the majority within their territories, culture and education became the only way to express Romanian and Serbian identity. Influenced by the Enlightenment, Romanian and Serbian intellectuals and clergy attempted to spread the ethnic characteristics of their nations by promoting the Romanian language, editing textbooks, writing poems in the Serbian spoken language, or promoting the Serbian myths through church paintings. This was an early phase of what would later become the Romanian and Serbian standardized culture.

Identification with the nation can occur unconsciously or it might be furthered by individuals or institutions; the two do not, however, exclude each other. In both cases under scrutiny, identification with the nation first came unconsciously in situations of conflict, or more precisely revolt – revolt against the bad conditions that peasants had to endure under the rule of a different ethnic group. One might ask why ethnic and linguistic elements prevailed in the nations of Eastern Europe in the nineteenth century. The majority of the population was living in rural areas, and society was

largely agrarian. For an oppressed, dominated, uneducated class such as the Romanian or Serbian peasants, "freedom meant the ability to use their own land without impediment, not a parliamentary regime".[5] In terms of language, "the vernacular of any small nation fighting for its independence is automatically regarded as the language of liberty".[6] Intellectuals and politicians consciously furthered what started as an unconscious process, triggered by the uprisings in the nineteenth century. They did so by fighting for the recognition of the spoken language. Through their theories and ideas they gave shape to an ethnic, ideological concept of the nation.

By the time Jews, Muslims, and Croats became "the other", Romania and Serbia had already had a history of ethnic nationalism, a period in which the legendary past – determined by centuries of domination and oppression by various empires – played a major role in defining Romanian and Serbian identity. Furthermore, the resentment and frustration accumulated under occupation led to the development of an ethnic consciousness perceived as the only alternative to national survival within multinational empires. But ethnic nationalism does not lead to genocide by itself; it needs some "favorable", short-term conditions. Ethnic characteristics did prevail in Romania and Serbia, but it was only in 1940-1945 and 1985-1995 that ethnic nationalism triggered genocidal policies. What made that possible was an interaction between long-term conditions (the presence of ethnic legacy and the perpetuation of ethnic features over time) and short-term conditions (situations of extreme crisis). The next section of this chapter focuses on the period in which most of the anti-Semitic and racist ideas were put forward and spread within society. These ideas, within a context of insecurity, made possible the construction of "the other". The phase under scrutiny is the one that sets up the "playground" for future mass violence in Romania and Serbia.

Who Are We? Where Are We? Ethnic Nationalism and its Approach of "the Other"

Romania

After the First World War, Romania had to face several social and political changes; beginning in 1918, Transylvania, Bukovina, Bessarabia, Moldavia,

5 Miroslav Hroch, "From National Movement to the Fully-formed Nation: The Nation-Buildings in Europe", *New Left Review*, I/198, March-April 1993: 16.

6 Ibid., 17.

and Wallachia all became part of the new state, Greater Romania. With the new territories (Transylvania, Bukovina, and Bessarabia) that joined the independent Romania of 1878, the population and the territory of the new state almost doubled.[7] This would have been the perfect moment for Romania to turn from ethnic nationalism to civic nationalism, given the diversity of the population. However, this did not happen due to important social, cultural, economic, and political factors. The country remained predominantly rural, with only 20% of the population living in urban areas; 72.3% of Romania's general population was working the land, only 9.5% worked in industry, and 18.2% were involved in tertiary sectors like commerce, banking, public services – "a bureaucratically rather than industrially oriented population".[8] Another important thing: in the three provinces that were added after the war, the urban population was predominantly non-Romanian; Romania was still a nation of peasants.

After the end of the war, Romanian authorities promoted a process of modernization that included land reform and universal male suffrage. The latter introduced two new categories to the electoral field: the peasants and the Jews. These revolutionary initiatives made possible the "mental modernization"[9] of large parts of the rural population, but in reality the authorities were not ready to support them; they gave land to the peasants but did not provide them with the necessary tools and other means to work their new properties. Furthermore, they offered the right to vote to all Romanians, but the political parties failed to represent the newcomers in the political arena. This failure can also be explained by the way in which the elites decided on these very important measures. During the war, the Romanian Army suffered substantial losses in terms of number of soldiers. People from home had to be mobilized in one way or another; this is why the measures were aimed mainly at the peasants. Pragmatic reasons rather than the need to modernize society were behind the decisions of the Romanian elite.

7 In 1919, Romania's population increased from 7,771,341 to 14,669,841. The Jewish population represented the third minority group, representing 4% (728,115) of the Romanian population after the War. Hungarians were the first minority, representing almost 8% of the population; Germans were the second with 4.1%. Other minorities living on Romanian territory were the Russians, Bulgarians, and Gypsies. See Irina Livezeanu, *Cultural Politics in Greater Romania: Regionalism, Nation Building and Ethnic Struggle 1918-1930* (Ithaca/London: Cornell University Press, 1995), 8-11.

8 Livezeanu, *Cultural Politics in Greater Romania,* 9.

9 Armin Heinen, *Legiunea Arhanghelului Mihail* (Bucuresti: Humanitas, 2006), 35.

Another policy targeting the peasants was education, as it was perceived as a method of national mobilization in a society where nationalism was mainly an intellectual issue or political program. In her work, Irina Livezeanu (1995) has focused on this particular aspect, on the "acquisition of cultural and educational institutions by the Romanian state and local elites in order to elucidate the problems of unification, nation building and nationalism".[10] Education was the path from *ethnies* to modern nations:

> For the peasants, schools of all levels were the road to full nationhood and, thereby, to a higher social status, to a bureaucratic white-collar job, and to a higher living standard and more personal power. By advancing into the urban world of high culture previously dominated by foreigners, the Romanian peasant could bring Greater Romania closer to the nation-state ideal… the new generation regarded the conquest of the urban areas and the acquisition of elite positions as a national mission.[11]

The Romanian state aimed to reform education in such a way as to develop the local middle class that was to replace the existing foreign one in order to create a Romanian elite that would change the urban-rural balance. This was, in E. Weber's terms, a process of turning peasants into Romanians. Even though well-intended, the Romanian educational policies ended up fuelling the populist nationalist discourse. According to the logic of the Romanian authorities, peasants were educated so they could come to town and occupy different positions, held at that point by a minority, mainly Jewish.[12] What was going to happen with this minority? Where were they supposed to go?

10 Livezeanu, *Cultural Politics in Greater Romania,* 17.

11 Ibid., 302.

12 At the end of the nineteenth century, the culture developed by intellectuals focused on the village, where the peasant was the core of Romanian nationalism and intellectuals perceived themselves as their representatives and defendants. The outcome was the establishment of negative stereotypes regarding the foreigner: the Turk (pagan, invader); the Pole (arrogant, invader); the Hungarian (oppressor); and so on… Leon Volovici, *Nationalist Ideology and Antisemitism: The Case of Romanian Intellectuals in the 1930s* (Oxford: Pergamon Press, 1991), 4. Negative stereotypes were also employed for the 'internal' foreigners: the Jews and the Greeks. The former were used by the leaders of Romanian Principalities in 1780 to stimulate urban development and became "the catalyst for the consolidation of nationalism and a stimulus to national awakening" in the nineteenth century. Heinen, *Legiunea Arhanghelului Mihail*, 4. In a society where minorities were used in the intellectuals' self-victimizing discourse, making them responsible for the decline in the national economy and culture, the Jews "succeeded" in distinguishing themselves from the other minorities when they were accused of being guilty for exercising a bad influence on

After 1918, with the emergence of the two new political constituencies, peasants and Jews, political parties faced an identity crisis. Ultimately they failed to represent the population and thus laid the grounds for a critical analysis of the political system. With the ban of communist parties in 1924, "the political left lost its capacity to contribute to the defining of the nation, and the national discourse was effectively delivered into the hands of the right".[13] Not even the party formed by Nicolae Iorga and A.C. Cuza[14] succeeded in overcoming the social and political changes. Their ideas, their nationalism, and their anti-Semitism were "out of date". The internal and external changes ensured the establishment of a "new generation" of nationalists who "in the crisis situation and frustration that they themselves felt personally, were the first who would start formulating a solution to the existing problems".[15] This new generation was represented by students motivated by Professor Cuza's lectures. It is precisely from among these students that the fascist movement, the Iron Guard, would take shape.

While Cuza had an important impact on the new generation and especially on its leader Corneliu Zelea Codreanu, the real mentor of this

Romanians through their economy and religion. Volovici, *Nationalist Ideology and Antisemitism: The Case of Romanian Intellectuals in the 1930s,* p. 8.

13 Katherine Verdery in Barkey, "Negotiated Paths to Nationhood: A Comparison of Hungary and Romania in the Early Twentieth Century", 526.

14 Nicolae Iorga and A.C. Cuza established the Democrat Nationalistic Party in 1910. In 1920, Cuza and Iorga split, as the former along with the new generation considered Iorga's nationalism out of date and unable to adapt to the new changes. Cuza and Iorga were part of an intelligentsia that suffered from the low prestige of Romanian culture. Convinced that the generation of 1848 failed in their process of nation-formation, they focused on rediscovering the roots of a national culture; this is why they turned to the past, to the national values of the fifteenth and sixteenth centuries and developing a cult of the past. Heinen, *Legiunea Arhanghelului Mihail*, 72-80. They resurrected cultural characteristics such as common origins and a glorious past portrayed in the fights against the Ottoman Empire and religion. Iorga, considered the greatest Romanian historian, built his nationalist ideology around the traditional values of rural life and opposition to modernization. He accused Jews of economic domination and degradation of the nation's spirit. Cuza associated the program for the revival of Romanian spiritual values with the fight against Jews (Volovici, *Nationalist Ideology and Antisemitism,* 23). For Iorga, anti-Semitism was a component of nationalist ideology to which he remained faithful; he never embraced the anti-Semitic extreme forms as Cuza did. For professors such as Cuza and his colleagues, after First World War "anti-Semitism became a political program, a philosophical and aesthetic creed" (Volovici, *Nationalist Ideology and Antisemitism,* 32). While Iorga perceived the existence of Jews as a historical fact, a population that might be assimilated if willing to embrace the language and Romanian culture and also to be guided towards productive activities, Cuza, Vasile Conta, and their successors were much more radical. From their point of view, a Jew would always be a foreign person and there was no place for him within the Romanian nation.

15 Jacques Semelin, *Purify and Destroy. The Political Uses of Massacre and Genocide* (London: Hurst& Co., 2007), 55.

generation was philosopher Nae Ionescu. Along with Nichifor Crainic, he became the representative of the new nationalism constructed around Orthodoxy as the core element of the Romanian ethnic spirit. The constructive, cultural nationalism of Nicolae Iorga, which focused on the development of native values within the framework of a peasant state,[16] was replaced by the idea of a totalitarian state that would secure "ethnic creativity" and the promotion of Christian values.[17] Ionescu and Crainic were also the fathers of the neo-anti-Semitic ideology. In Ionescu's view the national character was offensive and imperialist; these two characteristics ensured, in his view, the survival of a nation. Furthermore, the latter was justified in the sense that its purpose was to fulfil God's will, meaning a new spiritual form of life; in this equation any foreigner represented the Devil since their ideal was in opposition with "our" God[18]; for him to be Romanian meant to be Orthodox. The Jews in Ionescu's thesis were the alien body, hostile to Christian values, whose ethos was not derived from the Bible but from the Talmud, which encouraged their separation from the other nations[19] and emphasized the rational, material aspect.

Crainic's nationalism was much more focused on Jews than the nationalism promoted by Ionescu. The main elements of his theory were *autochtonism* and *Romanianism*; the former referred to one's own land, state, homeland, nation[20], underlying the idea of ownership and the separation between what is "ours" and the "intruders". With respect to the latter element, *Romanianism* was defined by the spiritual dimension: the Eastern Christian Orthodoxy and the "religious mystique". It is precisely this Christian theology that offered Crainic enough arguments for the elimination of Jews from Romania's social and intellectual life. He proposed the "de-Judaization" of Jesus and the Bible and emphasized the aim of the Christian world to struggle against Judaism – "... Today Europe is stirred by the war of the Talmud against the Gospel of Christ... Judaism has won success after success, and its progressive domination in the world is blinding it to its limitations".[21] For Zigu Ornea (1999), Crainic's and Ionescu's anti-Semitism was fundamentalist based on theological arguments. If one looks back at the first anti-Semitic ideas put forward by Eminescu, Iorga, and Cuza at the end of the nineteenth

16 Volovici, *Nationalist Ideology and Antisemitism,* 57.

17 Ibid., 59.

18 Heinen, *Legiunea Arhanghelului Mihail*, 167.

19 Volovici, *Nationalist Ideology and Antisemitism,* 105-107.

20 Zigu Ornea, *The Romanian Extreme Right: the Nineteen Thirties*, (New York: Columbia University Press, 1999), 87.

21 Nichifor Crainic in Volovici, *Nationalist Ideology and Antisemitism,* 98-99.

century and the beginning of the twentieth, one will notice that with these new intellectuals there was a shift in focus from the economy to religion; the Jews were, first and foremost, a religious threat, a minority who was endangering the supposed "essence" of the Romanian nation.

Nae Ionescu was indeed the mentor of the young generation of nationalists; however, its spokesman was Mircea Eliade who at the end of 1920s had assembled a heterogeneous group of intellectuals around himself; among them were also other important personalities of Romanian cultural life such as Constantin Noica and Emil Cioran. The central elements in their writings were *Romanianism, Orthodoxism* and *Ethnicism;* they emphasized ideas such as the Christian spirit, religious mysticism, "mystical revolution" and "new spirituality". Eliade was perhaps the best at stressing the importance of Orthodoxy within the Romanian nation: "Orthodoxy is, to us, true Christianity… We must be Christian to find a meaning to life. We want an effective Christianity that is the result of an experience, fresh, heavy with meaning, sparkling with gifts".[22] With respect to the Jewish minority, Eliade expressed the same fear that was to be found in most of the writings from those times; a fear generated by the supposed "ethnic danger" coming from the Jews: "From the war onwards, the Jews have invaded the villages of Bukovina and have got absolute majority in all of the towns of Bessarabia… And if you stay on the Bucegi mountains you can no longer hear people speaking Romanian; they speak Yiddish".[23]

Inspired by Hitler's Germany, Emil Cioran saw nationalism as essentially fanatic and exclusivist.[24] In comparison with Eliade, who kept out the violent negative references against the Jews from his writings, Cioran formulated all the charges against Jews with "sharpness and plasticity".[25] For him, Jews were traitors and a "mortal enemy of every other nationalism":[26]

> The Judaic invasion in the last decades has made of anti-Semitism the essential feature of our nationalism… We, as humans, cannot get closer to them because the Jew is first Jew and afterwards man… In whatever they do, Jews are unique, they are matchless in the world, bent as they are under a curse for which only God is responsible. If I were a Jew, I would commit suicide on the spot.[27]

22 Mircea Eliade in Ornea, *The Romanian Extreme Right,* 132.
23 Ibid., 389.
24 Ibid., 92.
25 Ibid., 107.
26 Emil Cioran in Volovici, *Nationalist Ideology and Antisemitism,* 107-109.
27 Emil Cioran, *Schimbarea la fata a Romaniei* (Bucuresti: Humanitas, 2001), 128-144.

Ionescu, Crainic, and the young generation represented only one segment of Romanian society – the nationalism and anti-Semitism of intellectuals. Their ideas and beliefs, which were heavily promoted in the journals, magazines, and newspapers that they owned, were not accessible to everyone. How, then, did national ideas become so popular? How did they spread among the population inhabiting the Romanian territory? In order to find an answer to these questions, one has to study the student movements of the 1920s and to examine the first people who came into contact with the ideas promoted first by professors such as Cuza and afterwards by Ionescu: the students.

The history of the student movements of the 1920s is basically the history of the Romanian fascist movement which was to gain power in 1940 and which was responsible for the first killings, tortures, and extreme forms of violence against the Jewish population. Livezeanu explains that the origins of the Iron Guard can be traced to the universities, which were responsible for the emerging national elite in Greater Romania. Between 1922 and 1927, the nationalist movement remained limited to the universities, where there was an outburst of anti-Semitic prejudices.[28] Students were dissatisfied with the overcrowding and competition for insufficient resources, which translated into a complaint against the large number of minority students, especially Jews. Romanian students had to compete with them not only for a place at university but also afterwards for a position in different fields: "the fact that Jewish students formed the largest national minority in the general university population legitimated for many ethnic Romanians the most frequent nationalist demand for limiting their number".[29] The student national movement became known not only for its violent character but also for the problem it raised: the perceived threat that Jews posed to the ethnic Romanian population. Within the educational process of "fashioning" a truly Romanian elite, a minority occupying the universities and different jobs was seen as a significant impediment. The way in which the liberals, conservatives, and other politicians dealt with this issue in the interbellum period was the students' main source of anger, revolt, and dissatisfaction.

Among these students, there was one who succeeded in gaining the admiration and support of his colleagues as well as professors. His name was Corneliu Zelea Codreanu. A student of Cuza, together they established the National Christian Union and the League of National Christian Defense (LANC) in 1922; these were not political parties but rather national movements. In 1927, Codreanu decided to split from his professor, and from within

28 Heinen, *Legiunea Arhanghelului Mihail*, 100.

29 Livezeanu, *Cultural Politics in Greater Romania,* 246.

LANC he formed the Legion of the Archangel Michael later known as the Iron Guard movement. Codreanu believed he was chosen by God to guide Romanian people to the right path; for him, the Jew was responsible for the crisis faced by the monarchy, the Church, and the family – all of which stood for the values he cherished. The Jew incorporated everything that Codreanu hated, especially democracy and communism:

> Democracy makes Rumanian citizens out of millions of Jews, making them equal with Romanians, giving them the same legal rights. Equality? What for? We have been here for thousands of years with plow and weapon in our hands; with our labors and blood. Why equality with those who have been here for only one hundred, ten, or even five years? Let's look at the past: We created this state. Let's look at the future: We Rumanians are fully responsible for Greater Rumania. They have nothing to do with it. What could be the responsibility of Jews, in the history books, for the disappearance of the Rumanian state?[30]

Codreanu's ideas were not new; his discourse was similar to the one advanced by Crainic and Ionescu. "Codreanu was the apostle of a cause, not its theoretician or ideologist".[31] Nevertheless, he did introduce the idea of the *new man* portrayed as hard-working, correct, a man of action, a fighter, a person who puts the nation above all his personal needs.[32] He opposed the Romanian politician, or more precisely the general perception of the Romanian politician of the 1930s, who was corrupt and interested only in his own welfare. With regard to anti-Semitism, the fascist movement introduced a new label for the Jew, namely Bolshevik:

> When I say communists I refer to Jews… the situation of peasants from Bessarabia did not improve after the union. The Russian rule was replaced by the Jewish one; for 12 years it is exploited by the communist Jews; they are like leeches on the fagged out body of the peasant.[33]

For the legionnaires, the fight against the Jewish threat became a national mission. They "shifted the emphasis from social and protectionist economic

30 Corneliu Zelea Codreanu, *Pentru Legionari* (*For Legionnaires*) (Bucuresti: Totul pentru Tara, 1937), 220-221.

31 Volovici, *Nationalist Ideology and Antisemitism,* 139.

32 Heinen, *Legiunea Arhanghelului Mihail*, 100.

33 Codreanu, *Pentru Legionari* (*For Legionnaires*), 201-203.

demands to radical, revolutionary measures designed to settle the Jewish question";[34] one of these measures was the transfer from *numerus clausus* to *numerus nullus* in order to achieve "total purification".[35]

The movement was fully sustained by Ionescu and the young generation of intellectuals. The former adhered to the movement in 1933 and became its ideological spokesman offering his moral and political support. Eliade embraced and promoted the *national messianism* and the *new man*, which symbolized the Iron Guard's spirit[36] and raised the movement to the rank of national revolution.[37] Noica, probably more than Eliade and Cioran, was a great supporter of the Iron Guard. He praised the movement's aspirations – a better country, another type of ideal man for the Romanian nation – and believed in its mission to secure the revival of legendary Romania.[38] The relation between intellectuals and the Iron Guard was one of symbiosis. While intellectuals found in the movement the national and spiritual setting characteristic for their philosophy, the Guard was able to employ their literary talent. For intellectuals, the Legion was a sort of a project in the sense that they tried to implement their theories as much as possible; Eliade and Noica "tried to spiritualize the movement and blur or embellish its violent aspects".[39]

But it was not the support coming from intellectuals that made the Iron Guard the third largest party in the 1937 elections. The Iron Guard's shift from a movement to a political party was also the moment in which nationalism became a mass movement; this was when nationalism reached its last mass-phase, according to Miroslav Hroch. I believe the period of 1918-1930 was an experimental period in which elites tried to to accommodate themselves to the new social and political changes and find solutions to the challenges they brought. This was the period that parties started to readjust their policies; the problem was that they were doing it not for the sake of the population but for the sake of keeping power. It was also the time that nationalism became popular among students. Several national movements were established, followed by the creation of a number of right-wing parties including those of Cuza and Iorga. The failure of the elite to respond to the social and economic changes led to a wave of disappointment and frustration among the population, who perceived the Romanian politicians

34 Volovici, *Nationalist Ideology and Antisemitism,* 65.
35 Ion I. Mota in Volovici, *Nationalist Ideology and Antisemitism,* 65.
36 Volovici, *Nationalist Ideology and Antisemitism,* 91.
37 Ornea, *The Romanian Extreme Right,* 185.
38 Constantin Noica in Ornea, *The Romanian Extreme Right,* 196-199.
39 Volovici, *Nationalist Ideology and Antisemitism,* 139.

as being corrupt and having no consideration for their problems. Codreanu's discourse addressed these very people; but he did more than just talk. He turned his attention from students to what he considered the heart of the Romanian nation: the peasantry, the new political class who obtained the right to vote in 1918 but still felt unrepresented by the existing parties.

It was not through political discourse that Codreanu gained the support, the sympathy, and the votes of the peasants; he used his own image for that, and he also referred to traditions, symbols, and leaders from medieval times. Codreanu and the members of his movements began visiting Romanian villages, often on horseback and wearing traditional clothes and sporting long hair like young Romanian peasants. Their look resembled that of a romantic hero, a *haiduc*.[40] At the same time, their clothes were supposed to remind people of the Moldavian or Wallachian military leaders who fought against the Ottoman Empire. It was not long before Codreanu came to be called the *Captain.* Sometimes the campaigns did not even involve a speech, only short visits that included marching and singing patriotic songs.[41] Concrete political statements are hard to find in Codreanu's speeches; he used a metaphoric language in which he always made reference to God, to how Romanians were on the wrong path, and how the only salvation were the young, uncorrupted generation; only then would Romania become beautiful like a "golden sun".[42] Like Eminescu and Iorga, the legionnaires harked back to medieval times, a "moment of greatness and national glory"; but in comparison with Iorga who wanted to build schools in the memory of Romanian leaders, the legionnaires built churches.[43] Political discourses were also replaced by action: Codreanu called on legionnaires to go to villages and help peasants with the harvest, with building roads and bridges, and with "assassinating corrupt officials and prominent minority figures".[44]

These were more or less the men who turned a national student movement into a political party that eventually gained power in 1940. They had the support of one of the most important intellectuals, of the Church, and of almost 16% of the population based on the 1937 elections (the Liberal Party obtained 35% and the National Peasant Party 20%). They promoted an exclusive nationalism and the idea that an ethnic pure nation could only

40 Francisco Veiga, *Istoria Gărzii de Fier, 1919-1941: Mistica ultranaţionalismului* (*History of the Iron Guard, 1919-1941: The Mistique of Ultra-Nationalism*), (Bucuresti: Humanitas, 1993), 84.

41 Ibid., 112-113.

42 Heinen, *Legiunea Arhanghelului Mihail*, 121.

43 Ibid., 123.

44 Mark Biondich, *The Balkans: Revolution, War and Political Violence since 1878* (New York: Oxford University Press, 2011), 124.

be achieved within a totalitarian state, the future National-Legionnaire State. For them, the Jewish population was a threat and an impediment to the establishment of such a state; the Jews posed a "deadly danger" to the Romanian nation. They manipulated the feelings of insecurity, frustrations, and dissatisfaction of the population and presented a scenario in which "the Jew" was responsible for all the bad things that occurred.

Serbia

Before analyzing the establishment of Yugoslavia, it is worth mentioning the two other moments in history that have been extremely significant in the process of Serbian nation-formation and the construction of "the other": the Balkan Wars and the Second World War, both of which were characterized by extreme forms of violence. The two Balkan Wars (1912 and 1913) were not only about the victory of Christians against Muslims or about national goals or simply greed; they entailed village-burning, atrocities, and mass violence. While the First World War and its aftermath portrayed the existing demarcations between Serbs and Croats and the arrogant attitude towards other people such as Muslims, the Second World War demonstrated the violent aspect of the existing situation. While the Kingdom of the Serbs, Croats, and Slovenes had managed to keep the conflict between Serbs and Croats to the level of ideas and policies, what happened after 1939 was connected to extreme forms of violence, a sort of preamble to what would take place almost fifty years later.[45] Given this background, we can conclude that the genocidal policies implemented in the 1990s were, to a certain degree, already familiar to both Croats and Serbs.

45 Three main forces dominated the period 1940-1945: Ustasa, the Croatian fascist movement engaged in constructing an ethnically pure Croatia, in which the "Jewish question" was accompanied by the "Serbian question"; the Serb Chetniks; and the Partisans. The latter two launched themselves in a civil war to complete "the panorama of murderous chaos that filled Yugoslav canvas". Misha Glenny, *The Balkans 1804-1999: Nationalism, War and the Great Powers* (London: Granta Books, 1999), 403. Mass crimes were perpetrated by Croats against Serbs and by Serbs against Muslims, and vice versa. In Bosnia, at that time part of the Independent State of Croatia, the Ustasa embarked on a "cleansing process". According to the Croat nationalists, the Muslims of Bosnia and Hercegovina were perceived as "Croats of Muslim faith, brothers in the struggle against the Serbs" (Glenny, *The Balkans 1804-1999,* 494). In the round-ups and executions of Serbs living in Bosnia, the Ustasa also used groups of Muslim traders and landowners willing to work with the Croatian fascist movement. To take revenge, Chetniks killed civilians – most of whom were Muslims, not Croats – "between two and three thousands Muslims were killed in Foca, including children and women, many of whom were routinely raped beforehand" (Glenny, *The Balkans 1804-1999,* 494). Serbs were stigmatized by Croats on grounds of culture and religion; they were denied citizenship and subjected to genocidal policies.

The civil war of 1941-1945 resulted in the victory of the Partisans and the establishment of 45 years of communism; the myth of national unity perpetrated by the 1918 Kingdom of Yugoslavia was replaced by a new concept. The new Yugoslavia was constructed around the ideas of "Brotherhood and Unity". The new state was made up of six republics: Serbia, Croatia, Bosnia-Hercegovina, Montenegro, Macedonia and Slovenia, and two autonomous regions that were part of Serbia – Kosovo and Vojvodina. In this communist establishment, Marshal Tito perceived any form of national self-assertion as a threat to the state; "instead of accommodating legitimate expression of national identity, his preferred solution was to suppress it".[46] The first serious dispute between Serbs and Croats occurred in 1967 and had to do with language. Briefly put, Croat intellectuals contested the Novi Sad Agreement which made Serbo-Croat the literary language; they argued that by considering the Serbian variant the literary language, the Croatian language was just a regional dialect.[47] Differentiating one's identity linguistically was proof that "self-definition by language retained its force as an expression of identity"[48] in the Balkans.

The events of 1967 culminated in the Croatian Spring of 1971 in which the country "was swept by waves of popular national euphoria".[49] The authorities' response to this national euphoria was full-scale suppression, which drove nationalism underground. The same policy was applied to Serbian nationalism. It was only after Tito's death that nationalist ideas would emerge again. But Tito did more than just suppress the two nationalisms; he tried "to neutralize one nationalism by pitting another against it".[50] Following this logic, Tito eroded Belgrade's constitutional dominance by offering more power to the two autonomous provinces, Kosovo and Vojvodina. Another important decision taken by the communist leader that would provoke disagreement and dissatisfaction, especially among Serbs, concerned the Muslims; in 1961, they were officially recognized as an ethnic category, and in 1971 they were recognized as a nationality.[51]

Serbs reacted immediately to the Croatian demands regarding language; they argued that if Croatia wanted cultural or any other type of autonomy,

46 Glenny, *The Balkans 1804-1999,* 574.

47 Tim Judah, *The Serbs: History, Myth and the Destruction of Yugoslavia* (Yale University Press, 1997), 145-146.

48 George Schopflin, *Nations, Identity, Power: The New Politics of Europe* (London: Hurts&Co., 2000), 355.

49 Judah, *The Serbs,* 146.

50 Glenny, *The Balkans 1804-1999,* 574.

51 Ibid., 148.

then they should grant the same right to Serbs living in Croatian territory. The Serbian nationalist intellectuals of the 1960s were united by "self-consciousness belonging to a particular generation, imbibed with traditional national values and a particular vision of the Serbian national question, forged by their experience of the Second World War".[52] One member of this generation was Dobrica Cosic, the person responsible for the national revival of 1980. He was also the first to raise the "Kosovo question". In a speech in 1968, Cosic underlined:

> We cannot pretend not to see the widespread sense in Serbia of worsening relations with Albanians, the dread felt by Serbs and Montenegrins, the pressures to emigrate, the desires of the intelligentsia to leave Kosovo, the lack of equality... The chauvinist mood and nationalist psychosis among Albanians is not seen in its real dimension; the irredentist and separatist mood and desires in parts of the Albanians population are being underestimated.[53]

While Cosic was drawing attention to the situation in Kosovo, historian Jovan Marjanovic criticized the proclamation of a Muslim nation. Most of the changes that took place in the 1960s and 1970s, such as acknowledging the Muslim nationality or elevating the autonomous regions to the status of constitutive elements of the federation with equal powers as the six republics, made Serbs feel disadvantaged and led to the strengthening of nationalist feelings. All these brought into the national discourse a theme that would become central in the 1980s: "the communist stab-in-the-back". The idea was promoted by Professor Mihailo Djuric, who emphasized that:

> Serbs were unfairly accused of centralism and unitarism, whereas, in fact, centralism had been implemented after the war in order to prevent the raising of the question of national responsibilities for the genocide that had been carried out against the Serbs during the Second World War.[54]

The speeches, disagreements, or debates such as the ones mentioned above were more a criticism of the Yugoslavian communist regime. Many of these intellectuals were former partisans or people who believed in the construction

52 Jasna Dragovic-Soso, *"Survivors of the Nation": Serbia's Intellectual Opposition and the Revival of Nationalism* (London: Hurst, 2002), 36.

53 Ibid., 40.

54 Mihailo Djuric in Dragovic-Soso, *"Survivors of the Nation"*, 44.

of a Yugoslavian identity: "along with their initial leftist leanings, the fusion of Serbian national identity and sense of Yugoslav belonging conditioned them to see in the new system a way of bridging the national differences".[55] The disappointment and the unequal way in which they felt Yugoslavian authorities were treating constituent members made them turn back to Serbian nationalism. This says much about how weak the process of nation-formation was at the level of Yugoslavia; people considered themselves first and foremost Serbs or Croats and secondly Yugoslavians. This can be explained by the lack of any political and cultural freedom as well as the lack of public debates about significant and painful episodes from the past, such as the genocide committed by Croats. In this way, the authorities gave nationalists, intellectuals, and politicians the perfect weapon to manipulate the population and to build their discourses around feelings of fear and insecurity.

Tito died in 1980, leaving behind a political vacuum that eventually led to a political crisis. Without Tito, it was hard to maintain "brotherhood and unity" in Yugoslavia. His death raised the question of how Yugoslavia should be organized. In addition, there was the problem of the economy; by 1980, the country had accumulated an external debt of USD 19 billion. Moreover, the process of transforming Yugoslavia from a rural society to an urban-industrial one began late, developed slowly, and faced several problems. "[B]y 1967, over 2.5 million peasants had left the countryside but it was still home to 48% of the Yugoslav population… in the mid-1960s the cities approached saturation point".[56] There was also the issue of the social gap between the rural and urban populations to consider. The difference was also between North (Croatia and Slovenia) and South: "Serbia's unemployment rate in 1980 was at 17-18%, while Slovenia maintained near full employment until 1989 and Croatia's rates stayed under 10%".[57] The first signs of crisis came precisely from the region that Cosic had warned the authorities of in his 1968 speech. A riot of Albanian students in Pristina over the quality of the food in the canteen turned into a movement with a political character. People from Kosovo demanded equality with the other nationalities in Yugoslavia and called for the Republic of Kosovo.

The death of Tito gave more freedom to critics of the regime; his death was followed in Serbia by "de-Titoisation and revision of history".[58] Kosta Cavoski followed this trend; he argued that the Yugoslav nations were not

55 Dragovic-Soso, *"Survivors of the Nation",* 36-37.
56 Glenny, *The Balkans 1804-1999,* 588.
57 Dragovic-Soso, *"Survivors of the Nation",* 66.
58 Ibid., 77.

treated equally, with Slovenes and Macedonians being the winners and Serbs the losers. In a crisis, people tend to turn to the past and to their origins. When Romanian intellectuals tried to underline the unique character of their nation, they looked to the fifteenth and sixteenth centuries. Serbs also rediscovered the past after the death of Tito. In communist Yugoslavia, history was rewritten, and certain episodes were deleted from the history books, including the genocide committed by Croats against the Serbs. In an epic novel, Dobrica Cosic looked back on the First World War and portrayed the Serbs' struggle in the war. The purpose of the book was to emphasize the tragic destiny of Serbia, a nation fighting for liberty and greatness, which had often "been deceived and fooled and blinded itself to accomplish tasks that went beyond its capabilities".[59] But Cosic did more than just victimize the Serbian nation, he contested the idea of the brotherhood of the South Slavs – "with his idea of Serbs having won the war but lost the peace, Cosic implied that the creation of Yugoslavia, instead of a larger Serbian state, had been a mistake".[60]

"Yugoslavia: a mistake" was not the only theme developed by intellectuals; genocide also became a favorite topic. For nationalists, the genocide perpetrated by Croats and Muslims against Serbs was just another source of self-victimization. Serbs were eager to draw attention to fascist Croatia and the killing it sanctioned but there was no mention of the Serbs' own violent episodes against Muslim and Croats. But intellectuals did more than just promote the theory of Serbs being betrayed by Croats and Muslims. They did something even more dangerous: they emphasized the idea of the supposed "continuity of Croatian genocidal intention towards Serbs". The "pioneer" of this was a professor of Belgrade University, Vasilije Krestic. Also focusing on the theory of exploitation, he suggested that an ethnically pure Croatian state was a plan that Croatian leaders had been plotting to achieve for centuries; the Ustasha genocide against Serbs, therefore, "was deeply rooted in the consciousness of many generations".[61] By 1988, genocide was a central theme in the media. Explosive language, broad generalizations, and photos from the war portraying dead and mutilated bodies were employed in order to provoke a full shock effect.[62] This was maybe the most important role of intellectuals. They provided Milosevic with all the material he needed to give people the feeling of insecurity and fear which he later exploited to his advantage.

59 Dobrica Cosic in Dragovic-Soso, *"Survivors of the Nation",* 92.
60 Ibid., 92.
61 Vasilije Krestic in Dragovic-Soso, *"Survivors of the Nation",* 112.
62 Dragovic-Soso, *"Survivors of the Nation",* 113.

Within the section of "nationalism's revival" in Serbia, the last paragraph goes to the Serbian *Memorandum* from 1986. This brings into discussion names already mentioned in this chapter, such as Cosic and Krestic. The document drawn up by members of the Serbian Academy, entitled by the media "A Proposal for Hopelessness", was basically another way of underlining how endangered, threatened, and jeopardized the Serbian nation was. The threat was seen as coming from Croats and Muslims, who were responsible for leaving "the last remnants of the Serbian nation" in Kosovo after being faced "with a physical, moral and psychological reign of terror".[63] While Muslims were accused of pushing and forcing Serbs out of Kosovo, Croatians were considered responsible for discrimination and forced assimilation. The document was actually summing up all the theories and ideas developed by intellectuals beginning with the 1960s and culminating in the 1980s. Nevertheless, they did bring something new: the "physical, political, legal and cultural genocide"[64] that Kosovo Albanians were experiencing by the Serb people. Even though the *Memorandum* was the perfect example of a dangerous, radical nationalistic discourse promoting an exclusive Serbian nation and formulating some very serious accusations, it did not state the idea of a "Greater Serbia". The idea was not mentioned but it does not mean that people did not think about it.

In his book *The Dark Side of Democracy*, Michael Mann argues that no matter how bold the demands in the Memorandum were, Serbs wanted more. This category of Serbs was mainly represented by rural Serbs, "privileged but vulnerable public sector workers", returning Serb refugees and "threatened *precani* Serb communities". Basically, they were people suffering from the recession and decentralization, people whose status made them feel insecure and sometimes endangered. They wanted more than just talks and autonomy; they wanted "a Serb rule extended over all areas where Serb minorities lived in Kosovo and border areas of Croatia and Bosnia".[65] In other words, this would be "Greater Serbia", an idea formulated clearly not by intellectuals or people but by one politician – Slobodan Milosevic. After Tito's death and all the changes that this implied, Milosevic became aware of the force and power of nationalism, switching from communist ideology to nationalist ideology.

63 Excerpts from the *Memorandum* in Judah, *The Serbs,* 159.

64 Quote from the *Memorandum* in Michael Mann, *The Dark Side of Democracy. Explaining Ethnic Cleansing* (Cambridge University Press, 2005), 365.

65 Ibid., 365.

As in the Romanian case, the leader received the support of numerous intellectuals; they saw in him the right man for Serbia, the one able to solve the problems of the Serbian nation. Eager to obtain and maintain power, Milosevic had no problem in replacing communism with nationalism and Yugoslavia with "Greater Serbia". An extremely important moment in this process of transformation is Milosevic's visit to Kosovo Polje[66] in 1987. The speech he held there among angry, scared, insecure Serbs presented him as their protector. In a few words, Milosevic laid out several national ideas: the fighting characteristic of Serbs ("it was never part of Serbian character to give up in the face of obstacles. To demobilize when it's time to fight"[67]); the Serbs' right to live in Kosovo, a right defined in terms of land, memories, and traditions ("You should stay here for the sake of your ancestors and descendants. Otherwise your ancestors would be defiled and descendants disappointed"[68]). Almost one year later, the Serbs from Kosovo gave Milosevic another lesson. In April 1987, Milosevic organized a session of the Communist Party concerning the situation in Kosovo. On that day, 3,000 Serbs from Kosovo gathered in front of the Parliament; they demanded the abolition of Kosovo's autonomy. The crowd eventually left, but its presence there showed Milosevic that "an angry crowd could unsettle the Yugoslav leadership".[69] Both episodes – the incident with the Serbs from Kosovo and the *Memorandum* of 1986 – demonstrated how nationalism was embraced by the "masses", moving it to phase C in Hroch's terms. But what guided these people was a nationalist ideology constructed not only around myths, historical boundaries, and memories but also around fear and security issues. Once Yugoslavia disintegrated, groups started to fear each other.

66 Intimately connected with the Serbian Kingdom is the myth that would later be used by nationalists: the myth of Kosovo Polje. The episode is portrayed as the great Serbian defeat and the beginning of centuries of Ottoman oppression; in Serbian history (or more accurately, mythology), Kosovo is both the historic homeland of Serbs and the medieval Serbian Kingdom, the heartland of Serbia but also the place of their "greatest national tragedy" [Eric D. Weitz, *A Century of Genocide. Utopias of Race and Nation* (Princeton/Oxford: Princeton University Press, 2003), 193]. Vuk Karadzic wrote one of the best epic songs regarding the battle, "The Downfall of the Serbian Empire". Briefly put, the epic tale portrays how the prince Lazar of Serbia lost the fight against the Ottoman Empire due to the betrayal of one of his lords. Furthermore, it emphasizes Lazar's choice for the empire of heaven, which is everlasting, over the empire of the earth; this is in essence the explanation employed to explain the Ottoman oppression.

67 Slobodan Milosevic in Laura Silber and Allan Little, *The Death of Yugoslavia* (London: Penguin, 1995), 37.

68 Ibid.

69 Ibid.

The purpose of this chapter was to stress the most important national ideas that were promoted a few years before genocide took place, ideas that showed the ethnic path the nationalists took in the process of nation formation. By looking at the political, cultural, and economic factors, to which I added the national legacy of former generations of intellectuals, I have tried to explain why Serbian and Romanian elites stuck to ethnic nationalism. I presented the progress of nationalism in its three phases: the promotion of nationalist ideas by intellectuals, the way in which these ideas influenced or shaped future leaders, and the population's embracing of these ideas. Romanian or Serbian leaders managed to mobilize people around their nationalist ideology by exploiting and exaggerating some realities. Romania was largely a rural society, with most of the Romanian population living in the countryside, and had a foreign middle class; Serbia was less developed than Croatia and Slovenia and did lose some of its power and influence once the two provinces gained more or less the same rights as the six other republics. Nevertheless, it was not the fault of the Jews, the Croats or the Muslims that the state of affairs in Romania and Serbia was as it was. It was, however, precisely those situations that strengthened the feelings of insecurity and frustration. The first to exploit these feelings were intellectuals who themselves experienced them; whether they wanted to be part of a greater Romanian culture or see justice done in Serbia, the intellectuals took up the three themes Sémelin considers to be central in genocides: identity, purity, and security. They used them to "fabricate ideological constructions of the enemy, starting from myths and fears peculiar to that society".[70] They strengthened the ethnic nationalism that had already been taking shape for almost a century and a half. The next stage was the projection of these constructions onto the political scene, "culminating" in the transformation of these ideas into genocidal policies.

70 Semelin, *Purify and Destroy,* 53.

2 Demonic Transitions

How Ordinary People Can Commit Extraordinary Evil

Christophe Busch

Collective violence is a man-made event. The organized exclusion, persecution, and murder of thousands of victims is not a chance occurrence that suddenly erupts within a society. On the contrary, these episodes of violence are often well planned, prepared, and executed. Several actors play a crucial role in this process, sometimes steered by an authority, sometimes initiated within the killing fields itself. But all these actors have their own attitudes, fields of interest, maneuverability, and individual responsibilities. This heterogeneous perpetrator group, which has continuously expanded over time and research, can be divided into various categories or typologies.[1] Consider, for instance, the organizers (desk murderers), the ideologists, the architects, the executioners, and so on. In my opinion, these typologies are building blocks to grasp the heterogeneity of the perpetrator group and the complexity of the process of becoming a perpetrator. Describing these building blocks is one matter, but the interactions, the social contagion, or reciprocal mechanisms of influence is quite a different one. Supposing that we want to understand these processes and mechanisms that lead people to become entangled in the collective violence, we need to (clinically) focus on the system around the perpetrator and the relational aspects within his criminogenesis. From this perspective, we can compare collective violence to a murderous knot, an influential network of destructive (f)actors.

Yet the public at large sees the origin of these crimes as less complicated. Although there is a desire to understand how it is humanly possible to commit these horrendous crimes, the attribution of the destructive behavior is invariably black and white. One divides the community into a group of "others" with a murderous disposition on the one hand and on the other a group of "ours" with a charitable disposition. This dichotomy between good and evil – or 'us' and 'them' – does violence to the truth. It is a dual

1 Alette Smeulers, *Perpetrators of international crimes: Towards a typology.* Supranational Criminology: towards a criminology of international crimes (Antwerp: Intersentia, 2008), 233-265. Klaus-Michael Mallmann and Gerhard Paul, ed., *Karrieren der Gewalt: nationalsozialistische Täterbiographien* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2004), 17-18. Johannes Houwink ten Cate, "*The Enlargement of the Circle of Perpetrators of the Holocaust*," Jewish Political Studies Review 20, no. 3-4 (2008): 51-72.

and Manichaean view that finds its origin in the complex character of collective violence and the unwillingness to face up to one's own destructive potential. In other words, people want simple explanations for such behavior that do not displace them from their comfort zone. Christopher Browning translated it as such: 'We look for flaws in others, not latent potentials within ourselves. For surely "we" and "our" society could not do what the perpetrators and their societies have done.'[2] Robert Jay Lifton came to the same conclusion after his encounters with various Nazi camp doctors. In a conversation with a friend and Holocaust survivor, he replied that 'it is demonic that they were not demonic'.[3] It is indeed disturbing that these mass murderers cannot be distinguished on the basis of their upbringing, personality, political persuasion, or specific behavioral patterns.[4] An explanation for their destructive behavior cannot be associated with some sort of psychopathology or other abnormality. The 'mad or bad' hypothesis turns out to be a rather popular defense mechanism for our self-image than a valid explanation for perpetrator behaviour. The harsh reality is that collective violence is planned and executed by ordinary men.[5] These perpetrators are truly 'unremarkable people set apart only by their lethal activities'.[6] Lifton called these perpetrators banal, referring to the concept of the 'banality of evil' by Hannah Arendt.[7] But the crimes committed and the choices they made cannot in the least be called banal. So he described them as banal people who committed demonic crimes.

> Man is neither good nor evil. If one believes in the goodness of man as the only potentiality, one will be forced into rosy falsifications of the facts, or end up in bitter disillusionment. If one believes in the other extreme, one will end up as a cynic and be blind to the many possibilities for good in others and in oneself. A realistic view sees both possibilities as real

2 Christopher R. Browning, Foreword to *Becoming Evil, How Ordinary People Commit Genocide and Mass Killing*, by James Waller (New York: Oxford University Press, 2002).

3 Robert Jay Lifton, *The Nazi Doctors. Medical Killing and the Psychology of Genocide* (New York: Basic Books, 2000), 5.

4 James Waller, *Becoming Evil, How Ordinary People Commit Genocide and Mass Killing* (New York: Oxford University Press, 2002), 8.

5 Christopher R. Browning, *Ordinary men: Reserve Police Battalion 101 and the final solution in Poland* (New York: HarperPerennial, 1998).

6 Alex Alvarez, *Governments, Citizens, and Genocide: A Comparative and Interdisciplinary* Approach (Bloomington: Indiana University Press, 2001), 7.

7 Hannah Arendt, *Eichmann in Jerusalem: A report on the Banality of Evil* (New York: The Viking Press, 1963).

> potentialities, and studies the conditions for the development of either of them.[8]

Erich Fromm summarizes it concisely when he states that people have the capacity for both good and evil. He calls for an analysis into the conditions that spawn these powers. Understanding this transition and acknowledging the malicious potentials of people is the aim of this article. To this end, I will focus on those elements that gradually draw people into the process of collective violence. Their road to hell is often paved with the ambition to do good. What is more, these perpetrators themselves change during the execution or involvement in these crimes. They learn by doing, by using their destructive potential for the purpose of terror and torture. They learned something that most people didn't know they were capable of. Geoffrey Nice, prosecuting attorney of the International Criminal Tribunal for the former Yugoslavia, puts it clearly that 'all of these men had been changed completely from what they were to what they became in what would appear to be the space of a few days'.[9]

This transitional process has been described by a number of authors in several fields of study, for example: 'continuum of destruction' by Ervin Staub, 'cumulative radicalization' by Hans Mommsen, or 'continuum of otherisation' by Kathleen Taylor.[10]

Ervin Staub portrays this evolution as follows: 'there is a progression along a continuum of destruction. People learn and change by doing, by participation, as a consequence of their own actions. Small seemingly insignificant acts can involve a person with a destructive system: for example, accepting benefits provided by the system or even using a required greeting, such as "Heil Hitler". Initial acts that cause limited harm result in psychological changes that make further destructive actions possible."[11] As a result, most perpetrator narratives show that their involvement in the destruction process is mainly a process of gradation and less disposition. It is as the forensic psychiatrist Robert Simon

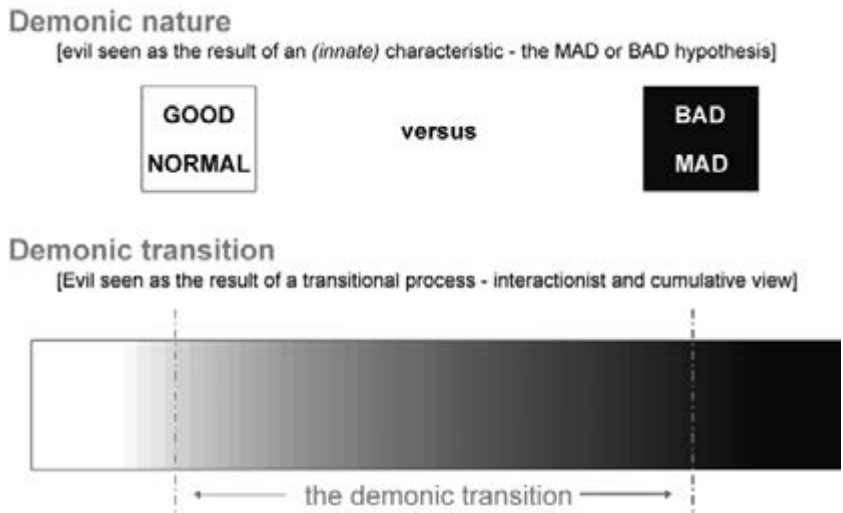
8 Erich Fromm, "The Heart of Man: It's Genius for Good and Evil," quoted in James Waller, *Becoming Evil*, 137.

9 Nanci Adler, ed., *Genocide and Accountability* (Amsterdam: Vossiuspers UvA, 2004), 33.

10 Kathleen Taylor, *Cruelty: Human Evil and the Human Brain* (New York: Oxford University Press, 2009).
Hans Mommsen, "From *Cumulative radicalisation and progressive Self-destruction as structural determinants of Nazi dictatorship,"* in *Stalinism and Nazism: Dictatorships in Comparison,* ed. Ian Kershaw and Moshe Lewin (New York: Cambridge University Press, 1997), 75-87. Ervin Staub, *The Roots of Evil: The Origins of Genocide and Other Group Violence* (New York: Cambridge University Press, 1989).

11 Ervin Staub, *The Roots of Evil*, 17.

Figure 2.1 The gray zone of the demonic transition (nature versus transition)



explains with the illuminating title of his book *Bad men do what good men dream*.[12] It is not the person who is demonic but rather the transitional process these perpetrators complete. A demonic transition!

Perpetrators of collective violence are indeed 'citizens of death's grey land'. They arrived at 'a confusing, emotional and moral no man's land'.[13] Christopher Browning formulates it unambiguously and borrows the concept 'grey zone' from Primo Levi. He refers to 'that dark world of mixed motives, conflicting emotions and priorities, reluctantly made choices, opportunism and acting out of self-interest combined with self-deception and denial – a world so human and universal'.[14] Within this deadly 'grey zone' lies the answer on how ordinary people are capable of committing extra-ordinary evil. The development of perpetrators is a gradual learning process. In small and often insignificant steps and influenced by a complex interplay of actors and factors, the perpetrator evolves on this continuum of destruction. A murderous network of (f)actors.

12 Robert I Simon, *Bad men do what good men dream: A Forensic Psychiatrist Illuminates the Darker Side of Human Behavior* (Washington D.C.: American Psychiatric Press, 1996).

13 Philip Caputo, *A rumor of war* (New York: Owl Books, 1996), 350.

14 Christopher R Browning, "From *Daniel Goldhagens gewillige beulen,*" in *Wiens schuld? De impact van Daniel Jonah Goldhagen op het holocaustdebat, ed.* Rolf Binner, Jan-Willem Bos and Otto Van Der Haar (Antwerp: Standaard Uitgeverij, 1997), 72.

L'enfer C'est Les Autres: Transitional Actors

> What we commonly mean by 'understand' coincides with 'simplify': without a profound simplification the world around us would be an infinite, undefined tangle that would defy our ability to orient ourselves and decide upon our actions. In short, we are compelled to reduce the knowable to a schema. [...] Nevertheless, perhaps for reasons that go back to our origins as social animals, the need to divide the field into 'we' and 'they' is so strong that this pattern, this bipartition – friend/enemy – prevails over all others.[15]

"'Understand' coincides with 'simplify'", postulates Primo Levi. Our ordinary lives are indeed extraordinarily complex. It is in this complexity and the social layeredness that evil lurks. This complexity and the necessary reduction to grasp our world can instigate the collective violence that we are studying. It is a universal story of 'we' and 'they', friend and enemy, good and evil, Übermensch and Untermensch, or Hutu and Tutsi. From a micro perspective one can observe that perpetrators possess innumerable possible motives for destructive behavior (status, power, dominance, self-interest, profit-seeking...). It was Rudolf Höss himself as camp commander of Auschwitz-Birkenau who reminded us that the life of prisoners depended on the behavior and mentality of several camp guards in spite of all rules and agreements.[16] People give meaning to their environment and behave themselves within social and cultural frames of reference.[17]

In my opinion, it is impossible to explain violent behavior merely as a result of ideological fanaticism – *the believers* – or obedience to authority – *the obedient*.[18] Even though both factors play a crucial role in the process, such a reduction to only one specific factor does not do justice to the complexity of human behavior. Therefore, it is necessary to outline these processes and (f)actors that increase the probability of genocidal behavior. There are risk factors on becoming entangled in the collective violence process; they recruit, motivate, and enable us to commit these acts. In an attempt to 'understand' the role and evolution of these (f)actors, I refer

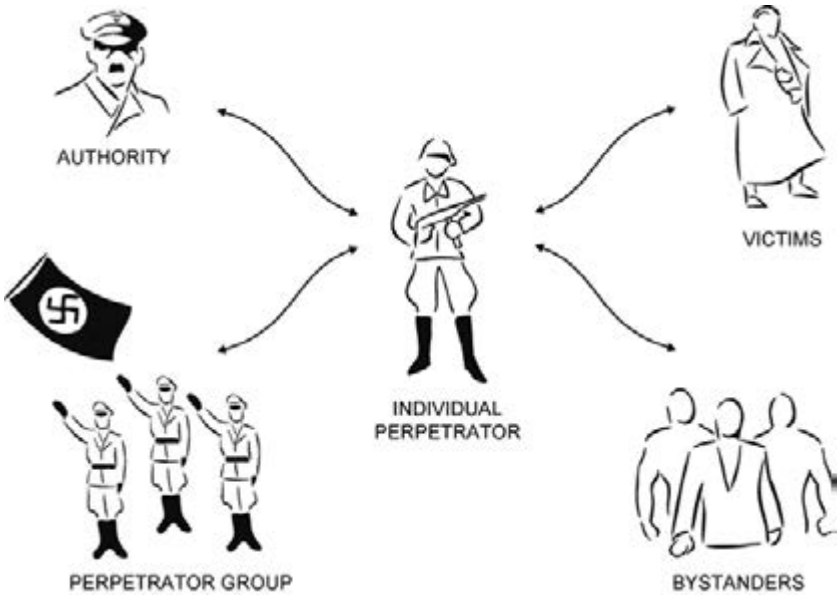
15 Primo Levi, *The Drowned and the Saved* (New York: Vintage Books, 1989), 36-37.

16 Steven Paskuly, ed., *Death Dealer: The Memoirs of the SS Kommandant at Auschwitz Rudolph Höss* (New York: Da Capo Press, 1996), 91.

17 Harald Welzer, *Täter: Wie aus ganz normalen Menschen Massenmörder werden* (Frankfurt am Main: Fischer Verlag, 2005). Harald Welzer, "Mass murder and moral code: some thoughts on an easily misunderstood subject," *History of the Human Sciences*, no. 2-3 (2004): 15-32.

18 Cf. the Goldhagen-Browning debate.

Figure 2.2 A graphic representation of the actors of destruction



to insights from several disciplines such as social psychology, sociology, biology, historiography, and – last but not least – criminology.[19] My basic assumption for this explanatory model is the social nature of evil. Genocide and mass murder originate in the minds of people. They are configurations of collective violence that need to be planned, organized and executed by human hands and human thoughts. It is the result of interactions between groups of people with a deadly outcome. In other words, a large part of the explanation for this perpetrator behavior lies in the reciprocal interaction processes between these actors of destruction.

Within this simplified model of actors I distinguish five categories, namely: the authority, the perpetrator group, the individual perpetrator, the victims, and the bystanders. This model thus consists of three collectives and two specific individuals. On the one side, we have the authority possessing absolute power like Adolf Hitler, Pol Pot, Jozef Stalin, or Mao Zedong, and on the other side, the mass murderer himself as human being in a social and biological sense. Obviously, the boundaries between these collectives are diffuse and consist of subgroups and cliques. Even members from the

19 Benjamin A. Valentino, *Final Solutions: Mass Killing and Genocide in the 20th Century* (New York: Cornell University Press, 2004), 39.

victim groups who are forced to participate in the destruction process or members of the perpetrator group who are trying to save people from their deaths show us that the boundary between perpetrators, bystanders, and victims is changeable over time.[20] History shows us a huge amount of narratives of shifts between these categories. But the point to be made here is that perpetrator behavior is influenced by the interactions within and between these three hierarchically structured collectives. Each individual (perpetrator, victim, or bystander) lives in specific networks with their own rules, practices, and traditions. People become influenced by all the (f)actors inside the networks they are a member of (in-group) but also by the 'networks from the other side' that they do not belong to (out-group). We need 'the others' as a mirror for our own perception and evaluation.

Perpetrators and victims are both active participants in this complex process of reciprocal interpretation, signification, and assessment of oneself, the situation, and the opposition.[21] This circular process forms patterns of action and reaction that shape our world. A striking example of this is the testimony of Fritz Hensel, the brother-in-law of camp commander Rudolf Höss. Hensel resided about four weeks at his in-laws in the villa near the death camp. During a walk through the camp, Höss and Hensel ran into a lorry full of corpses. They both engaged in a conversation on the legal and moral aspects of the camp. Höss acknowledged the violent character of the place to his brother-in-law, who in turn emphasized that he could not understand it. According to Höss, this was 'because you come from the outside. Here we look at things differently'.[22] Later that evening, Hensel asked him what they meant with the term 'Untermenschen'. Höss replied: 'They are not like you and me. You saw them yourself; they are different. They look different. They do not behave like human beings.'[23] His answer gives us an inkling of how he perceived his 'reality'. These victims were no (longer) human beings. After all, human beings would not live in such wretched conditions, nor would they submit so willingly to their fate. The outsider sees, of course, that these living conditions are created by the perpetrators and that the victims, in this stage of the persecution, have only very limited choices available.

20 Aleksandr Solzhenitsyn suggested that "the line dividing good and evil cuts through the heart of every human being. And who is willing to destroy a piece of his own heart?" [Solzhenitsyn, *The Gulag Archipelago 1918-56* (London: Harvill Press, 2003), 75].

21 Luc Reychler, ed., *De volgende genocide* (Leuven: Leuven University Press, 2004), 84.

22 Steven Paskuly, *Death Dealer*, 198.

23 Ibid., 198.

The interpretive frameworks play a crucial role or, in the words of Höss, 'we look at things differently'. People learn by doing and by imitation. The victims also learn from each other. In this light Luc Reychler makes the following comparable observation: 'also they learn-by-doing and evolve on a continuum of victimhood to their final downfall. The further the destruction process has progressed, the more difficult it is to be halted, until the situation leaves no maneuverability for the victim.'[24] The victimology stresses this interactive involvement between the perpetrator and the victim. The vulnerability of the victim, the characteristics of the victims (in terms of difference), the relation between perpetrator and victim (conflicts or disputes), and the behavior of the victim can increase the possibility of victimhood.[25] A similar proposition does apply to direct or indirect bystanders. These bystanders are often *passive* actors of destruction. Their apathy can contribute to the further exclusion, persecution, and destruction of the victims. The perpetrators often see the absence of disapproval as a form of silent consent.

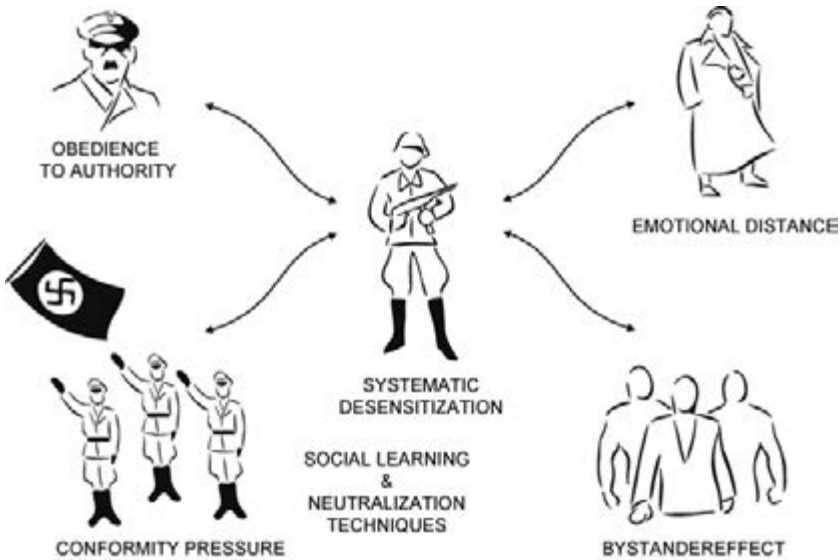
A Genocidal Knot: Transitional Factors

Human beings are first and foremost a social species. A large part of our evolutionary fitness can be attributed to our cooperation in tribes or networks. We continuously interact with each other both consciously or unconsciously. Who we are and what we do cannot be studied in a social vacuum. The individual mass murderer or genocidal perpetrator can therefore not be disconnected from their genocidal network, which encompasses a wider net of actors (one authority, the perpetrator group, the victims, and the bystanders). He resides in a murderous habitat, which in a horrific way is searching for its balance. Genocide, therefore, is a socially constructed event. It involves groups of individuals, people of flesh and blood, who are the basic cause of the creation and further evolution of collective violence. Some social psychological and biological dynamics become clearly visible within these actors of destruction. Think, for example, of the obedience to authority, group conformity, and biological reluctance to use deadly force. In all this, it is striking that it is not only all these diverse actors but also the processes that occur that are mutually related. A representation in pictures of these actors of destruction is a theoretical division where

24 Luc Reychler, *De volgende genocide*, 87.

25 Ibid., 89-93.

Figure 2.3 A graphic representation of the transitional factors



not only groups but dynamics also overlap each other. The distance to the victim for example can have an impact on the level of obedience and the other way around, just like with the aspiration for conformity. Any passive behavior of the bystanders can only reinforce this whole dynamic. We can safely say that we are dealing here with a web or 'knot' of actors and dynamics that are in constant interaction (circularity). The complexity of the human behavior is therefore impossible to represent clearly. There exists a kind of indivisibility of all the numerous interwoven factors. It is my aim to highlight those factors that recruit, motivate, and enable people to commit extraordinary crimes. I aim to deal with those factors that frequently play a role in the transitional process of becoming a perpetrator, namely *the risk factors for collective violence*.

In this case also, understanding shall mean simplifying a bit, knowing that in reality genocide does not consist of a cocktail of three or four ingredients. Each factor separately does not happen in isolation from the others. Just like the actors, these transitional factors are also continuously mutually interacting. And although we will study four clusters of risk factors, we must stress that the destructive power is situated mainly in the combination or rather interaction between these factors. The whole is definitely more than the sum of its parts. In order to grasp this complexity, I will cluster these transitional factors into four categories: 1) Influences from the perpetrator

group (obedience and conformity), 2) Emotional distance to the victim, 3) Systematic desensitization, and 4) Social learning amongst perpetrators.

These are the factors that have an important transitional influence on the individual perpetrator, his reference framework, and the behavioral choices he makes therein. It is not the sum of these risk (f)actors but their mutual interactions that will have a multiplication effect. The perpetrator's world is rational, logically constructed, and makes sense from his point of view. According to him, 'good' means killing 'the other'. It is thus the circular interaction between these transitional factors that can address our destructive potential and nullify our biological reluctance to kill. Transitional factors operate somewhere in between black and white, in the middle of that grey zone of the perpetrator's behavior. They shape a bounded rationality that can result in the gradual entanglement to the collective violence process.

Influences from the Perpetrator Group (Obedience and Conformity)

As far as the perpetrator group is concerned, I would like to mainly focus on the situational aspects. It is obvious that each individual has their own peculiarities, characteristics, empathic ability, and the like. And although these numerous personal traits and dispositions always play a role, it would divert me too much if I were to treat them within the scope of this article. In this instance, I would like to mainly focus on the transitions that happen to people and the mechanisms often involved in them. It is in the same vein that the social-psychologist Leonard Newman highlights the artificial discussion between situation and disposition: "The battle over which variables account for more variance in behavior, personality traits or social contexts – was actually abandoned a long time ago. It has long been recognized that people and their traits and the situations in which they find themselves *interact*. In other words, not only are stable dispositions and situational influences both important causes of behavior, but more than that, people and situations combine to elicit behavior in complicated ways, and even have the potential to transform each other."[26]

26 Leonard S *Newman*, "From *Beyond situationism: The social psychology of genocide and mass killing*," In *NS-Täter aus interdisziplinärer Perspektive*, by Helgard Kramer, ed. (München: Meidenbauer, 2006), 110.

So, if we want to look for a (situational) explanation for the perpetrator's behavior, we must first listen to what the perpetrators themselves have to say about their actions. Interpreting these eyewitness statements is often made more difficult because certain interests such as prosecution, social acceptance, or exactly the opposite, rejection, can be attached to it. It is in this framework that Jean Hatzfeld states that the perpetrator will first deny the facts and then lie about them.[27] It was during the post-war court cases such as the Nuremberg or Eichmann trials that many perpetrators declared to be not guilty of the acts they were accused of. Time and time again, the Nazi elite pleaded 'ich bekenne mich im Sinne der Anklage nicht schuldig.'[28] As grounds for pleading not guilty, they steadfastly used the known defense mechanisms such as: negating their knowledge, negating their responsibility, or the 'tu quoque' argument.[29] The story of the perpetrators could usually be simplified to the following two premises. On the one hand, they used the 'wir haben es nicht gewußt' line and on the other 'Befehl is Befehl'. They resolutely pushed all responsibility in the direction of the Führer, who of course had committed suicide in his bunker in Berlin.

Although these arguments do not make sense when trying to prove their innocence, they do say something about what influenced their behavior. In reply to the question by Leon M. Goldensohn, prison psychiatrist from January 1946 until July 1946 in Nuremberg, whether the murder of 2.5 million people did not get to him sometimes, Camp Commander Rudolf Höss replied:

> I thought I was doing the right thing. I was following orders and now of course I understand that that was wrong and unnecessary. However, I do not understand what you mean with 'does it get to me', because personally I never killed anybody. I was only the leader of the Auschwitz destruction programme. It was Hitler who, through Himmler, gave the order and it was Eichmann who gave me the order regarding the transports.[30]

It transpired that the executioners of the violence relied on the military command structure, as if committing a crime because a higher authority

27 Jean Hatzfeld, *Seizoen van de Machetes: Het verhaal van de daders* (Amsterdam: De bezige bij, 2004), 54.

28 Jan De Laender, *Het hart van de duisternis: Psychologie van de menselijke wreedheid* (Leuven: Davidsfonds, 2004), 242.

29 The 'tu quoque' argument is similar to the neutralizing technique 'condemnation of those who condemn' (supra).

30 Robert Gellately and Leon Goldensohn, *Neurenberggesprekken: Nazi's en hun psychiater Leon Goldensohn* (Amsterdam: JM Meulenhoff, 2004), 345.

ordered you to is no longer a crime. Our initial astonishment about this excuse must, however, not stand in the way of critical reflection. We must ask ourselves whether or not it is possible for people to barely register any subjective guilt when they commit crimes ordered by a legitimate authority.[31] Is it plausible to think that the perpetrators of the violence can appease their conscience by believing that it wasn't them but the Führer who had taken the decision to exterminate? Herbert Jaeger called these crimes therefore "Massenmordes ohne schuldgefuhl" (mass murder without the guilt).[32] The question remains whether this excuse was only legitimately used within the framework of a court case in order to escape prosecution, or whether this mechanism of shifting responsibility was also active within the killing fields themselves?

The man who focused on *the individual in a social world* and the mechanism of shifting responsibility was a young psychology professor at Yale University.[33]

Stanley Milgram wanted to know if people were capable, when ordered by a legitimate authority, of torturing a fellow human being by applying electric shocks. Would these guinea pigs, Joe Bloggs, obey the morally unacceptable orders of this authority? Milgram organized an experiment, using the pretext that he was executing research into the effects of punishment on learning and memory.

With his notorious experiment, Milgram proved that *no less than 62.5% of his test subjects obeyed his orders.* It transpired that a majority of people were capable, when ordered by the test authority, of applying painful shocks to fellow human beings, regardless of cries for help and pleas by the victims. The results of his experiment shocked the world. Although his findings were rather overwhelming, we must also point out that 37.5% of his test subjects did not obey the orders. More than one-third was able to resist the pressure of the experimental setting and quit during the course of the experiment. It is equally important to refrain from considering the people who obeyed as monstrous people or sociopaths. Everybody who has read Milgram's detailed research reports or who has attentively watched the experiment's documentary will know that the test subjects (teachers) were exposed to

31 Jan De Laender, *Het hart van de duisternis*, 243.

32 Herbert Jäger, *Makrokriminalität: Studien zur Kriminologie kollektiver Gewalt* (Frankfurt am Main: Suhrkamp Verlag, 1989), 9.

33 Stanley Milgram, *Obedience to Authority: An Experimental View* (New York: HarperPerennial, 1974). Thomas Blass, ed., *Stanley Milgram: The individual in a social world Essays and experiments* (London: Pinter & Martin, 2010). Thomas Blass, *The Man Who Shocked the World: The Life and Legacy of Stanley Milgram* (New York: Basic Books, 2004).

an enormous level of stress. In 1963, Milgram reported extensively about the stress these people had experienced.

> In a large number of cases, the degree of tension reached extremes that are rarely seen in sociopsychological laboratory studies. Subjects were observed to sweat, tremble, stutter, bite their lips, groan, and dig their fingernails into their flesh. These were characteristic rather than exceptional responses to the experiment. [...] At one point he [one of the participants] pushed his fist into his forehead and muttered: "Oh God, let's stop it." And yet he continued to respond to every word of the experimenter, and obeyed to the end. [...] I observed a mature and initially poised businessman enter the laboratory smiling and confident. Within 20 minutes, he was reduced to a twitching, stuttering wreck, who was rapidly approaching a point of nervous collapse.[34]

The test subjects that obeyed were ordinary people progressing on a continuum of destruction. The question, however, remains: what made them obey? In order to clarify things, I have clustered the variables that influence obedience into four categories, namely: the direct legitimate authority, the agentic nature of obedience, the sequential nature of obedience, and the distance to the victim. These four clusters together contain the variables that influence the level of destructive obedience to an authority.

The first variable is the authority itself. It is very clear that this has a crucial place within these obedience studies. The test subjects' aggression – the application of electric shocks – is of the instrumental kind. In other words, the test subjects were not intrinsically motivated, by hate for example, to torture their victims. On the contrary, the only reason they obeyed was to avoid conflict with the test leader, the authority.[35] The presence and immediate control of this authority is therefore of the utmost importance and seems to be an important factor in obedience.

Apart from that, the authority itself is also important. It must be a legitimate authority. We have learned to obey people with the power and function of an authority. A uniform or a similar symbol usually expresses their power. Milgram also proved that apart from the perception

34 Stanley Milgram, "Behavioral study of obedience." *Journal of Abnormal and Social Psychology*, no. 67 (1963), 375-377. Arthur G. Miller, "From *What can the Milgram Obedience Experiments Tell Us about the Holocaust? Generalizing from the Social Psychology Laboratory*," in *The Social Psychology of Good and Evil,* by Arthur G. Miller, ed., (New York: Guilford Press, 2004), 196.
35 Jan De Laender, *Het hart van de duisternis*, 253-254.

and interpretation of these power symbols, the monopolistic source of authority is important.[36] Blind obedience requires one voice, one power, one authority. Or, in the words of the Nazis: 'ein Volk, ein Reich, ein Führer.' These forms of monolithic authority are frequently found in cases of mass murders or genocides, where we are usually dealing with a totalitarian state or organization which does not allow for any opposition or autonomy and whose rulers usually employ 'supra-individual fictional slogans' such as: in the name of 'our homeland', 'God', 'the nation', 'honor', or 'the race'. People usually are overawed by the supra-individual fictional slogans and treat them with respect and idolatry. Rummel translated it in his famous maxim 'power kills, absolute power kills absolutely'.[37]

A second important variable is the agentic situation in which our test subjects were put. 'Moved into the agentic state, the person becomes something different from his former self, with new properties not easily traced to his usual personality', Milgram declared.[38] It is a situation whereby the test subject sees himself as an instrument of somebody else's wishes. He concentrates on his situation and lets his behavior be controlled by the authority present. He has the feeling of not acting independently anymore but rather of being the extension of the authority's will (test leader). Zygmunt Bauman calls this agentic situation the opposite of the autonomous situation.[39] Perpetrators talk about a sort of loss of freedom. They feel as if they are not free to act as they see fit. In their own words, they act according to the real or perceived threat emanating from the authority (putative coercion). In military power relations, it is certainly conceivable for disobedience to be punished.[40] From this perspective, disobedience or desertion is a violation of the rules and must be 'corrected'. Such a threat of punishment will drastically increase obedience. Milgram proved with his experiment that it is not about *what* the test subjects do but *whom* they are doing it for. He revealed the mechanism of shifting responsibility.[41] The test subject recognizes the legitimacy of the authority and gives it the right to give him orders, which he follows willingly. The responsibility for the order lies then with the legitimate authority and not with the actor or test subject himself. Bauman further builds on this and says:

36 Zygmunt Bauman, *De moderne tijd en de Holocaust* (*Amsterdam: Boom, 1998*), 199-201.

37 Rudolph J Rummel, *Statistics of Democide: Genocide and Mass Murder since 1900* (Münster: Lit, 1998), 1.

38 Stanley Milgram, *Obedience to Authority*, 143.

39 Zygmunt Bauman, *De moderne tijd*, 198.

40 Jan De Laender, *Het hart van de duisternis*, 263.

41 Zygmunt Bauman, *De moderne tijd*, 197-198.

> We may surmise that the overall effect of such a continuous and ubiquitous responsibility shifting would be a free-floating responsibility, a situation in which each and every member of the organization is convinced, and would say so if asked, that he has been at someone else's beck and call, but the members pointed to by others as the bearers of responsibility would pass the buck to someone else again. One can say that the organization as a whole is an instrument to obliterate responsibility. The causal links in co-ordinated actions are masked, and the very fact of being masked is a most powerful factor of their effectiveness.[42]

We also need to take into account the fact that there is rarely a one-on-one relation between the authority and the obeying person. It usually is a group or entity of perpetrators, and it is exactly this collective aspect of the crimes that increases the relative ease with which they are committed. The responsibility becomes, in fact, elusive because an indirect involvement is what we are dealing with here.[43]

A third variable is the gradual or sequential nature of obedience. During the experiment, obedience was slowly built up step by step. Gradually, ever stronger shocks (in steps of 15 volt) were applied, concurrently increasing the gradual psychological dependence on the authority.[44] Bauman used the swamp metaphor to explain this mechanism:

> Everyone who once inadvertently stepped into a bog knows only too well that getting oneself out of the trouble was difficult mostly because every effort to get out resulted in one's sinking deeper into the mire. One can even define the swamp as a kind of ingenious system so constructed that however the objects immersed into it move, their movements always add to the 'sucking power' of the system.[45]

In Milgram's experiment, the test subjects did not find it difficult to apply the first shocks. But as these and the social counter-pressure increased, their application became ever more horrifying. Likewise, the costs of withdrawal increase dramatically. The situational obligation locks the test subject in his position: in other words, the fact that the test subject has already obeyed in the past will dictate his future behavior of obedience.

42 Ibid, 198. (English edition, 163)
43 Ibid., 198.
44 Jan De Laender, *Het hart van de duisternis*, 260.
45 Zygmunt Bauman, *De moderne tijd*, 192. (English edition, 157.)

Milgram called it the 'binding factor'. Bauman highlights the paradox of this sequential action.[46] The test subject becomes a slave of his previous actions, because there is a gradual obligation to apply the next shock. If indeed this shock is not acceptable, what can possibly justify the preceding slightly lighter shock? This means that you can not possibly stop now without admitting that the previous shocks were also unacceptable. 'You can't clean without getting yourself dirty. In order to hide the dirt, you need to keep muddling on'.[47] Perpetrators of genocidal violence show the same gradual involvement.

The fourth important variable detected by Milgram is the distance to the victim or the suffering caused. The willingness to commit cruelties is inversely proportional to the distance to the victim.[48] In several forms of the experiment, Milgram examined how the variable 'distance-closeness' influenced the obedience percentage. Milgram states: 'If in this study an anonymous experimenter could successfully command adults to subdue a fifty-year old man, and force on him painful electric shocks against his protests, one can only wonder what government, with its vastly greater authority and prestige, can command of its subjects.'[49] With this remark, Milgram touched upon a very important subject, namely: what is the generalizability of the experiment? Because the experiment was an artificial and finely tuned research project, when compared to real-life situations, two big differences immediately become apparent.[50] First, the relational aspect was very short and ad hoc. The test subjects did not know the test leader and their pseudo test subjects beforehand. They had simply replied to an ad in a newspaper and took part for only one hour in the experiment. Second, the experiment usually consisted of a test leader, the authority, who very purposefully and consistently interacted with the test subject. These two aspects are very rarely found in real-life situations, where behavior is influenced and guided by incalculable specific (f)actors. For there is a whole set of interacting variables that could have influenced the perpetrators' choices and their resulting behavior. Bauman names a few factors that were lacking in Milgram's experiment but that are always present in relationships stretching over a certain period. He indicates factors such as solidarity and the feeling of mutual obligation but also the diffuse

46 Ibid., 192-194.

47 Ibid., 193.

48 Ibid., 189.

49 Stanley Milgram, "Some conditions of obedience and disobedience to authority." *Human Relations*, no. 18 (1965), 75. Arthur G. Miller, ed., *The Social Psychology of Good and Evil*, 193.

50 Zygmunt Bauman, *De moderne tijd*, 199.

reciprocity, the routine, and the multiple sources of authority.[51] Reality, it seems, is much more complex than the re-enactment in Milgram's lab. And although obedience to an authority seems to be a powerful force, it does not seem to be in its own right a real motivation for genocide or mass murder. Ervin Staub states that the motivation to obey is often a result of the desire to follow the leader, to be an excellent member of the group, or to show respect for the authority.[52] Obedience to an authority does play an important part, but it takes more than that to explain perpetrator behavior during genocides and mass murders. The perpetrator group is not only influenced by authority but also by the numerous variables within and outside of the group. 'A society's strong respect for authority is *one* source of genocidal violence. A tendency to like and obey authority is one characteristic of perpetrators.'[53]

In other words, 'the others' or the perpetrator group plays an important role in the transformation into a perpetrator. It is this perpetrator group that enables people to commit extraordinary evil. The tribal pressure resulting from these fatal friendships can enable people to execute behavior they individually would abhor. Gustave Le Bon analysed the Parisian street gangs during the French Revolution. In his book *La Psychologie des Foules* from 1895, he notes that aggression increased significantly when people were part of these anonymous groups.[54] The crowd has a life of its own, as it were, its own thinking and its own (more aggressive) behavior. He also mentioned 'un esprit collectif', a kind of collective spirit that captured all members of the group. Membership of a group indeed also includes a form of psychological protection. 'The crowd will protect its members by making them unidentifiable,' according to Jan De Laender. The anonymity in a group takes away the fear of punishment or retribution. The actions of one individual are only one link in a whole chain of connected actions. The 'Schreibtischtäter' who edits the transport lists to Auschwitz-Birkenau does not feel any responsibility for the ensuing mass murder. The divisional organisation of the genocide dissolves the feeling of responsibility. The large distance created between the action and its eventual effect restricts our moral sensitivity. The extraordinary evil is being segmented and hidden in long causal chains. This in turn creates a diffuse responsibility or in other

51 Zygmunt Bauman, *De moderne tijd*, 199-200.

52 Ervin Staub, *The Roots of Evil*, 29.

53 Ibid., 30.

54 Jan De Laender, *Het hart van de duisternis*, 71-72. James Waller, *Becoming Evil*, 29-30.

words a 'free-floating responsibility'.[55] This is what Werner Dubois[56] said as a witness during his trial in the 1960s about his role as guard in Sobibor:

> I know very well that the extermination camps were used to commit murder. What I did was participate in it. If I get sentenced, I will have deserved it. Murder is still murder. When evaluating guilt, I think the actual job in the camp is of no importance. Wherever we were employed, we all were just as guilty as the next man. The camp worked in a chain of jobs. Should one link in that chain break, the whole enterprise would collapse.[57]

Loyalty within the group, the well-known band of brothers, was therefore of the utmost importance to keep the chain of murders going. Research and experience show us, however, how difficult it is to leave a group. This tribal pressure has convincingly been indicated by the conformity experiments by Solomon Asch.[58] But recent biological research by Paul Zak on *the moral molecule* or the hormone oxytocin also shows us the biological basis of these tightly knit groups, the perpetrator super organism.[59]

'We called them cockroaches' (*Emotional Distance to the Victim*)

It is our empathic and physical distance to the victim that will mainly influence our perception, our emotional experience, and our resulting behavior. Aggression becomes significantly easier to execute when it can be done from a distance. The greater the physical distance to the victim, the more the reality level of killing decreases. Increasing this distance is not just a physical matter, expressed for example in meters. The distance between the perpetrator and the victim can be increased by accentuating the mutual differences or by intentionally increasing the causal chain of

55 Jan De Laender, *Het hart van de duisternis*, 75-76.

56 Werner Dubois was a guard at Vernichtungslager Sobibor. He was present during the uprising in October 1943.

57 Raul Hilberg, *Daders Slachtoffers Omstanders: De joodse catastrophe 1933-1945* (Haarlem: Becht, 2004), 31. Jules Schelvis, *Vernietigingskamp Sobibor* (Amsterdam: De Bataafsche Leeuw, 2004), 285.

58 Jan De Laender, *Het hart van de duisternis*, 292. Roel W. Meertens, Yvonne R.A. Prins, and Bertjan Doosje, *In iedereen schuilt een terrorist. Een sociaal-psychologische analyse van terroristische sekten en aanslagen* (Schiedam: Scriptum, 2006) 56-58.

59 Paul J. Zak, *The Moral Molecule: The New Science of What Makes us Good or Evil* (London: Bantam Press, 2012).

responsibilities within the perpetrator group. Distance is therefore not just a physical matter. Dave Grossman describes four kinds of emotional distance which, as far as killing a fellow human being are concerned, are just as efficient as physical distance.[60] These four are cultural distance, moral distance, social distance, and mechanical distance. These four kinds deal mainly with the emotional involvement and identification with the victim. Emotional withdrawal seems to be the core in each of these cases. According to Erich Fromm, there is a clear link between this withdrawal and the prevention of destructive aggression: "There is good clinical evidence for the assumption that destructive aggression occurs, at least to a large degree, in conjunction with a momentary or chronic emotional withdrawal."[61]

This process of labeling and evaluation is decisive in the first kind of emotional distance, namely cultural distance.[62] Creating cultural distance is an often-used tactic when conditioning and systematically desensitizing future genocidal perpetrators, usually by means of incendiary media like radio and/or film. The enemy is presented as an inferior form of life, who is a threat to the group that needs protecting. Examples of this tactic are the incendiary radio programs of the Rwandan radio station *Radio Milles Collines* which, during the genocide, incited the population to exterminate the Tutsi cockroaches as well as the 'documentary' entitled *Der ewige Jude* construed by the Nazis. All genocides know descriptions where, after a process of otherization, the victim group is dehumanized. This feeds one of our motivations, namely creating and maintaining a positive image of ourselves. If the other party is disease-spreading vermin, then I am not. This is a lesson that is pretty amenable to learn. To call the victim group an inferior breed of animal is a very recognizable part of the socialization process of the perpetrator. Not unimportant is the style in which this happens, because words here are the carriers of the actions.[63] In other words, it is the language used in order to create cultural distance which is of remarkable importance. Our perception of reality, for example, is created by the use of language, whereby content is dictated by the cultural, social, and political context. This also means that nobody escapes the tyranny of the linguistic conditioning. In this context, it is important to note that languages can be a powerful cultural and political weapon, of which C.

60 Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (New York: Back Bay Books, 1996), 158-170.

61 Erich Fromm quoted in *On Killing*, by David Grossman, 160.

62 Dave Grossman, *On Killing*, 160-164.

63 Herbert Hirsch, *Genocide and the Politics of Memory: Studying Death to Preserve Life* (North Carolina: University of North Carolina Press, 1995), 98.

Wright Mills said: 'we must approach linguistic behavior, not by referring it to private states in individuals, but by observing its social function of coordinating diverse actions.'[64]

From a transitional point of view, we cannot underestimate the influence of language on the creation of cultural distance. Grossman, for example, states that when you treat and kill people like cattle, you will consider them cattle,[65] something that was abundantly clear in Gitta Sereny's book about camp commander Franz Stangl. Sereny interviewed Stangl for several days and noticed his aberrant perception of the thousands of victims:

> I wanted to get him to speak more directly about the people, and asked where the people were who had come on the transport. His answer continued to be evasive; he still avoided referring to them as 'people'.
> 'Oh, by that time of the morning everything was pretty much finished in the lower camp. A transport was normally dealt with in two or three hours. At 12 I had lunch – yes, we usually had meat, potatoes, some fresh vegetables such as cauliflowers – we grew them ourselves quite soon – and after lunch I had about half an hour's rest. Then another round and more work in the office.'[66]
> 'So, you didn't feel they were human beings?'
> *'Cargo,'* he said tonelessly. *'They were cargo.'*[67]

A second form of emotional distance is, according to Grossmann, the moral distance to the victim,[68] by which he means the intense belief in moral superiority with regards to the victims. Not only are the perpetrators superior, their purposes have also been declared sacrosanct. Several Nazis boasted of their loyalty to the homeland and their National Socialist ideology.

Camp commander Rudolf Höβ, for example, wrote in his autobiography after the war: 'My tremendous love for my country and my feeling for everything German brought me into the NSDAP and into the SS. I believed that the National Socialist world philosophy was the only one that suited the German people. The SS was, in my opinion, the most energetic defender of this philosophy, and the only one capable of leading the German people

64 Ibid., 98.
65 Dave Grossman, *On Killing*, 161.
66 Gitta Sereny, *De duisternis tegemoet: Bekentenissen van Franz Stangl, commandant van Treblinka* (Utrecht: Het Spectrum, 2001), 171. (English edition, 170)
67 Gitta Sereny, *De duisternis tegemoet*, 205. (English edition, 205)
68 Dave Grossman, *On Killing*, 164-167.

back to a life more in keeping with its character.'[69] This dynamic of moral distance works in two ways. On the one hand, it firmly records the fault of the enemy where, after a condemnation, punishment or revenge is called for. And on the other hand, it confirms the legality of the higher purpose and the resulting individual actions.

Grossman calls social distance[70] the third form of emotional distance, with which he means that one specific class of society will over a long time be regarded as inferior within a socially stratified society. This form of thinking in classes can be called universal and creates its own pecking order. The lowest social classes are therefore attributed with the most negative characteristics such as stupidity or parasitism. Sometimes the class differences are actually structurally defined. From 1933 onwards, when the Nazis took power, anti-Jewish laws gradually created social exclusion. An example of these were the 1935 Nuremberg laws, denying Jews German citizenship and forbidding marriage between Jews and 'Aryan people'. This social stratification – and the distance that was created as a result– allowed the perpetrator group to shift the responsibility for ordering or executing it to another social class of co-perpetrators. This is what Hannah Arendt wrote about Adolf Eichmann in *Essays in Understanding:* 'When his occupation forces him to murder people, he does not regard himself as a murderer because he has not done it out of inclination but in his professional capacity. Out of sheer passion he would never do harm to a fly.'[71]

The fourth and last form of emotional distance is perhaps the most obvious one, namely the mechanical distance to the victim. Grossman mentions the mechanical buffer that allows the perpetrator to push the human aspect of the victim into the background.[72] He cites the example of the Nintendo-like way of modern-day warfare. Jan De Laender remarks that human aggression is a specific kind of aggression, because we are the only species that uses artificial weapons. Those weapons have a multiplication effect, increasing and multiplying the aggression. The most important effect is that the mechanical distance created by these new sophisticated weapons very accurately undermines any natural inhibitions. We only have to think of the shock generator in the Milgram experiment, located literally in between the pupil and the master. A clear example of this is the 'cockpit

69 Steven Paskuly, *Death Dealer*, 185.

70 Dave Grossman, *On Killing*, 167-169.

71 Hannah Arendt, *Essays in Understanding 1930-1954: Formation, Exile, and Totalitarianism* (New York: Schocken, 1994), 130. Also: Hannah Arendt quoted in *Ze zouden nog geen vlieg kwaad doen,* by Slavenka Draulic, (Breda: De Geus, 2003) 4.

72 Dave Grossman, *On Killing*, 169-170.

isolation' phenomenon experienced by pilots. They seldom see their victims or the destruction they inflict. Their helmet and built-in headphones also give them auditory protection. One of the pilots called it 'the calm and silence of a computer room'.[73] Such a mechanical isolation makes the feeling of guilt melt like snow under the sun. Bauman talks in this situation about 'the substitution of the content's morale by the technology's morale'.[74] He notes the positive dependence relationship between the efficiency of this substitution and the distance to the consequences of his actions. Bauman also concludes that: 'the causal relationship between his actions and the suffering of his victims fades away and becomes very easy to ignore.'[75]

Summarising, we can say that creating emotional distance to the victim is an important transitional factor with perpetrators of collective violence. Moreover, the four forms of emotional distance described by Dave Grossmann (cultural, moral, social, and mechanical) do not operate independently, they are interwoven. In a genocidal context, we can see that perpetrators of mass murders undergo a chronic process of emotional withdrawal. It is this emotional distance that enables them to suppress their conscience and act from an agentic condition. It causes the biological unwillingness to kill members of the same species to be partially neutralized.

Lethal Tolerance (*Systematic Desensitization*)

> All the men coped with the tough physical stress well. No less considerable were the extreme psychological demands made on them by the large number of liquidations. The morale and self-possession of the men was kept up by personally reminding them constantly of the political necessity [of what they were doing].
> *Tätigkeits- und Lagebericht, No. 1, 31 July 1941*

The picture painted here is the end phase of the transition, the point at which the perpetrator has no more inhibitions that would prevent him from executing his deadly violence, sometimes with much cruelty. More important to us, however, is the preceding evolution, namely the growing process of the destructive behavior. This process includes, in my opinion, three discernible phases: initiation, routinization, and brutalization. It is a

73 Jan De Laender, *Het hart van de duisternis*, 57.
74 Zygmunt Bauman, *De moderne tijd*, 196.
75 Ibid., 196.

process of growth that consists of small steps but that does have some clear key moments or transitional acts. One of the most common of those acts is the act of the 'first time' or 'first kill'. The common aspect of these three phases is the mechanism of tolerance and habituation, or in other words, a systematic desensitization.

Initiation

For starters, we must again conclude that the perpetrators of collective violence are usually normal people, which means that they are no stranger to the typical human reactions to extreme circumstances. Everybody pays a price when subjected to terror, destruction, and death, even our perpetrators. In the long run, this can cause extreme brutalization, of which more later. In the short term, this exposure is important during the initiation to the process of murder.

This gradual form of desensitization recalls the gradual or sequential aspects of Milgram's famous experiment. Milgram called it the binding factor, of which Bauman said: 'in order to hide the dirt, you have to keep muddling on'.[76] Figuratively speaking, we could say that these perpetrators bury themselves in the swamp. Each action, each movement sucks them deeper into the swamp of death and destruction, a gradual continuation on the continuum of destruction.

> We have to eat and drink well because of the nature of our work. … Otherwise we would crack up. … It's not very pleasant stuff… It is a weakness not to be able to stand the sight of dead people; the best way to overcome it is to do it more often. Then it becomes a habit. … [T]he more one thinks about the whole business, the more one comes to the conclusion that it's the only thing we can do to safeguard unconditionally the security of our people and our future. I do not therefore want to think and write about it any further. … [E]verywhere we go we are looked upon with some degree of suspicion. That should not divert us from the knowledge that what we are doing is necessary.[77]

This member of the SS discloses, probably unconsciously, the root of the initiation, routinization, and brutalization process. He highlights the

76 Ibid., 193.

77 Quoted in: Benjamin A. Valentino, *Final Solutions*, 47. Quoted in Ernst Klee, Willi Dressen and Volker Ries, eds., *The Good Old Days: The Holocaust Seen by Its Perpetrators and Bystanders* (New York: Konecky and Konecky, 1998), 168-171.

abhorrent content of the job but states that killing even more makes it all the more bearable. The systematic and numerous cases of exposure desensitizes the perpetrator from the consequences of his actions. He also mentions the ideological necessity of the murderous actions and calls them 'the only thing we can do to safeguard unconditionally the security of our people and our future'. This member of the SS thereby indirectly also accentuates the importance of the group dynamics. He says that everywhere they go, people look at them with suspicion. In other words, the perpetrator group is isolated from the rest, who do not judge them explicitly but still approach them with a degree of suspicion. This creates a clear need for friendship, secrecy, and social cohesion within the perpetrator group.

Routinization

A significant amount of training, during which much experience is gained, helps us to get used to the challenges we have to face. A similar process of routinization is also visible with our perpetrators of extraordinary evil. Training and experience usually create a higher resistance against the impact of the murder process. It seems, therefore, that it is the frequent exposure to everyday terror that makes people more or less used to it. A likewise feeling of numbness is described by a survivor of Treblinka:

> Did we become hardened, callous to the suffering, the horror around us? Well, one can't generalize; as with everything in life, people reacted differently. One did, I think, develop a kind of dullness, a numbness where the daily nightmarish events became a kind of routine, and only special horrors aroused us, reminded us of normal feelings; sometimes this would be connected with specific and special people, sometimes with special events.[78]

This routinization also seems to occur along the same lines within the perpetrator group. Stangl, the Treblinka camp commander, spoke about the routinization of and the habituation to the terror during an interview with Gitta Sereny. He also mentioned an aid commonly used to take one's mind off of the horror.

> 'Would it be true to say that you got used to the liquidations?'
> He thought for a moment. 'To tell the truth,' he then said, slowly and thoughtfully, 'one did become used to it.'

78 Richard Glazar quoted in *De duisternis tegemoet*, by Gitta Sereny, 196. (English edition, 192)

> 'In days? Weeks? Months?'
> 'Months. It was months before I could look one of them in the eye. I repressed it all by trying to create a special place: gardens, new barracks, new kitchens, new everything; barbers, tailors, shoemakers, carpenters. There were hundreds of ways to take one's mind off it; I used them all.'
> 'Even so, if you felt that strongly, there had to be times, perhaps at night, in the dark, when you couldn't avoid thinking about it?'
> 'In the end, the only way to deal with it was to drink. I took a large glass of brandy to bed with me each night and I drank.'[79]

The use of alcohol therefore seems to be very functional for mass murderers. It dampens the feeling of pity and the physical abhorrence when killing. It makes killing easier. The use of alcohol reduces our feelings of fear and our awareness. It has a very specific impact on our nerve system, suppressing the activity of the prefrontal and orbital lobes of the brain. And it is exactly those two lobes that cause feelings of shame, pity, or abhorrence.[80] Jan De Laender draws a comparison which cannot be misunderstood between the effects of large doses of alcohol and the effect of orbital and prefrontal brain lobes. 'People with injuries in those lobes become rude, without shame and careless. They lose the capacity to have pity, they transgress social rules and strangely enough they even become indifferent to physical pain. [...] No wonder the Einsatzgruppen readily took to the bottle.'[81]

Brutalization

To reduce the tension between cognition and behavior, the perpetrator undergoes several cognitive shifts, each time overcoming his (moral) biological inhibitions. The ever-increasing desensitization causes the psycho-social dissonance or psychological unease that is experienced to become ever smaller.[82] And it is exactly this reducing of the psychological unease that will cause further brutalization, a brutalization usually expressed very

79 Gitta Sereny, *De duisternis tegemoet*, 204-205. (English edition, 200)

80 Jan De Laender, *Het hart van de duisternis*, 300.

81 Ibid., 300.

82 The theory of psychosocial dissonance is an extension of the cognitive dissonance theory of Leon Festinger. It is a refinement that includes the anthropological perspective on culture, motivation, contextual variables, the self, and emotion. At the individual level, Alex Hinton argues that the psychological discomfort is reduced by cognitive shifts (moves) through which one is transformed into agents of death. See: Alexander Laban Hinton, "Agents of Death: Explaining the Cambodian Genocide in Terms of Psychosocial Dissonance", *American Anthropologist* 98, no. 4 (1996): 818-831.

individually and 'creatively'. In other words, the brutalized murder process is no longer a routine, a mechanical and passionless event. It has now become a lethal game that receives a personal touch from the mass murderer himself. I believe it is in this transitional stage that the dynamics appear that Hinton refers to as 'genocidal bricolage'. 'Like all human beings, genocidal perpetrators are active meaning-makers, for whom the act of killing is often highly symbolic, ontologically resonant, and suffused with meaning. They are "genocidal bricoleurs" who draw on a large "toolkit" of personal and cultural knowledge to carry out the task at hand, often asserting their identity in the process.'[83] It is in this human cruelty that the perpetrator shows off his ingenuity. In this last stage (initiation, routinization and *brutalization*), the perpetrator enters a kind of intoxication by killing – an intoxication or addiction to the murder process. This is often called 'the joy of slaughter'.[84] Brutalization is not necessarily the last phase in the continuum of destruction. It is also not the case that each and every mass murderer reaches this extreme, because the behavior of each individual perpetrator differs because of individual traits. Wolfgang Sofsky dedicated a complete chapter to the violent excesses in the Nazi concentration and extermination camps in his book *The Order of Terror*. He indicates that extreme violence was an everyday occurrence in those camps. But he considers this cruelty to be more of a specific way of behavior within a complex power structure rather than an unbridled explosion caused by the physical necessity of the individual.[85] He says:

> In excess, power runs riot, letting off steam through the outlet of the defenseless. It is rooted in a situation of omnipotence. In excess, the perpetrators demonstrate their triumph over the other. They show just how free they are. Excess is violent force for its own sake: terror per se. It has no goal; it is not a means to an end. Cruelty wills nothing but itself, the absolute freedom of arbitrary action, which it realizes by countless new ideas and variations.[86]

83 Alexander Laban Hinton, *Why did they kill?: Cambodia in the Shadow of Genocide* (Berkeley: University of California Press, 2005), 289.

84 Joanna Bourke, *An Intimate History of Killing: Face to Face Killing in 20th Century Warfare* (New York: Basic Books 1999), 19.

85 Wolfgang Sofsky, *The order of terror: The Concentration Camp* (New Jersey, Princeton University Press, 1997), 225.

86 Wolfgang Sofsky, *The order of terror*, 224.

It is in this context that Sofsky talks about the five conditions for cruelty, in particular:

1 the institutionalization of terror;
2 the specialization in terror;
3 group conformity;
4 the diffusion of responsibility; and
5 the extreme distance between the perpetrator and the victim.[87]

The Womb of Evil: Social Learning amongst Perpetrators

Herbert Hirsch rightly points out that people are not born with a memory or with specific political ideas. On the contrary, people are born into a particular environment and undergo a process of cultural transmission through interaction with their surroundings. This is a process of continuous socialization realized by one's family, relatives, learning system, the media, belief system, youth movement, and countless other networks of which one can be a member.[88] It is in such an ingenious way that the fear of the Jewish threat was socially constructed; and although this was a non-existent threat, it was taken for real. It was Epictetus who asserted already in the first century BC that it is not things themselves that cause us distress but rather the opinion we hold of these things. In other words, reality consists of what a large group of people decide to call reality. This is what social psychologists call social proof.[89]

It is from this point of view that we can understand why anti-Semitism was at a high, although we need to add here that people do not only learn from books. On the contrary, the majority of what we learn comes from observing, imitating, or doing. The whole of German society was penetrated by a virulent anti-Semitism. Newspapers, radios, films, and even carnival floats all carried this racial message. And although this cultural transmission of anti-Semitism can be an important feeding ground for our perpetrators, it certainly is not enough of a motivation to commit extraordinary evil. It is indeed often the case that we can speak of an attitude-behavior consistency. In other words, if I truly hated Jews, my behavior towards them will more likely be discriminatory. However, such a negative attitude towards a

87 Ibid., 223-240.

88 Herbert Hirsch, *Genocide and the Politics of Memory*, 109.

89 Paul Watzlawick, John H. Weakland and Richard Fish, *Het kan anders, over het onderkennen en oplossen van menselijke problemen* (Houten/Diegem: Van Loghum Slaterus, 2002) 116-117.

specific group cannot be so strong that it readily pushes aside our natural inhibition to kill, although it can possibly help in doing so. So, in spite of Goldhagen's theory and his eliminationist anti-Semitism, I believe that if one is to become a mass murderer, one would need to learn an awful lot more and also in a very specific way (conditioning). What does this learning consist of? Or rather, how do you condition a normal man to become a mass murderer?

One point of view that could help us answer these questions is that of criminologiests and their criminal learning theories. Our starting point is the argument I already mentioned, namely that people are learning organisms throughout their entire lifetime. A human being does not stay the same during his lifetime. Based on new experiences and understandings, a new layer is formed on top of already existing ones. Within the framework of this research, we can say that a perpetrator has created several layers to reach a final destructive phase. It is therefore important to go and study the content of the learning process and the way in which it was administered. The criminologist Edwin Sutherland formulated one of the first theories about it in 1939. He considered criminal behavior to be part of human behavior, placing deviant behavior within the larger framework within which all human behavior is explained. Sutherland argued:

> The processes which result in systematic criminal behavior are fundamentally the same in form as the processes which result in systematic lawful behavior. … Criminal behavior differs from lawful behavior in the standards by which it is judged but not in the principles of the genetic [causal] processes.[90]

The basic principle of his differential association theory is that criminal behavior is learned just like all other human behavior. The source of deviance is to be found within the intimate social networks of individuals. He argued that individuals who selectively, or differentially, associate themselves with deviant members of society will more than likely behave themselves in the same way, i.e. deviantly. Criminal behavior from this point of view is therefore learned behavior. It is learned from others by 'face-to-face' interaction in small, intimate groups. The content of this learning process includes not only the techniques to commit these crimes but also the attitudes

90 Edwin Sutherland quoted in *Companions in Crime: The Social Aspects of Criminal Conduct,* by Mark Warr (New York: Cambridge University Press, 2002) 75.

(motivation) necessary.[91] Sutherland described his theory[92] by way of the following statements:

1 Criminal behavior is learned.
2 Criminal behavior is learned in interaction with other persons in a process of communication.
3 The principal part of the learning of criminal behavior occurs within intimate personal groups.
4 When criminal behavior is learned, the learning includes techniques of committing the crime, which are sometimes very complicated, sometimes simple and the specific direction of motives, drives, rationalizations, and attitudes.
5 The specific direction of motives and drives is learned from definitions of the legal codes as favorable or unfavorable.
6 A person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of the law.
7 Differential associations may vary in frequency, duration, priority, and intensity.
8 The process of learning criminal behavior by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning.
9 While criminal behavior is an expression of general needs and values, it is not explained by those needs and values, since non-criminal behavior is an expression of the same needs and values.[93]

Besides these nine statements, Sutherland also remarks that the likelihood that individuals will participate in criminal activity increases when they are exposed – early in their lives, in relatively frequent intervals, over a long period of time and by a source they respect and recognize – to definitions (attitudes) that advocate transgressing the rule of law. It is quite remarkable in this aspect that we see so many similarities between numerous perpetrators' witness statements and the criminological learning theory Sutherland developed in 1939. First of all, Sutherland does not regard perpetrators as a separate category of people. On the contrary, he focuses on the interactional

91 Sutherland called this 'definitions favorable to violation of law'.

92 Francis T Cullen and Robert Agnew, eds., *Criminological Theory: Past to Present* (Los Angeles: Roxbury Publishing Company, 2006), 122-124 & 134-138.

93 Sutherland pointed out that these needs can also form the basis of non-criminal behavior. So, in order to get money, for instance, one can either steal or go to work.

dynamics and learning process that every human being undergoes. This mechanism of differential association is the same for perpetrators as for non-deviant individuals. Only the content is different because of positive or negative definitions with regards to crime.

Although the similarities are remarkable, we still need to pay critical attention to the specific character of criminal behavior. Sutherland mentions, for example, definitions that could possibly cause a transgression of the penal code. Collective violence, however, is often not against local legislation. In most cases, this violence is demanded and organized by or with the knowledge of the authorities or the ruling elite. What it boils down to is that mass murderers, in contrast to perpetrators of normal offences, will more likely have the perspective that they are behaving just as the authorities expect them to. Within criminal theory, two major areas of criticism have been formulated against the differential association theory. First, it is claimed that Sutherland does not give a decent description of 'definitions favorable and unfavorable to crime'. Several criminologists have tried to describe the nature of these theoretical definitions. For example, Sykes and Matza have described five neutralization techniques in this field. Their theory has given more clarity to the nature of the definitions described by Sutherland and also provided a very useful point of view within this perpetrator study. I will go into this in more detail further on in this study.

Second, it is said that the differential association theory fails to describe the full process by which crime is taught. The theory only states that certain definitions (for or against crime) are taught but does not go into detail as to how.[94] It was the criminologists Robert Burgess and Ronald Akers who in 1966 reformulated the differential association theory using the terminology of operant conditioning. This fast-growing branch of behavioral psychology, with B.F. Skinner as its figurehead, stressed the relationship between behavior and validation. Based partly on experimental understandings, Akers developed and tested a social learning theory to explain criminality. And by following these principles of operant conditioning, he stressed the role of a positive and negative validation of deviant behavior.[95]

> Whether individuals will refrain from or initiate, continue committing, or desist from criminal and deviant acts depend on the relative frequency,

94 Although in my opinion, some variables related to the learning process were already named by Sutherland, such as duration, frequency, and intensity.

95 Mark Warr, *Companions in Crime*, 77.

amount, and probability of past, present, and anticipated rewards and punishments perceived to be attached to the behavior.[96]

Akers argued that crime is taught using three processes:

1 Individuals learn the convictions that define crime as desired, justified, or mitigating in certain situations.
2 Individuals will partake in crime because they are differentially validated by and through criminal behaviour. This validation can be both positive (financial gain, social justification) and negative (no longer excluded).
3 Individuals will partake in crime because they imitate the criminal behavior of others, more specifically respected others whose criminal behaviour has already been validated.[97]

As with Sutherland, this social learning theory can be applied to both deviant and non-deviant behavior. That is why Mark Warr declares quite frankly: 'much of the beauty and elegance of social learning theory lies in its generality'.[98] With this, Akers gives a clear answer to the unanswered question of how the learning process works exactly. This inter-personal learning mechanism by imitation and direct or indirect[99] validation is a process each and every single one of us knows through and through. Harald Welzer notes hereby that the perpetrators were capable of killing because they kept seeing themselves as individuals who acted with an unblemished moral code.[100] This social code during the years of National Socialism consisted of degrading and persecuting 'the others'. From the point of view of this moral code, it was 'OK' for the perpetrators to kill.

Gresham Sykes and David Matza stressed in their theory the importance of the perpetrator's morally consistent self-image. Their neutralization techniques work perfectly because they allow perpetrators to maintain a non-criminal self-image, notwithstanding their participation in certain crimes.[101] Sykes and Matza found in their research into youth criminality, for

96 Ronald L Akers, "Social Learning and Social Structure: A General Theory of Crime and Deviance," (Boston: Northeastern University Press, 1994), 66; quoted in Mark Warr, *Companions in Crime*, 77.

97 Francis T Cullen and Robert Agnew, eds., *Criminological Theory,* 116.

98 Mark Warr, *Companions in Crime*, 78.

99 'Indirect' refers to seeing how others' behavior is reinforced.

100 Harald Welzer, "*Mass murder and moral code*", 16-17.

101 Volkan Topalli, 'When being good is bad: An expansion of Neutralization Theory', *Criminology* 43, no. 3 (2005), p. 800.

example, that there are ways in which normal people define their behavior, or the situation in which they find themselves, so that it does not conflict with the prevailing moral code, something that is clearly at work in the case of perpetrators of extraordinary evil. Tzvetan Todorov also stresses the presence of a moral code in the perpetrators while noting that its perception is different.

> Guards who committed atrocities never stopped distinguishing between good and evil. Their moral faculty had not withered away. They simply believed that the "atrocity" was in fact a good thing and thus not an atrocity at all – because the state, custodian of the standards of good and evil, told them so. The guards were not deprived of a moral sensibility but provided with a new one.[102]

The provision of a new moral standard also forms the core of Sykes and Matza's neutralization techniques. Values are re-defined in order to neutralize the normative dissonance.[103] This enables the removal of natural (moral) inhibitions, causing pity and empathy to be applied selectively and depending on the situation. In their famous 1957 article, *Techniques of Neutralization: A Theory of Delinquency*, they stress that many cases of delinquency are based on an expansion of the defensive techniques (rationalizations) used by perpetrators.

> It is our argument that much delinquency is based on what is essentially an unrecognized extension of defenses to crimes, in the form of justifications for deviance that are seen as valid by the delinquent but not by the legal system or society at large.[104]

Crucially, they remark that these justifications (rationalizations) are made not only after the criminal activity and therefore AFTER the criminal behavior; there are reasons to believe that these justifications are taught BEFORE the deviant behavior occurs. The justifications precede the delinquent behavior, which in fact enables the deviant behavior. These

102 Tzvetan Todorov, *Facing the Extreme*, 129. Also: Tzvetan Todorov quoted in *Governments, Citizens, and Genocide*, by Alex Alvarez, 113.

103 As a result, the theory of neutralization techniques provides an answer to the criticism formulated at the differential association of Sutherland's theory – namely, the content of the "definitions in favor of or against the law".

104 Gresham M. Sykes, David Matza, 'Techniques of Neutralization: A theory of Delinquency', *American Sociological Review* 22, no. 6 (1957), 666.

defences neutralize the values and standards towards the victim group in question. The perpetrators can then participate in destructive behavior that is otherwise considered unacceptable by them. This causes the moral code to remain intact but redefined in such a way that the psychological unease caused by going against the natural inhibitions is paralyzed, so to speak. Sykes and Matza also point to the importance of the perpetrator group in this redefining process. People will not only use individual arguments to use these justifications. It is usually the socially constructed reality by the group that will influence the individuals to redefine and neutralize their standards. It will be exactly these techniques and not the exactly opposite standard that the perpetrators will learn from each other. Sykes and Matza wrote:

> We call these justifications of deviant behavior techniques of neutralization; and we believe these techniques make up a crucial component of Sutherland's "definitions favorable to violation of law." It is by learning these techniques that the juvenile becomes delinquent, rather than by learning moral imperatives, values or attitudes standing in direct contradiction to those of the dominant society.[105]

Sykes and Matza classified their neutralization techniques in five types: negation of responsibility, negation of damage or disadvantage, negation of a victim, condemnation of those who condemn, and appeal to a higher moral allegiance. Alexander Alvarez, one of the few criminologists who actually introduced a criminological point of view into the field of genocide studies, added a sixth neutralization technique to this: the negation of any humanity or dehumanization.[106]

Sutherland's differential association theory and Sykes and Matza's neutralization techniques are fundamental to understanding how normal people can be made to neutralize their natural inhibitions against murder and violence. It clarifies the mechanism that enables perpetrators to commit crimes of obedience, which is a category that includes the large majority of perpetrators. It is only a small minority of perpetrators that actually transgresses into crimes of initiative.[107]

105 Ibid., 667.

106 Alex Alvarez, *Governments, Citizens, and Genocide*, 125-129.

107 I use the terminology described by Hamilton and Kelman and further refined by Kressel in his book *Mass Hate*. Herbert C Kelman and V Lee Hamilton, *Crimes of Obedience* (New Haven: Yale University Press, 1989). Neil J Kressel, *Mass Hate: The Global Rise of Genocide and Terror* (New York: Westview Press, 2002).

Final Remarks

'Man is God nor devil but an earthly in-between being which tentatively searches its way in a complex and imperfect world,'[108] according to Jet Isarin in her essay about *Het kwaad en de gedachteloosheid* (*Evil and thoughtlessness*). Tzvetan Todorov makes a similar statement accentuating the transformations or demonic transitions of those thousands of individuals as the crucial factor that undeniablly enables genocide or mass murder.

I have placed my focus on those risk factors that recruit, motivate, and enable people to apply such genocidal violence. The starting point of my explanation model is the social nature of evil. This means that a mass murder or genocide happens because of the thinking and acting of numerous people. Perpetrators, victims and bystanders are all part of a complex circular interaction process that influences and guides them. Perpetrators make choices along the way (key moments) from good to bad, and they are influenced by the behavior of 'the others' (co-perpetrators, victims and bystanders). And although they are never directly forced to partake in the murderous activities, they are under pressure by a few (f)actors. The complexity lies in the indivisibility of the numerous (f)actors which are interwoven in a real knot. Not only the groups (actors) but also the dynamics (factors) overlap each other. Social reality cannot simply be described as a clear and theoretical divisible event but rather as a complex and imperfect process that whimsically searches its own way.

108 Jet Isarin, *Het kwaad en de gedachteloosheid: Een beschouwing over de holocaust* (Baarn: Ambo 1994), 23.

3 State Deviancy and Genocide

The State as a Shelter and a Prison

Kjell Anderson

The state is not only protector but also prison warden to its citizens. Arguably, state institutions are the most egregious perpetrators of human rights abuses. Political scientist R. J. Rummel estimates that governments have intentionally killed one hundred sixty nine million people in the twentieth century alone.[1] Much of this mass killing was done by authoritarian regimes against their own citizens.[2] This reality, the fundamental recognition that the state is not always a benign presence acting in the best interests of its citizens, has led to a re-imagining of state sovereignty.

Liberal thinkers have long acknowledged that the state, with its monopoly on power and coercive force, is the greatest threat to the rights of its citizens.[3] As Michel Foucault argues: "if genocide is indeed the dream of modern powers, this is not because of a recent return of the ancient right to kill; it is because power is situated and exercised at the level of life, the species, the race, and the large-scale phenomenon of population."[4] At the domestic level, the state's monopoly on violence is carried out through the disarming of private citizens and the arming of state organs. State authority itself rests upon violence and the threat of violence. In effect, the state exercises the right to life and death including the use of capital punishment and the waging of war. This system is granted legitimacy and authority through the law.

In contrast, the international system is anarchical precisely because there is no international monopoly on violence, no super-state.[5] Through

1 Rudolph J. Rummel, *Death by Government* (Piscataway, New Jersey: Transaction Publishers, 1997), p. 15. A later estimate by Rummel claims a figure of 262 million deaths: http://www.hawaii.edu/powerkills/ (accessed 19 June 2008). Rummel uses the term "democide" to denote such mass killing by governments.

2 Examples abound, but some of the more prominent cases include the mass killings of Hitler, Mao, and Stalin.

3 For example, see the writings of Thomas Hobbes in *Leviathan*.

4 Michel Foucault, "Right of Death and Power over Life," in Nancy Scheper-Hughes and Philippe Bourgois (eds.), *Violence in War and Peace* (Malden, Massachussetts: Blackwell Publishing, 2004), p. 80.

5 Reinhart Kössler, "Violence, legitimacy and dynamics of genocide – Notions of mass violence examined," *Development Dialogue*, No. 50 (December 2008), p. 37.

the threat of violence, the state creates a "pacified space"; this operates internationally through multilateral treaties.[6] International human rights law is also rooted in multilateral treaty-making; it militates against the unlimited coercive power of the state and locates sovereignty at the level of individuals.[7] Such treaties are consensual, yet over time treaties may become customary and therefore non-consensual.[8]

The ideal of the state is that citizens concede a measure of legitimate authority to the state in return for security and cooperation towards the greater good. The state must also manage conflict through the appropriate distribution of resources. Yet there are many states where this social contract has been broken; these states operate much like individual criminals in society: through their deviant acts, they subvert shared values and collective interests. These criminogenic states drive the perpetration of genocide, a crime of concern to the international community as a whole. Therefore, it is logical and reasonable to extend the concept of deviancy beyond individuals to cover the actions of states. The realisation of human rights and the prevention of genocide are not possible without a robust framework to interdict state deviancy.

State Deviancy and State Crimes

State Deviancy

The concept of deviancy is central to criminology. Deviancy is a sociological term that covers a wide range of acts that are considered out of line with the accepted standards of society. Such acts have a degree of context-specificity: the catalogue of deviant acts differs from society to society and even between different individuals and groups within a society. Those who commit deviant acts can be said to be "deviants", while groups of deviants form "deviant subcultures". Deviant behavior may be normative within these subcultures.

Ideally, the criminal justice system should be closely aligned with the social contract and the general interests of the population. Accordingly, all crimes are deviant acts (with the exception of crimes committed with acceptable justifications and excuses). This aligns with the principle of legality – criminal behavior must be clearly proscribed. Liberal democracies

6 Kössler 40.

7 Kofi A. Annan, "Two Concepts of Sovereignty," *The Economist*, September 18, 1999.

8 May 59.

coincide most closely with this ideal of criminalizing only deviant acts, although there is still some inconsistency in terms of *mala prohibita* acts such as 'moral' offences.[9] In contrast, authoritarian states often criminalize acts that are not harmful to the interests of the polity (such as free expression). Indeed, in the worst case, authoritarian states become themselves *criminogenic* (crime-producing) and perpetrate or condone the commission of normally criminal acts. In such states, entire social groups may become effectively criminalized, as they face a regime of systematic persecution (which may be manifested as the crime against humanity of persecution, the crime against humanity of apartheid, or the crime of genocide). Moreover, a sort of "deviancy creep" may occur where the definition of deviant, and criminalized, acts becomes increasingly expansive.

However, not all deviant acts are criminalized. Therefore, deviancy has both a moral aspect and a legal aspect. What is legal is not necessarily moral and what is moral is not necessarily legal. The definition of certain acts as criminal, of certain behavior as deviant, and of certain individuals as deviants is the subject of much criminological inquiry. Marxists and conflict theorists argue that the definition of crime is a product of economic power relations and that any action harming the public should be considered criminal.[10] The creation and definition of public harms may be elite-driven. Moreover, labelling theory posits that applying negative labels to individuals such as "deviant" is a self-fulfilling prophesy: individuals may become marginalized and subsequently commit further deviant acts. At the international level, there is a reluctance to label states as "genocidal", as this stigma closes all further dialogue with the government in question and may increase pressure on the labelling state to respond.

The gravity of crimes is generally considered on the basis of the perceived harm and wrongfulness of the act, as well as legal sanctions. Under these criteria (excepting legal sanctions which are not proportionate to the harm), genocide is one of the most serious crimes and would universally be regarded as deviant and *mala in se*. It is unsurpassed in its perceived harm. However, it must be remembered that genocide is a state crime, thus it is generally not perceived as wrongful by the perpetrating government. Moreover, the occurrence of genocide often involves mass participation, or, at least, mass acquiescence. In genocidal states, deviant behavior is actually normative. In

9 *Mala prohibita* acts are "bad because they are prohibited" – in contrast to *mala in se* acts, which are "bad in and of themselves" such as murder.

10 Mark Lanier and Stuart Henry, *Essential Criminology* (Boulder, Colorodo: Westview Press, 2004), p. 26.

this sense, deviant states could be said to be deviant subcultures within the conventional international culture. Given that it is a mass crime, genocide's victims are often very visible, although attempts are generally made to conceal victimization. Nonetheless, genocide is considered both a seriously deviant behavior and a crime, and the individuals that commit genocide are both deviants and criminals. Even states that commit genocide rarely, if ever, openly acknowledge the commission of this crime. The question then arises whether states themselves can be deviant or criminal.

The concept of "organizational deviance", first developed by the criminologists David Ermann and Richard Lundman, is useful when discussing state deviance. Ermann and Lundman argue that organizations may be deviant where they violate the norms of external actors, where these actions are supported by those in the organization (or at least a strata of the organization, including elites), and where new members are socialized to support deviance.[11] Ermann and Lundman were primarily concerned with corporations and white collar crime, but states equally fit the bill as complex organizations. Indeed, states violate the norms of external actors (international law and governance), they are internally supported by individuals and institutions within the context of the genocidal state, and new members are socialized to support deviance. This socialization may occur intensively in military organizations within the state, or more indirectly through propaganda and ideology. In the context of the international system, the United Nations and other international organizations can be seen as "controller organizations" with the authority and, arguably, purpose of controlling the actions of states.[12]

If states have any sort of institutional personality, then it must also be possible to pronounce that states are able to commit deviant acts and crimes. There is an extensive body of treaty and customary international law that codify state deviancy. Perhaps it would be more accurate to speak of deviant acts rather than deviant individuals (or states). Applying this label to individuals or states implies some kind of immutable and eternal characteristic, while the label "deviant" is best used as a descriptor for a pattern of behavior. Such a pattern must be *systematic and significant, illegal conduct*.

11 David Ermann and Richard Lundman, "Deviant Acts by Complex Organizations: Deviance and Social Control at the Organizational Level of Analysis," *The Sociological Quarterly,* Vol. 19, No. 1 (Winter 1978), pp. 57-58.

12 Ermann and Lundman 59.

Crimes such as genocide and crimes against humanity contain a built-in "systematic" element. The Elements of Crimes of the Rome Statute stipulates that, in the case of genocide, "the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction", while crimes against humanity require a "widespread or systematic attack". Thus, genocide as a grave and systematic crime is by its very nature deviant, and the sovereignty of states that commit genocide cannot be inviolable. As Raphael Lemkin once argued: "sovereignty cannot be conceived as the right to kill millions of innocent people."[13]

Public international law relates to the obligations of states as subjects of law. It sets out numerous illegal acts for states including the breach of treaty obligations (contract) and the commission of international crimes such as genocide, crimes against humanity, war crimes, piracy, and terrorism. Genocide, a *jus cogens* norm and *erga omnes* obligation, is prohibited by customary international law.[14] These are more than mere legal principles; they are actually representative of the shared values of the international community. These moral norms are transgressed not only by acts but also by omissions.

Critics sometimes argue that the international system and the norms it embodies are entirely the product of power relations and specifically the domination of the "more developed countries" at the core of the system over the "less developed countries" on the periphery. There is some validity to this disputation, yet, in spite of their flaws, the only institutions with the legitimacy to judge and apply the notion of state deviancy are the existing international judicial and political bodies such as the International Court of Justice (ICJ) and the United Nations Security Council. States are political objects within a political system, and any determination of state deviancy is going to have an inevitable political aspect. Consequently, there is a fundamental lack of consistency in the application of moral and legal norms by international political and judicial institutions.

Institutional reforms are essential to improve the effectiveness of these bodies. Nonetheless, state deviancy can be determined on the basis of patterns of fundamental violations of international law. Such acts undermine

13 Dominik J. Schaller & Jürgen Zimmerer (eds.), *The Origins of Genocide: Raphael Lemkin as a Historian of Mass Violence* (London: Routledge, 2013), p. 8.

14 *East Timor* (*Portugal v. Australia*), Judgment, I.C.J. Reports 1995, p. 90, paragraph 29. *Legality on the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, paragraph 83. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Preliminary Objections, Judgment, I.C.J. Reports, 1996, p. 595, paragraph 31-32.

shared values and collective interests and inherently represent a grave threat to international peace and security. Modern notions of security (such as "human security") encompass threats to the fundamental human rights and security of human beings. Thus, states that commit gross human rights violations are clearly deviant within the international legal and moral order.

Another philosophical challenge to the concept of state deviancy emerges from the moral reluctance to attribute collective guilt. The state is more than an abstract entity; it is also the aggregate of numerous individuals. Does the attribution of responsibility to a corporate entity such as a state represent a form of collective guilt (and collective punishment), blaming every citizen for the actions of a selective group? Those perpetrating genocide are often fortified by state power. The crime of genocide does imply the criminal responsibility of individuals, with the standard of proof for the *mens rea* and *actus reus* that such responsibility implies; yet genocide as a mass crime cannot occur without the acquiescence of scores of passive individuals that may not be criminally responsible. Therefore, although some individuals are more responsible than others, there *is* a form of collective guilt based on state deviancy that can be applied collectively – not in terms of blanket and unattributable individual criminal responsibility but rather in terms of the responsibility of the state as a discrete entity with authority over individuals.[15]

State Crimes

If states can be deviant in the moral sense, can states also be deviant in the criminal sense? There is a long pedigree to the argument that states are capable of committing crimes just as individuals are criminally responsible.[16] Article 19 of the Draft Articles on State Responsibility articulated this idea of state crimes, but it was deleted from the final draft. The draft provision defined state crimes as intentionally wrongful acts committed in breach of international obligations fundamental to the interests of the international community as a whole. In the debate over the provision, members of the International Law Commission who were in favor of the inclusion of state crimes argued that aggression was one state crime that was already widely recognised. This was disputed by other commission members who argued that aggression was not a true crime with penal sanctions imposed on states,

15 For a more extensive treatment of collective guilt see the classic work by Karl Jaspers: *The Question of German Guilt*, (New York: Capricorn Books, 1961).

16 See, for example, the International State Crime Initiative (http://statecrime.org/), as well as Penny Green and Tony Ward, *State Crime* (London: Pluto Press, 2004).

and also that the definition of aggression itself is contested.[17] The state crimes article was deleted from the final draft largely because consensus could not be achieved on state crimes.

Several potential problems arise with regard to state crimes. First, there are no adequate institutional mechanisms for the investigation and determination of state crimes.[18] State sovereignty is a significant impediment to the creation and functioning of such a mechanism, as is the lack of a means of compelling the cooperation of states under investigation (though fact-finding commissions created under Chapter VII of the UN Charter could be one such mechanism). There is also a need for completely neutral institutions capable of conducting investigations free from the taint of political interference in the judicial process.

Second, if states are to be treated in a matter analogous to individuals, then there would be an expectation that the system respect basic due process obligations (enshrined in numerous human rights instruments); such a system would need to have a prosecuting agency, complaints systems, and rules of procedure and evidence.[19]

Third, it would be unclear which sanctions might be applied to states. If state crimes were true crimes with criminal responsibility, then penal sanctions would be appropriate (as opposed to typical civil sanctions such as compensation), yet a state, by definition, cannot be subject to penal sanctions. States can, however, be punished through other means such as fines and the confiscation of property. The desirability of such punitive measures in the context of post-violence peacebuilding is questionable, yet funds from fines may be used to ensure that victims receive assistance.

Alternatively, certain individuals within the state (i.e. leaders and state agents) can be held criminally responsible as representatives of the state. However, if only certain individuals are held criminally responsible, then how do state crimes differ from ordinary international crimes such as genocide and war crimes?

The issue of penal sanctions also brings to mind the question of genocidal intent (*mens rea*). If states are going to be criminally responsible, they must not only commit the acts of genocide but also possess the requisite intent. How can this criminal intent be proven? The idea of aggregate entities such

17 International Law Commission, *International Law Commission Yearbook (1998)*, paragraph 269, p. 68.

18 International Law Commission, *International Law Commission Yearbook (1998)*, paragraph 309, p. 74.

19 International Law Commission, *International Law Commission Yearbook (1998)*, paragraph 312, p. 75.

as organizations and corporations possessing a *mens rea* is not totally without precedent: one only needs to turn to corporate criminal trials for means to impute *mens rea* on a collectivity. Fundamental to this exercise is the notion that the responsibilities of the aggregate entity (the state in this case) are distinct from those of its discrete members. Such an approach is logical when one considers the effect of state policies in organizing diverse and divergent individual intents towards the collective enterprise of genocide.

Individualist approaches to corporate criminal responsibility look to certain individuals within the corporation in order to ascertain the responsibility of the corporation as a whole. The concept of vicarious liability (the liability of an employer for their employee or a principal for its agent) is accepted in certain jurisdictions (for example the U.K., the U.S.A., and South Africa). Another form of vicarious liability (breech of personal duty) occurs where a corporation is responsible for the failure to prevent certain criminal acts when such acts are within the scope of the individual's employment or authority and the offense must have been, at least in part, beneficial to the corporation.[20]

In contrast, the doctrine of identification (found in certain common law jurisdictions) posits that a corporation may be liable for serious criminal offences if one of its most senior officers acted with the requisite intent. This doctrine is built around the notion of a "controlling mind" whose actions and intentions can be imputed to the corporation.[21] The determination of which individuals constitute a controlling mind is context-specific.[22] However, the evidentiary requirements are very high, as it must be proven that the corporation is guilty of committing the crime and that the "controlling mind" is personally responsible.[23]

Critics of individualist approaches to corporate criminal responsibility argue that the main power of the corporation comes from its power to organize, and so why pretend that the corporation is just a collection of autonomous individuals?[24] In the case of responsibility for genocide, one

20 Andrew Weissmann, "A New Approach to Corporate Criminal Liability," *American Criminal Law Review*, Vol. 44, no. 4 (Fall 2007), p. 1319. See also Amanda Pinto and Martin Evans, *Corporate Criminal Liability* (London: Sweet and Maxwell, 2003), p. 21.

21 McBarnet, Doreen, Aurora Voiculescu, and Tom Campbell (eds.), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (New York: Cambridge University Press, 2007), p. 407. See also: *Bolton* (*Engineering*) *Company Ltd. v. Asiatic Petroleum Company Ltd.* (1957), Q.B. 159, [1956] 3 W.L.R. 804, 1A.

22 Pinto and Evans 64-65.

23 McBarnet, Voiculescu, and Campbell, p. 409.

24 McBarnet, Voiculescu, and Campbell, p. 414.

could raise similar questions: genocide is a mass crime requiring state policy and organization, so why are only individuals held criminally responsible? Moreover, the social-psychological nature of organizations such as corporations and states is that they place individuals under tremendous pressure to restrain their individual autonomy in favor of shared values and goals.[25] Existing decision-making structures shape the policy of the state and its intention.[26] The collectivist approach rejects the doctrine of identification and replaces it with concepts such as "management failure" and "organizational fault."[27] This is a kind of negligence standard that requires that corporations be responsible for the acts of their agents, whether such acts were directly ordered or merely encouraged through wilful blindness or recklessness. The collectivist approach to aggregate *mens rea* is consistent with the responsibility of states to prevent genocide as set out by the International Court of Justice in the *Bosnia v. Serbia* case.[28]

It is sometimes argued that corporations are devoid of moral choice and so cannot be held criminally responsible; yet in the case of states committing genocide, one can make a strong argument that even if states are not moral actors in the same manner as individuals, there is an element of aggregate volition present in the formation of a corporate/collective genocidal culture and the decision to embark on the shared enterprise of genocide. It must be acknowledged that it is more difficult for organizations to control the actions of their members than for individuals to control their own actions, yet states are organizations with centralized power and a monopoly of coercive force. Perhaps, then, the greater the degree of state control, the greater the state's potential liability for violations of the law of state responsibility. It may not be possible for the governments of failed states to prevent genocidal acts from certain armed groups within their territory.

We must also consider that the decision-making of states differs from that of individuals. States often make decisions through institutionalized and collective processes. This can contribute to phenomena such as *groupthink* (where individual opinions align towards a perceived mean as a way of maintaining harmony within the group), *inertia* (whereby there is

25 The study of "organizational crime" first emerged from the notion of "white-collar crime" developed by Edwin Sutherland; see: Edwin Harden Sutherland, *White Collar Crime* (Los Angeles: Dryden Press, 1949). See also, for example, M. David Ermann and Richard J. Lundman, *Corporate and Governmental Deviance* (New York: Oxford University Press, 2002).

26 May 144.

27 McBarnet, Voiculescu, and Campbell, pp. 421-427.

28 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v. Serbia and Montenegro*). Judgment. 26 February 2007.

a reluctance to alter pre-existing policies, once they align with particular expectations and interests), and *cumulative radicalzsation* (where the expressed opinions of individuals become more extreme in an attempt to outbid others). Such tendencies undoubtedly render state decision-making more complex; yet individual perpetrators may also be subject to similar pressures (albeit in a less structured environment).

Finally, the issue of rehabilitation must be considered: if states are guilty of crimes as aggregates of collective guilt, then can states themselves (as collective actors) be rehabilitated? Can state recidivism be prevented? There is an abundance of literature in the area of peacebuilding that would suggest that societies can be rehabilitated through measures such as transitional justice and human rights education. Would such measures also rehabilitate the state? This concept of state rehabilitation (and punitive measures) once again raises the question of collective guilt: who is responsible and when does this responsibility end?

State Deviancy and the Law of State Responsibility

In spite of the failure of state crimes to come to fruition, there are certainly other means to hold states responsible for deviancy and the crime of genocide. The law of state responsibility is a legal mechanism created in order to reinforce the obligations of states under public international law. It is rooted in traditional notions of international relations where states are the sole subjects of international law and are held to have reciprocal obligations to each other. Historically, the law of state responsibility has had only limited success in holding states responsible for violations of international law. The inherent weakness of the law of state responsibility is that it is a system based entirely on consent. Adjudicating bodies, such as the ICJ, do not have the jurisdiction to hear cases unless the states in question have agreed and one of the states is an "injured party" (i.e. a state that has been victimized by the violation in question). As such, the law of state responsibility represents a somewhat weak enforcement mechanism for international law.

In spite of this fundamental weakness, it must also be acknowledged that the scope (and utility) of the law of state responsibility is expanding. With the rise of the global human rights regime, individuals are now subjects of international law. Thus, state obligations are no longer merely reciprocal and self-contained: states now have obligations to their own citizens and general legal obligations that transcend bilateral relationships with other states. This has also been reflected in the law of state responsibility, as the

concept of "injured states" has expanded to encompass not only those directly affected by violations but also the broader international community.

The concept of state crimes shows its lasting influence in Article 48(b) of the Draft Code on the law of state responsibility. This article contains the notion of the breach of "obligations owed to the international community as a whole." Substantively speaking, these obligations are fundamental, *erga omnes* obligations of international law, largely the obligation not to commit criminalized human rights violations such as crimes against humanity and genocide. States that commit such serious, *mala in se* violations of international law are undoubtedly deviant, just as, in the domestic context, murder and rape constitute deviant acts.

Article 48 (b) represents a sort of *de facto* universal jurisdiction principle for the law of state responsibility because it enables any state to claim injury by any other state that has committed such gross human rights violations. Therefore, any state that commits these breaches is *hosti humani* – an enemy of all humankind, and, it could be argued, guilty of *de facto* state crimes under the guise of the law of state responsibility.

Furthermore, in the case of *Bosnia and Herzegovina v. Serbia and Montengro* (the "Genocide Case"), the International Court of Justice appears to embrace a notion of state responsibility for genocide that borrows wholesale from international criminal law. The Genocide Convention is interpreted as being a treaty not only entailing international judicial cooperation but also state responsibility. Article 3 of the Convention, setting out modes of responsibility for genocide, is directly applied to states; therefore states are to be held responsible not only for genocide but also complicity in genocide, incitement to genocide, attempted genocide, and conspiracy to commit genocide. This liberal interpretation of the law expands on the substantive aspects of the convention, but is not contrary to its object and purpose. However, this direct interpolation of what are essentially criminal law provisions into general public international law is problematic.

The issue of criminal intent has already been touched on, but another possible way around the intent conundrum is to shift the focus: in the case of the law of state responsibility, from proving intent to proving the existence of a state policy.[29]

The *Bosnia v. Serbia* case clearly set out the responsibilities of states in relation to the crime of genocide. This wide-ranging responsibility includes: 1) the responsibility not to commit genocide, 2) the responsibility not to

29 Gaeta, Paola. "On What Conditions Can a State Be Held Responsible for Genocide?" *European Journal of International Law*. Vol. 18, no. 4 (2007), p. 12.

further the commission of genocide (through complicity or other acts or omissions), and 3) the responsibility to actively prevent genocide. Any state party that does not meet its responsibilities under the convention could be said to be in breach of its international obligations *vis a vis* the other states party to the convention.

The Genocide Convention is primarily an international treaty ensuring state cooperation in the criminalization and punishment of genocide. Article 1 of the convention reaffirms that genocide is "a crime under international law". Furthermore, Article 4 stipulates that "persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals." Other articles of the convention require that states enact legislation criminalizing genocide (Article 5), try alleged genocide perpetrators before a competent tribunal (Article 6), and extradite genocide suspects where applicable (Article 7).

The Genocide Convention does not specifically stipulate that states have an obligation not to commit the crime of genocide. Nonetheless, it would be an absurdly strict constructionist judicial interpretation to assume that the commission of genocide by a state party would not be a breach of their obligations under the convention. Rather, it would be in direct contradiction with the object and purpose of the treaty. Serbia and Montenegro argued in the genocide case that the convention did not explicitly prohibit states from committing genocide, but this argument was rejected by the court when it stated that it would be paradoxical if states had an obligation to prevent genocide yet could commit the "international crime themselves."[30] Indeed, the prohibition of genocide is widely accepted as a part of customary international law.

The ICJ's view that the state can be held to be responsible in the same manner as individuals under Article 3 poses several challenges. For example, there is the question of which standard of proof is applicable for imputing responsibility on a state for genocide? The Court maintained that to require a criminal standard of proof is not appropriate for state responsibility, but also that the civil standard of a "balance of probabilities" is too low.[31]

The ICJ addressed the relationship between individual criminal responsibility and state responsibility by arguing as follows: "If any organ of the state, or a person or group whose acts are legally attributable to the state, commits any of the acts proscribed by Article III of the Convention, the international

30 *Bosnia v. Serbia* para. 166.

31 Gaeta 16.

responsibility of that state is incurred."[32] By requiring a link with individual criminal responsibility, the court seems to be adopting an interpretation similar to individualist theories of corporate criminal liability.

The Court, however, also argues that state responsibility for genocide can arise under the Genocide Convention regardless of whether any individual in that state has been found guilty of the crime of genocide. Antonio Cassese asks if this means that a state can be responsible for genocide even if its individual agents are found to not be criminally responsible (for instance by reason of intoxication or because the individuals responsible are all deceased)?[33] The answer is not entirely clear, as it seems that the Court is combining individualist and collectivist theories of criminal responsibility. Although individual criminal responsibility and state responsibility (criminal or otherwise) are distinct bodies of law, at some point the factual determination of state responsibility requires the criminal liability of individuals for acts of genocide.

States can also be held responsible for complicity in genocide. Complicity in criminal law is a conceptually broad category of responsibility that includes acts and omissions such as providing material aid to perpetrators, encouraging the commission of criminal acts, ordering crimes, harboring fugitives, etcetera. In the genocide case, the Court appears to utilize a different concept of complicity for state responsibility than that normally used for criminal responsibility. The Court argues that complicity requires some kind of positive action, but this is not consistent with a regular interpretation of international criminal law.[34] The Court seems to require proof of direct control for complicity, but it is not clear why or how they developed this separate state responsibility concept of complicity in genocide. This direct control standard for complicity is unreasonably high and creates a strange paradox whereby a state effectively bears a greater responsibility to prevent genocide than to not be complicit in genocide.

The direct control standard means that a state could provide the means for genocide, with knowledge and intention that the materials be used for genocide, and still not be responsible because it is not exercising effective

32 *Bosnia v. Serbia* para. 179.

33 Antonio Cassese, "On the Use of Criminal Law Notions in Determining State Responsibility" p. 5.

34 For example, in *Furundzija*, the trial chamber of the ICTY upheld that the mere presence of the accused at a crime may amount to complicity under certain circumstances (if they are an "approving spectator"). See ICTY Trial Chamber, *Prosecutor v. Furundzija* Judgment paragraph 207.

control over the perpetrators.[35] This is at odds with the Court's broad reading of the object and purpose of the Genocide Convention to embrace not only cooperation on criminal matters but also the responsibility to prevent genocide and the responsibility not to commit genocide. How can a state be barred from committing genocide yet be perfectly free to aid others in their commission of genocide? The Court should have adhered more attentively to the criminal law notion of complicity and ensured that states that knowingly provide substantive support to genocidal regimes are guilty of complicity in genocide. From a normative perspective, those enabling harm are only guilty if they are aware that their act will contribute to the harmful outcome (genocide).[36]

After the judgement in the genocide case, there can no longer be any doubt that states have a legal responsibility to prevent genocide. Although the Genocide Convention focuses on the punishment of genocide, the drafters did understand the importance of including prevention within the convention. It was for this reason that the obligation to prevent genocide was placed in Article 1 of the convention rather than leaving it as a mere preambular reference. The drafters also decided to remove the phrase that the obligation to prevent genocide occurred "in accordance with the following articles". The ICJ interpreted this decision as meaning that the obligation to prevent found in Article 1 does "impose distinct obligations over and above those imposed by other Articles of the Convention. In particular, the contracting parties have a direct obligation to prevent genocide."[37]

This obligation to prevent genocide is one of conduct rather than result; thus, states are not responsible for failing to prevent genocide but rather for failing to show due diligence in taking measures to prevent genocide.[38] There are several important points to consider when assessing whether a state has exercised due diligence in relation to the prevention of genocide in other states:

– *Capacity to influence*: How much capacity does the state have to influence the perpetrating state (this is a product of geography and the nature of the links and relations between the two states)?
– *The likely effectiveness of intervention is not relevant*: it is not material whether the intervention of a particular state would have been effective

35 Mark Gibney, "Genocide and State Responsibility," *Human Rights Law Review*, Vol. 7, no. 4 (2007), p. 772.

36 Gregory Mellema, "Enabling Harm," *Journal of Social Philosophy*, Vol. 37, No. 2 (summer 2007), p. 214.

37 *Bosnia v. Serbia*, para. 165.

38 *Bosnia v. Serbia*, para. 430.

or achieved the intended result. The possibility exists that actions that might be ineffective when employed by a single state would be effective if several states all took this action.

– *Genocide must have actually been committed*.[39]

In spite of this final point, the obligation to prevent begins when a state "learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed."[40] The Court does not specifically state what a "serious risk" of genocide constitutes or what it means that a state "should normally have learned" of the risk of genocide. Perhaps one can assume that the *should have* standard is a product (like the capacity to influence) of the state's geographical proximity and relations with the state at serious risk of committing the violation.

In the case, there is little judicial interpretation of the concept of "serious risk", but the court bases its assertion that the Serbs 'should have known' of the risk of genocide in Bosnia based on past circumstances (i.e. the persecution already committed by the Bosnian Serbs) and statements made by the Bosnian Serb leadership. This foreseeability (*dolus eventualis*) fell short of the direct knowledge that the Court required for complicity in genocide. It will be interesting to see if in future the Court looks to other sources to assess the risk of genocide such as early warning indicators. It appears that factual ambiguity will remain a useful excuse for bystander states in the absence of objective standards. However, it must be noted that the Court did order provisional measures during the course of the Bosnian Civil War (1993) demanding that the Government of Yugoslavia "take all measures within its power to prevent commission of the crime of genocide."[41]

The Court's interpretation of the obligation to prevent genocide also appears to be a differential responsibility. States are expected to fulfill their responsibility to prevent genocide in proportion to their capacity to do so. In other words, adjacent states neighboring and states with close relations with the genocidal regime bear a special responsibility to strive to prevent genocide. As an outgrowth of this concept, one would expect that more powerful states with the capacity to exert greater influence on other states would also bear a greater responsibility to prevent potential genocides.

39 *Bosnia v. Serbia*, paras. 430-431.

40 *Bosnia v. Serbia*, para. 431.

41 International Court of Justice, Reports of Judgments, Advisory Opinions and Orders, Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide, "Request for the Indication of Provisional Measures," Order of 8 April 1993, para. 52.

If a state wishes to pursue a claim under the law of state responsibility, it must establish that it has been injured by the breach of obligation committed by another state. Such a claim of injury was upheld by the Court in the case of Democratic Republic of Congo v. Uganda, where the Court ordered Uganda to pay compensation for gross human rights violations associated with Ugandan military intervention in the DRC in 1998.[42] Nonetheless, the concept of injured state, as stipulated in the Articles on State Responsibility, is increasingly broad and now includes not only single states but also groups of states and even the 'community of nations' as a whole. This is manifested in Article 48 on the "invocation of responsibility by a state other than the injured state". Paragraph 1 of the article reads:

> 1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if:
> (*a*) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or
> (*b*) the obligation breached is owed to the international community as a whole.[43]

Subparagraph b, concerning the breach of obligations "owed to the international community as a whole", has special import for the crime of genocide. According to the ILC Commentary, this provision addresses "collective obligations protecting interests of the international community as such."[44] Genocide, a crime seeking the destruction of a component part of humanity, is nearly universally accepted as being contrary to the 'interests of the international community as such.' Article 41 (1) of the Draft Articles requires that "the obligation to cooperate applies to states whether or not they are individually affected by the serious breach."[45] Thus, it appears that states have an obligation to cooperate to bring about the end of a serious breach, such as genocide, *whether or not* they are individually affected by that breach. It is at this point that the law of state responsibility finds synergy with the obligations of states to prevent genocide under the Genocide Convention, customary international law, and the responsibility to protect.

42 Augustine Brannigan, *Beyond the Banality of Evil: Criminology and Genocide* (New York: Oxford University Press, 2013), p. 169.
43 ILC Article 48.
44 ILC 322.
45 ILC Article 41.

In conclusion, both the concept of state crimes and the law of state responsibility maintain that genocide is a deviant act prohibited by international law, and states that facilitate this act must be held responsible. The broadening of the concept of injured state in the law of state responsibility, combined with the increasing recognition of responsibility of states to prevent genocide, means that wilful blindness is no longer a viable policy for third-party states in the event of genocide or the likely commission of genocide. States are under a legal obligation to enforce international law and respond appropriately to state deviancy. As a state-perpetrated crime, genocide requires an international response.

Enforcement: Interdicting State Deviancy

Even as veritable mountains of legal text and political pledges have accumulated, the victims of genocide remain profoundly alone in their plight. There is a good human rights argument for state sovereignty, as individuals have the right to associate together in states and these states can protect individuals from external tyranny. States are grounded in both natural justice and expediency.[46] Yet, as we know, states also commit horrible human rights abuses. Ironically, sovereignty dictates that the principal perpetrators of gross human rights violations – states themselves – are also the primary enforcers of international human rights. Even the UN itself is a collection of states.

This enforcement deficit means that the global human rights regime is a weak system of social control lacking in the kind of negative sanctions necessary to discourage organizational deviancy. It is a system where deviancy largely goes unaddressed.

How can deviant behaviour can be discouraged? Ultimately, genocide is not possible without the mobilization of state power by individual leaders. Perhaps disincentivizing and discouraging genocide is fundamentally about discouraging the individuals within the state who have decision-making power over the state as a whole. It must be clear to both the state and its leaders that genocide will be too costly and too risky for them at both an individual and an institutional level. Even if individuals and states are not always rational actors, enforcement measures can restrain both rational and irrational deviant behavior. Moreover, specific deterrence can be applied

46 Larry May, *Crimes Against Humanity: A Normative Account* (New York: Cambridge University Press, 2004), p. 9.

to states through measures such as restrictions on certain state functions and strict international monitoring (for example, the "no-fly" zones in Iraq in 1992-2003 functioned as a sort of specific deterrence against attacks by the Iraqi state on its Kurdish minority).

The roots of the enforcement deficit lie in the lack of effective authority in the international system. There remains a fundamental gap between human rights aspirations and human rights enforcement. It is not enough to rely on *post-facto* judicial mechanisms; genocide and similar gross human rights violations must be addressed as they occur. In the domestic sphere, law enforcement does not wait for criminal charges before arresting those individuals in the process of an apparent homicide. Appropriate intervention must be timely.

The Responsibility to Protect

The "responsibility to protect" doctrine offers one model for effectively interdicting state deviancy. The doctrine stipulates that, where states fail in their international obligations and commit gross human rights violations such as genocide, other states have a "responsibility to protect" the human security of the citizens of that state. Thus, state sovereignty is limited. The state monopoly on violence further reinforces the moral imperative of third-party intervention in order to protect the security of citizens threatened by their own state.

The ICJ's finding that states have a positive obligation to prevent genocide occurring in other states is synergistic with this concept of the responsibility to protect; in fact, the court seems to have been significantly influenced by the idea.

Intervention in the international context may be problematic in and of itself, as it is a challenge to the sovereignty of states (protected by Article 2 (7) of the UN Charter). In particular military intervention, which remains a last resort under the Responsibility to Protect, involves significant risks. Nonetheless, the cost of inaction is great, and international intervention to counteract gross human rights violations, or the risk of such violations, may be authorised under Chapter VII by the UN Security Council on the grounds that such acts constitute a threat to international peace and security.[47]

47 The mandate of the UN Security Council is sufficiently elastic that it may determine itself which sort of situations are threats to international peace and security.

In the first instance, the Council may authorize a range of diplomatic and economic measures such as arms embargoes, smart sanctions, and preventive diplomacy. These political measures may include such things as mediation, fact-finding, and "second-track" (non-official) dialogue. Unfortunately, the extremism and (frequent) isolation of genocidal regimes reduces the effectiveness of such soft-power measures. If the state in question does not respond to these steps, then more negative actions can be taken such as "naming and shaming" and diplomatic isolation. The effectiveness of the "naming and shaming" strategy is somewhat unproven. Labelling theorists might argue that naming and shaming only contributes to the alienation and isolation of deviant states.

Diplomatic instruments may also be accompanied by either positive economic measures (forms of inducement) or negative measures such as boycotts or embargoes (boycotts are preferable because the impact is principally on exporters). The aim of economic sanctions should be to maximize political impact while minimizing collateral damage.[48] In order for sanctions to be effective, it must be clear what conduct will lift the sanctions.[49] Sanctions will also be more effective if there is a pressure group within the country that has the power to influence government policy (i.e. the white business community in apartheid South Africa).[50]

At the early stage, covert operations may also be utilized. The imperilled population can be armed, although this presents the risk of further violence and human rights abuse. Such a measure was contemplated in Bosnia, where all parties to the conflict were under an arms embargo but there was a gross disparity in power between the forces. An argument was made at the time that lifting the arms embargo and arming the Bosnian Muslims could prevent gross human rights violations. Other types of covert operations that could be considered to counter imminent or ongoing genocide include the assassination of demagogic leaders (as was attempted with Hitler), the sabotage of genocidal infrastructure, providing material support to victim populations, or the use of psychological operations (propaganda, such as warning the victim population of an impending attack or deterring the attackers from their attack by making them believe military intervention is imminent).[51] All of these measures are of questionable legality and have

48 Fred Grünfeld, "The Effectiveness of United Nations Economic Sanctions," in W.J.M. van Genugten and G.A. de Groot (eds.), *United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights* (Antwerp: Intersentia, 1999) p. 110.

49 Grünfeld, "The effectiveness…" 110.

50 John G. Heidenrich, *How to Prevent Genocide* (London: Praeger, 2001), p. 101.

51 Heidenrich, p. 116.

the potential to undermine the international system and to contribute to further human rights abuses.

The United Nations is the only authority in the international system that has a sufficiently broad membership and the appropriate institutional mandate to authorize the use of force. Moreover, there are checks and balances inherent in multilateralism. However, there might be situations where paralysis in the UN brings other alternatives under consideration. This creates a difficult situation, as bypassing the UN erodes the long-term viability of the international system, yet allowing large-scale suffering on account of systemic weakness is also fundamentally morally unsound (and contrary to the aims of the UN). However, all things considered, pre-eminence must still be given to decision-making structures of the UN in order to avoid a situation in which international law is completely eroded.

One possible way around a deadlocked or ineffective Security Council is a Uniting for Peace Resolution. The Uniting for Peace Resolution (Resolution 377A of November 3, 1950) declares that when the Security Council fails to act to maintain international peace and security, the General Assembly may declare an Emergency Special Session within twenty-four hours and consider passing a resolution on the matter. The Emergency Special Session can be called if the matter is referred to the Secretary-General by a majority of member states or on a procedural vote in the Security Council (the permanent five members cannot veto procedural matters). The paradox of humanitarian intervention is that prudential consideration is the enemy of urgent response. The best approach is to struggle urgently to improve the effectiveness of the UN rather than to encourage vigilantism.

It must be recognized that coercive force may sometimes be needed, as the states perpetrating gross human rights violations are those that are the least likely to pay heed to international norms, judicial mediation, or other forms of 'soft power.'

Where military intervention does occur, the immediate priority must be to separate the perpetrators from their potential victims. This may be done in several ways, including direct attacks on genocidal infrastructure (concentration camps, command and control facilities, and transportation and communication networks), and through the creation of secure corridors or safe havens for refugees. The more industrialized the genocide, the easier it may be to disrupt ongoing genocide. If genocide is more diffused, it may require a greater "on-the-ground" presence. Once vulnerable populations are protected, then the intervening force should shift its priority to other goals such as addressing the root causes of the violence and removing the genocidal regime. Regime change is morally and legally imperative in the

case of genocide, as any regime that is committing genocide has lost all legitimacy within the community of nations.

Military intervention should only take place in the gravest cases of deviancy. To determine the seriousness of state deviancy, one must weigh the threat that the deviant act poses to the fundamental integrity of the system. Crimes such as genocide and crimes against humanity flagrantly breach the ideals of the United Nations Charter such as the maintenance of international peace and the "dignity and worth of the human person."[52] Moreover, they have ruinous humanitarian consequences, inflicting terrible suffering on thousands of individuals. In such cases, military intervention may be imperative.

Punishing Deviant States

If states are indeed capable of deviancy, then beyond enforcement measures, we must also consider whether states should be punished. The international system differs greatly from domestic legal systems as a system of normative and legal controls for the punishment of deviant acts. First of all, one must consider the inherent legislative and executive pluralism in the international system. There may be legal and even ethical norms, but there is no real corresponding supranational authority to implement and enforce these norms. Of course, there are institutions such as the United Nations, the International Court of Justice, and the International Criminal Court that seek to enforce norms, but the authority of these institutions is inherently limited due to their limited resources, their reliance on consent, and the presence of competing norms such as state sovereignty. These limitations lead to the highly selective enforcement of norms, a tendency that reduces the potential to deter deviant acts and undermines the legitimacy of the entire system.

Controller organizations must have the clear purpose of controlling deviancy. They must also possess legitimacy among those they seek to control and a mandate to "protect certain social actors from specified deviant actions by given types of organizations."[53] In the case of international organizations such as the UN, one can question whether such institutions possess a mandate to stop deviant actions by states, and if so, where is this mandate derived from? States remain central to the international system,

52 Charter of the United Nations, "Preamble", June 26, 1945.

53 Ermann and Lundman, pp. 59-60.

and the United Nations remains a community of states that is controlled by states as institutional actors rather than any other external stakeholder. Moreover, although states act deliberately, they can do so without a clear presumption that they will face sanctions either in terms of individual criminal responsibility or state responsibility. This limits the effectiveness of legal norms.[54]

With these limitations in mind, we can consider what must be done with state deviancy beyond the interdiction of offences. In the case of individual offenders in domestic judicial systems, there is a range of retributive and restorative mechanisms such as capital punishment, incarceration, victim-offender mediation, and community service. John Brathwaite's reintegrative shaming theory offers a different perspective by framing crime prevention and legal sanctions in terms of producing shame in the offender. He contrasts *stigmatizing shaming*, which humiliates offenders and labels deviancy as a "master status trait", with *reintegrative shaming*, which demonstrates clear disapproval for the offence while still allowing the eventual possibility of reintegration.[55]

In the context of state deviancy, reintegrative shaming is arguably more effective and logical than stigmatizing shaming. We must clearly condemn the acts of states committing genocide, but condemning the state itself may contribute to its isolation – a condition that may send a moral message but may also contribute to the risk of future atrocities.[56] This condemnation must also encompass measures to combat genocide denial. We cannot practice specific deterrence in the sense of incapacitating states (though incarceration, for example), but the capacity of states to commit atrocities can be limited in other ways such as arms embargoes and the jamming of hate media. Deterrence, in the context of states, can encompass measures that limit the capacity of individuals (especially leaders) to perpetrate. This can include discentives such as the freezing of assets or even the execution of arrest warrants for international courts and tribunals.

After atrocities, criminal justice may serve a role in broader transitional justice measures. In particular, criminal responsibility serves to identify guilty individuals. Arguably, this process of the individualization of guilt also contributes to reintegration by shifting responsibility from the state,

54 Ermann and Lundman, p. 64.

55 John Brathwaite and Tony Makkai, "Reintegrative Shaming and Compliance with Regulatory Standards," *Criminology*, Vol. 32, no. 3 (1994), p. 362.

56 Barbara Harff, "No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Mass Murder Singe 1955, *American Political Science Review* 97, no. 1 (2003).

as a political community, to individual perpetrators. However, the danger of adopting entirely individualized transitional justice measures is that they largely ignore the collective and institutional bases of perpetration. International criminal trials are symbolic exercises in shaming which often do approach prosecutorial strategy (and selectivity) from the perspective of placing institutions on trial through the actions of individuals (e.g. the post-Nuremberg Einsatzgruppen trial and the "Media Trial" at the International Criminal Tribunal for Rwanda). Yet the mass dimensions of perpetration may not be fully captured by such trials. Indeed, the collective responsibility of states for genocide is relevant in as much as the perpetration of genocide is not the result of a small collection of individual perpetrators but rather entire *regimes* and systems of perpetration.

States as Bystanders to Deviancy

In addition to being perpetrators of mass atrocities, states also act as moral and legal bystanders. Moral rationalizations ("techniques of neutralization") are often applied by perpetrators to reframe their behavior in ways that neutralize moral norms and, subsequently, moral responsibility.[57] These techniques may be equally applied by bystanders in order to neutralize the moral norm to intervene in support of the responsibility to protect and the responsibility to prevent genocide.[58]

– *Denial of the Victim*: Bystanders often argue that victims are responsible for their own suffering, that they brought violence on themselves, either through their own historical or contemporary violence (a double genocide), or through their inability to accept reasonable alternatives to genocide (such as appeasement). Apportioning the blame to all sides in a conflict is also a way of avoiding involvement. Bystanders may also tacitly (or even explicitly) argue that the victim is not equally human so they do not deserve to be rescued. In the case of bystander states, the victims are not directly dehumanized but are rather condemned through the

57 Kjell Anderson, *The Dehumanisation Dynamic,* Doctoral Thesis (Galway: National University of Ireland, 2011). See also: Gresham M. Sykes and David Matza, "Techniques of Neutralization: A Theory of Delinquency." *American Sociological Review*, vol. 22., no. 6 (December 1957), pp. 664-670.

58 Economist Albert Hirschman argues that people who do not want to act cite the futility, perversity, and jeopardy of proposed measures. Samantha Power applies this theory to the United States' response to genocide, and I am melding this idea with my own modified form of Skykes and Matza's neutralization-drift theory. See Power, 125.

subtle discourse of exoticism: the victims are very different from "us" and therefore our moral obligations towards "them" are diminished.

– *Denial of Responsibility*: Bystanders may justify their inaction by arguing that others are in a better position to intervene and are therefore more responsible for the consequences of non-intervention. Social psychological experiments show that individuals are much less likely to intervene if there are other non-intervening individuals present – this has the effect of diffusing moral responsibility.[59] States may also deny their responsibility by failing to recognize a general responsibility to protect. Yet one might ask: if there is no responsibility to protect, then why are states so reluctant to recognize situations of ongoing genocide? Samantha Power argues that American decision-makers avoid the term "genocide" so that they "can in good conscience favour stopping genocide in the abstract, while simultaneously opposing American involvement in the moment."[60]
– *Claim of Futility*: Bystanders argue that to take action would be too difficult or too complicated. Moreover, intervention might require power and resources that are simply unavailable. A variation of this technique is the idea that intervention would be existentially fruitless: supernatural or human evil are real and immutable characteristics of human existence, so intervention would be pointless. Bystanders may also argue that their intervention would only make matters worse, exacerbating the humanitarian situation.
– *Claim of Jeopardy*: To intervene would be too risky and might expose the bystanders themselves to potential victimization. This is often the argument made by Western countries against intervening in Africa. There is an unmistakeably racist subtext to this argumentation: Africans are not worthy of any meaningful toil; Africa itself remains hopeless.
– *Claim of Ignorance*: Passive bystanders often claim that the victimization they are witnessing is not clear, that there is not enough information available for reasonable determination or certitude. The apparent uncertainty or decision paralysis of other bystanders further reinforces the claim of ignorance. When in dialogue with other doubting bystanders, a type of groupthink may take hold. A group of people (or perhaps

59 The experiments of Latané and Darley found that with an increasing number of bystanders, there was a decreasing willingness to help. See Ervin Staub, *The Psychology of Good and Evil* (New York: Cambridge University Press, 2002), p. 74.

60 Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002), p. xviii.

> even states) may also exhibit *pluralistic ignorance*, where a subconscious decision is taken to ignore the victimization at hand and to send cues to other bystanders that the apparent victimization is actually going unwitnessed or not even taking place at all. As early as late 1942, the Allies began receiving reports of the Holocaust, but decision-makers denied and suppressed this information because it was deemed 'not reliable' or 'incomplete.'[61]

The greater the number of techniques of neutralization effectively invoked, the weaker the moral obligation to intervene. As was argued earlier in this chapter, states are both distinct institutional personalities as well as the aggregate of millions of individuals. Individual bystanders – whether they are direct, on-the-scene bystanders or long-distance bystanders – wish to avoid moral guilt for the suffering of others. This may be especially true for leaders who may utilize techniques of neutralization both for political-instrumental reasons and also for the sake of their own cognitive integrity.

Conclusion: Genocide and the Paradox of State Power

Individuals such as Mahatma Gandhi have proved that grassroots action against tyranny can be effective. Yet, the rapid mobilization of altruistic individuals (or even states) on a global scale is implausible. Therefore, the solemn burden for action against genocide rests with states, as only they have the necessary resources and infrastructure. Indeed, the nature of genocide as a crime where the full fury of state power is directed at marginal groups demands the intervention of other states.

There is a paradox at the heart of this discussion of state deviancy: state power is needed to bring an end to genocide, yet it is state power itself that can be the cause of genocide. At the very least, the concentration of power – generally in the form of a state – is necessary to enact genocide. How can states be the instrument of human rights enforcement when they, like individuals, are often self-interested or even selfish?

Indeed, the risks of this conceptualization of state deviancy are manifest. First, one might consider the potential of "deviancy creep", where socially defined deviant acts are continually expanded, and therefore state sovereignty is continuously and substantially eroded (such an erosion of sovereignty

61 Ibid., 35.

may also erode human rights if it occurs in an arbitrary manner).[62] There is also a risk that the 'inmates could get control of the asylum' – namely that an increasingly intrusive and authoritarian international system is controlled by the deviant states themselves and used to negative ends. Nonetheless, deviant acts such as genocide are uncontested as social ills within the international community. Action against such crimes is consistent with the very raison d'être of the United Nations – to counteract threats to international peace and security and foster international cooperation.

Human rights, at their core, are altruistic. Indeed, the law itself is aspirational, demanding a modicum of altruistic behavior from flawed individuals. The question, then, is whether this is a systemic flaw or a strength. In truth, it is a necessity. Human rights *must* be transcendent and aspirational in order to realize any meaningful change in the human condition. Moreover, the human rights of individuals must be fundamental to the international system. An International Committee of the Red Cross (ICRC) survey conducted in 1999 found that fully two-thirds of civilians in twelve war zones were in favor of military intervention.[63] We cannot ignore the plight of victims in other countries.

Yet one might still argue that through state-oriented international mobilization, we are only seeking to unwisely globalize the demonstrably non-altruistic state. Perhaps we need to move beyond the state to more basic and less ambitious forms of human organization? Expansive state power and nationalist ideologies may lend themselves to grand, utopian, and ultimately destructive enterprises. Inevitably, discussions about the failings of state altruism lead to discussions of the failure of individual altruism. After all, states are led by individuals and comprised of individuals. Is the state a vehicle of human desire? If this is the case, then the sinister manifestations of state power are ultimately attributable to the imperfection of homo sapiens.

The recurrence of gross human rights violations may lead us to question whether the mass victimization of individual citizens by their own states is actually deviant within the international system. Does the complete ineptness of the "international community" in response to situations like the Syrian Civil War prove the hollowness of moral norms? Moreover, we can ask ourselves whether the ambiguity of international treaties is itself indicative of a failure to create binding, meaningful norms of social control.

62 Germany between the world wars is one such society where the concept of deviancy was continuously and ruinously expanded.

63 Thomas G. Weiss, *Humanitarian Intervention* (Cambridge: Polity Press, 2007), p. 153.

It is difficult to answer these questions empirically, but we can surmise that the bystanding behavior of states in response to situations like Syria does undermine the function and meaning of moral norms. We must not overlook progress in reaching such a sober conclusion – human rights issues are increasingly being considered by international bodies whereas, in past decades, they were simply not an important diplomatic issue beyond the reciprocal rights of minority communities.

The altruistic rhetoric of human rights must not be grounded in naivety about the genuinely flawed character of human society but rather in a desire to respond to atrocity in a progressive and effective manner. What is needed are realistic structures built around a core of idealism. The failings of globalized altruism necessitate enduring and robust structures of international mobilization within a framework of human rights. The international system must be transformed into a true system of social control grounded on state responsibilities. This system of social control would operate through political interaction, as states are the main subjects of the system, rather than individuals. Even if states cannot be reformed, they can at least be restrained. Focusing on states as perpetrators is merely another way of breaking the chain of causality of genocide. Such a system to counteract state/organizational deviancy requires both constraints on the power of states to abuse their own citizens and constraints on their boundless power to ignore the abuse of citizens in other states. It also means ensuring that international institutions have the power to enforce norms.

What is being proposed here is not an international system acting as a "philosopher king" in the Platonic sense of a benign dictator but rather a system grounded in democratic participation within each state and between states within the global community. Indeed, the democratization of international relations creates stakeholders in the interdiction of organizational deviancy beyond states themselves. Intervention of any type must be purposefully restricted to the safeguarding of shared values and collective interests. While we might hope that such moral and legal norms already exist, principles seem to rarely catalyze action. This must change. What is at stake is the restoration of civilizational progress itself.

Part II
Courses of Genocide

4 Hunting Specters

Paranoid Purges in the Filipino Communist Guerrilla Movement

Alex de Jong

In 1986, a popular uprising ended the rule of Ferdinand Marcos, who had been dictator of the Philippines since declaring martial law in 1972 (which was officially lifted in 1981). Despite defeating their enemy, the Communist Party of the Philippines (CPP) – the principal anti-Marcos force – went through a period of disorientation in the 1980s. In that decade, it is estimated that the CPP had an armed forces of around fifteen thousand, political cadres also numbering some fifteen thousand, and about a million supporters.[1] During this decade, CPP members tortured and killed hundreds of their own comrades in an attempt to uncover Deep Penetration Agents (DPAs) or government spies in the underground party and in its armed wing, the New People's Army (NPA) guerrilla. The intra-party violence was most intense in Mindanao, the southern island of the Philippine archipelago. The purges there, which lasted from mid-1985 to mid-1986, dealt a particularly heavy blow to the organization. This essay looks at the party's ideology to find explanations for this violence. I argue that the party's framework pushed it to explain unexpected difficulties as the work of spies.

The history of the communist movement is scarred by murderous purges of those deemed by party leaders to be a threat. However, the CPP's self-destructive behavior had a number of peculiar characteristics. One is that the purges took place within a party that was not in power. Purges in ruling communist parties were often part of attacks of a ruling group on an opposition or on a perceived threat to its power. In the Chinese and Cambodian communist parties, for example, purges took place before the seizure of state power but in a context that these parties formed the de facto government over substantial areas. The same could not be said of the CPP. The purges in the CPP were not the outcome of a faction fight or the removal of dissidents under the cover of fighting saboteurs and spies. Although the central leadership of the party could initiate purges or stop them, a purge

1 Patricio N. Abinales and Donna J. Amoroso, *State and society in the Philippines* (Oxford 2005) 219.

like the one in Mindanao started independently of the national leadership. The national leadership did not determine who were going to be the victims. At one point, even CC members and their emissaries were suspect because distrust had become so generalized.[2] The purges in the CPP were not a consequence of an internal power struggle, and victims did not belong to specific categories. Because of this, the term 'purge' could be considered a misnomer. But because the persecutors in communist purges tend to create the categories that are victimized, I have decided to use the term 'purge' here.

Self-Mutilation of a Movement

The first purges in the CPP seem to have taken place in the early 1980s. According to a former leading party member, the earliest purge took place in 1980, on the islands Samar and Leyte.[3] Somewhat later, a purge called *Kadena de Amor* on the island of Luzon cost around 30 lives, and in 1982 a purge named *Oplan Takipsilim* (Operation Plan Twilight), also on Luzon, cost dozens of lives, while hundreds were arrested and tortured. At the end of the 1980s, a hunt for spies called Operation Plan Missing Link (OPML) was organized, and a special committee called 'Olympia' hunted for spies nationwide. These operations led to the loss of dozens of lives and seem to be the last two instances of widespread 'purging'.

The most lethal purge happened around the mid-1980s, just as the country's political crisis was reaching a climax, on the island of Mindanao. Here, the purge also included people in the mass base of the movement. In July 1985, regional party leaders, members of its Mindanao commission (Mindacom), were in Manila for a meeting of the party's Central Committee. To take care of affairs while they were away, they appointed a 'caretaker commission' of three cadres. This commission received reports that agents had infiltrated the movement. Afraid of the damage these agents could do, the caretaker group did not wait for the return of Mindacom but ordered an immediate hunt for infiltrators. Mindacom met to evaluate this campaign and to estimate the threat.[4]

2 Author's interview with Harry (15.04.2011).

3 Author's interview with Harry (15.09.2011). Harry, which is not his real name, joined the CPP in 1977 or 1978 and was a senior party member in Mindanao during the purges. He left the party in the 1990s because of political differences.

4 Patricio N. Abinales, 'When the revolution devours its children before victory: *Operasyong Kampanyang Ahos* and the tragedy of Mindanao communism' in: Idem, *Fellow traveller. Essays*

Basing themselves on an evaluation of *Oplan Takipsilim* that deemed it to be a success, Mindacom gave the green light for an island-wide purge, which was named *Operasyon Kampanyang Ahos* (Operation Campaign Garlic) or 'Kahos'. The operation spread rapidly. The political officers (POs) in charge of the collectives that members were organized in received permission to use 'hard tactics' (torture) to obtain information and were given the role of judge, jury, and executioner. Those accused had no right of appeal. It was easy to come under suspicion: being named once in a 'confession' meant being placed under surveillance, being mentioned twice was grounds for arrest.[5] Rumors of comrades torturing and killing each other began to spread as NPA camps were used as prisons and graveyards. Afraid, disillusioned, or both, many members and sympathizers left the movement.

Three months later, Mindacom ordered an end to Kahos. But even representatives of the leadership had become suspect and it would take another six months, until April 1986, for Kahos to end completely. By that time, hundreds had been killed. How many is uncertain: the total number of victims of Kahos probably exceeds 800. I interviewed 'Harry', at the time a leading cadre in central Mindanao, who estimates the number of deaths to be around 2,000.[6] Similar to assessments of earlier anti-infiltration drives, an initial assessment of Kahos concluded that 'mistakes' had been made but that the operation as a whole had been a success. In the early 1990s, the party adjusted this assessment and declared Kahos, OPML, and Olympia to be 'criminal'. The main responsibility for the killing was attributed to party members who by this time had developed political differences with the leadership. The pre-Kahos purges were ignored.[7]

The figure below contains information gathered by an organization set up by survivors of the purges.

on Filipino communism (Quezon City 2001) 153-193, Patricio N. Abinales, 'Kahos revisited: the Mindanao commission and its narrative of a tragedy' in: Rosanne Rutten, *Brokering a revolution. Cadres in a Philippine insurgency* (Quezon City 2008) 144-188.

5 Author's interview with Harry (15.04.2011).

6 Author's interview with Harry (15.04.2011).

7 The CPP's view of Kahos, OPML and Olympia can be found in Armando Liwanag, 'Reaffirm our basic principles and rectify errors', *Kasarinlan*, 1 (1992) 96-157.

Figure 4.1 'Anti-infiltration' campaigns/operations[8]

Campaign/ operation	Year(s)	Areas	Number of victims
Kadena de Amor	1981-82	Quezon-Bicol Zone	Around 30 dead
Oplan Takipsilim	1984	Southern Quezon towns of Lopez, General Luna and Calauag	Around 30 dead
Operation Zombie/ Cleaning *Kampanyang Ahos* (Kahos)	1983-84 July 1985-86	North-Central Mindanao region Cagayan de Oro, Misamis Oriental, Bukidnon; Southern Mindanao: Davao City, Davao del Norte, Davao del Sur, part of Cotabato	Over 1500 arrested and tortured; over 800 killed
Oplan Missing Link (OPML)	1988	Southern Tagalog: Quezon Laguna, Cavite, Batangas	112 arrested and tortured; 66 killed
Olympia	1988-89	Based in Metro Manila, involved nationwide organizations	20 killed
Eastern Visayas	1988-89	Cebu, Leyte, Samar	?
Western Visayas	1985-89	Aklan	?
Cagayan Valley Region	Early 1980s – '89	Cagayan Valley Region	300 dead
Central Luzon operation	1988 – 89 (?)	Bulacan (?)	?

Their geographical spread and recurrent character indicate that the purges were the result of policies and ideas present in the CPP as a whole. Many of the purges were linked because they were organized on the basis of assessments of earlier operations, like the assessment of *Oplan Takipsilim* that helped to convince the Mindanao leadership to implement Kahos.

Halfway through 1984, the party's newspaper *Ang Bayan* (The People) published an article entitled 'Busting a spy network: One region's experience', which gives insight into how the purges were perceived in the organization.[9] It describes the *Kadena de Amor* campaign of 1981 as very successful. According to the article, a conspiracy was discovered when an infiltrator told one of his comrades that the enemy was recruiting him, and suggested this was a chance for the movement to infiltrate 'the other side'.

8 Based on 'Peace Advocates for Truth, Healing and Justice. Research, Education and Communication Project Final Report', may 2006. Numbers are approximate minimums.

9 'Busting a spy network: one region's experience', *Ang Bayan* 10 (1984) 13-16.

But 'penetrating analysis' by 'responsible comrades' supposedly unmasked him and other infiltrators. Those considered guilty were 'punished according to the nature and seriousness of their crimes' – we can assume that this means execution. This article was published on the eve of Kahos, as rumors of spies circulated.[10] The purges were deep, self-inflicted wounds costing hundreds of lives, following a similar pattern of accusations, torture, and more accusations and more executions. To explain this pattern, we need to examine the party's world-view.

Philippine Maoism

The Communist Party of the Philippines was officially founded in 1968 on the birthday of Mao Zedong – December 26th – symbolizing the party's adherence to Maoism. Mao's China was then going through its most radical phase, the Cultural Revolution, and had broken with the Soviet Union. Many radicals perceived the Cultural Revolution to be an attempt to avoid the stultifying bureaucracy that burdened the Soviet Union. They were inspired by Maoism's radicalism and the importance it gave to revolutionary movements in Third World countries like the Philippines.[11] The influence of Maoist thinking on the CPP was to remain deep.[12]

For large parts of its mass base of peasants and the urban poor, the official party ideology was not very important, but many cadres of the CPP were former students or came from the Catholic clergy. The CPP's Maoism considered these 'intellectuals' to be relatively privileged and called on them to go over to the side of the proletariat, motivating them to follow the Maoist line strictly.[13] A kind of division of labor developed within the CPP and its allied organizations; former students and clergy became leaders, organizers, and educators, while NPA fighters were mainly drawn from the poor peasantry. Thinking and writing remained the task of a selective few, in the first place that of founding chair Jose Maria Sison, who insisted rigidly on the Maoist framework.

10 Author's interview with Harry (15.04.2011).

11 Lin Piao, *Vive la victorieuse guerre du peuple! – Pour le 20e anniversaire de la fin victorieuse de la guerre de Résistance du peuple chinois contre le Japon* (Peking 1965). Alexander C. Cook, 'Third world maoism' in: Timothy Cheek ed., *Mao. A critical introduction* (Cambridge 2010) 288-313.

12 Armando Malay Jr., 'Some random reflections on Marxism and Maoism in the Philippines' in: Randolf S. David ed., *Marxism in the Philippines. Marx centennial lectures* (Quezon City 1984) 45-99.

13 Author's interview with Harry (15.04.2011).

At times, those 'above' and those 'below' talked past one another, making it difficult to develop effective education.[14] One *Ang Bayan* article complained that even the party's own publications were not read widely among its members.[15] The leadership was aware that political education was lacking, and appeals for further study and education were a recurring element in the party newspaper. That such calls were often repeated demonstrates that the official program of political education was not strictly implemented and that there were doubts about the ideological commitment of its members. These doubts proved to be justified as the movement fell apart in the late 1980s.

The CPP did modify Maoist strategy to some degree in texts like *Specific Characteristics of our People's War* (SCPW, 1974) and *Our Urgent Tasks* (OUT, 1976), both written by Sison under the pseudonym Amado Guerrero. The principle of 'centralized leadership and decentralized operations' was an important element in the development of the party's ideology. This principle was explained as follows: '[the party] must distribute and develop throughout the country cadres who are of sufficiently high quality to find their own bearing and maintain initiative not only within periods as short as one or two months, periods of regular reporting, but also within periods as long as two or more years, in case the enemy chooses to concentrate on an island or a particular fighting front and blockade it.'[16]

This meant that party units enjoyed relative freedom to experiment with different approaches as long as such experiments remained local, were successful, and could be combined with formal adherence to the Maoist framework. A range of opinions existed in the supposedly monolithic party, but a refusal to discuss anything that would not fit the Maoist paradigm made it impossible to arrive at a synthesis of various viewpoints and experiences. Local experiences 'rarely worked their way "upwards" as ideas that prompted a re-thinking of the central tenets of Party thought'.[17] Cut off from practical experiences, the party's thinking became a reified ideology.

14 David Glanz, 'Confusion grows from the barrel of a gun. The Communist Party of the Philippines.' PhD dissertation, Monash Univerity. 2001. 70.

15 'Newspapers: flag bearers of the mass movement' *Ang Bayan* (12) 1982, 12-14.

16 Amado Guerrero, *Specific characteristics of our people's war* (Oakland 1979), Amado Guerrero, 'Our urgent tasks', *Rebolusyon* 1 (1976) 2-33.

17 Kathleen Weekley, 'From vanguard to rearguard, The theoretical roots of the crisis of the Communist Party of the Philippines' in: Patricio N. Abinales ed., *The revolution falters: the left in Philippine politics after 1986* (Ithaca 1996) 28-60, there 36.

The Party in Mindanao

The island of Mindanao is the second largest of the country after Luzon. In the late 1970s, the party there became the fastest growing branch of the movement. Patricio N. Abinales described how the CPP there could grow so rapidly thanks to the 'fluidity' of local society: Mindanao had long been a frontier zone with large, unsettled stretches of land, but by the late 1960s this frontier had started to 'fill up'.[18] The frontier could no longer function as a safety valve absorbing the poor and the landless. At the same time, capital increasingly penetrated the island to tap rich agricultural and mineral resources. Marcos' attempts to implement developmentalist policies increased social tensions. Great numbers of people were radicalized and joined the revolutionary movement. The period of the most rapid advance was between 1981 and 1984 with a severalfold expansion of guerrilla fronts, mass organizations, and party members. Abinales estimates that between 1981 and Kahos in 1985, the number of party members grew from 950 to 2396: a growth of over 250 percent.[19]

Early on, the party in Mindanao had low recruiting standards, meetings were chaotic and informal, often no notes were taken, and decisions were not implemented.[20] To organize the party, Mindacom was set up in the early 1980s and party work became better organized. But any organization going through as rapid a growth as the CPP in Mindanao was bound to have great difficulties in absorbing and training all the new members. Many cadres in Mindanao had only limited familiarity with Marxism. A 1980 party evaluation concluded in Mindanao that 'party-building' was weak.[21] According to Harry, a large majority of CPP members in Mindanao did not go through basic political training (this was corroborated by notes for an internal discussion that I obtained in my research).[22] Party leaders remained more interested in success stories about the expansion of the movement and neglected to implement security measures or consolidate its mass base.[23]

18 Abinales, 'When the revolution devours its children before victory', 163.

19 Ibid., 166.

20 Benjamin Pimentel, *U.G. An underground tale. The journey of Edgar Jopson and the First Quarter Storm generation* (Pasig City 2006) 147-166.

21 Kerkvliet, Ben J. Tria, 'A different view of insurgencies' HDN discussion paper series 5, Quezon City, n.d. 4.

22 Author's interview with Harry (15.04.2011), 'Remarks of Ka Nong at study session of January 19, 1992'.

23 Author's interview with Harry (06.04.2011).

The Mindanaon CPP was weaker than it looked. The distrust that would tear it apart sprung up between people who were hardly familiar with each other. Even though they supported the same party, they often had little in common. Many party supporters were unprepared to deal with sudden political changes. They lacked political training and only had their experiences in a largely military struggle to build on.

After the August 1983 assassination of the figurehead of the liberal opposition, Benigno Aquino, the Marcos regime faced a crisis. Marcos tried to regain the upper hand by calling for early elections, but Benigno's widow – Corazon 'Cory' Aquino – stood against him in the elections and began to gather increasing support. The CPP unsuccessfully called for an election boycott and did not play a decisive role in the urban mass protests, known as the EDSA revolution (named after Epifanio de los Santos Avenue, one of the main roads of the capital and the epicenter of the political demonstrations). The revolution ultimately led to Cory Aquino becoming president in February 1986. In a few short months, the CPP went from being the vanguard of the anti-Marcos movement to society's rearguard.[24]

Party forces decreased sharply as a result: between 1987 and 1990, party membership fell by 15 percent, the number of neighborhoods under its coverage dropped by 16 percent, the number of NPA fighters declined by 28 percent, and total membership in party-controlled rural mass organizations decreased by a staggering 60 percent.[25] To counter these developments, critics urged significant changes in the party's thinking and operating. Sison, who had re-assumed the position of chairman in 1987 following his release from prison in March 1986, went the other way.[26] Using a new alias, Armando Liwanag, he attacked those who criticized the Maoist model. The debate came to a head and led to splits within the party after Sison published in 1992 a document called *Reaffirm our basic principles and rectify mistakes* which called for a return to Maoism after the 'deviations' of the 1980s.[27] Sison was able to win over a majority of the party leadership. He and his supporters, now dubbed 're-affirmists' or RAs, started to expel the

24 Kathleen Weekley, *The Communist Party of the Philippines 1968-1993. A story of its theory and practice* (Quezon City 2001) 224.

25 Nathan F. Quimpo, 'The debacle of the Communist Party of the Philippines. A complete failure of the maoist paradigm' (n.p., n.d.) 10.

26 Quimpo, 'The debacle of the Communist Party of the Philippines' 74. Sison denies that he is Armando Liwanag.

27 Armando Liwanag, 'Reaffirm Our Basic Principles and Rectify Errors', *Kasarinlan*, 1 (1992) 96-157.

're-jectionists' (RJs) who rejected the Maoist model. At the end of 1992, the RAs had control of a unified but weakened party.[28]

Ideological Causes

Schematically, the pattern of 'anti-infiltration operations' in the CPP poses three questions: 1) what caused them, 2) what made it possible for them to continue so long, and 3) why did they happen when they did? Evaluations of the purges by Paco Arguelles[29] (Ric Reyes, a member of Mindacom during Kahos), Walden Bello,[30] and Robert Francis Garcia[31] provide some elements of answers, focusing on the party's instrumentalist view of people and the intolerance of difference. Abinales analyzes why Kahos was so much more devastating than the other purges.[32] He discusses the increase in tensions in Mindanaon society during the 1980s and how this was reflected in the growth and self-destruction of the Mindanaon CPP. Another essay points to the institutional and ideological weakness of the Mindanaon CPP and interprets the purge as an attempt by a bewildered leadership to keep the organization together under the pressure of an intensifying civil war and rapid changes.

The CPP conducted an evaluation of the purges in *Reaffirm our basic principles* and *General review of significant events and decisions (1980-1991)*.[33] These documents were part of the debates in the movement in the late 1980s and early 1990s. It should be noted, however, that this analysis, written by party ideologue Sison, was motivated by the wish to attack opposing tendencies in the movement and should be treated carefully. To summarize, it stated that the party had deviated from the 'correct' (Maoist) line, which led to exaggerated hopes of victory. Confronted with setbacks caused by this deviation and unable to explain these, the 'deviationists' started to look

28 Kerkvliet suggests its possible that since the 1990s, 'CPP members today are more united around a Communist ideology.' Kerkvliet, 'A different view of insurgencies', 4.

29 Paco Arguelles, "'Kahos': A Soul Searching," *Human Rights Forum*, 5 (1995).

30 Walden Bello, 'The Crisis of the Philippine Progressive Movement', *Kasarinlan*, 1 (1992) 166-177.

31 Robert Francis B. Garcia,, *To suffer thy comrades. How the revolution decimated its own* (Manila 2001).

32 Abinales, 'When the revolution devours its children before victory' and 'Kahos revisited: the Mindanao commission and its narrative of a tragedy'.

33 Armando Liwanag, 'Reaffirm our basic principles and rectify mistakes', Communist Party of the Philippines, 'General review of significant events and Decisions, 1980-1991', *Debate* 7 (1993) 33-95.

for spies, leading to the purges. Sison left open the possibility that there were real Deep Penetration Agents, or DPAs, but suggested that it was the 'deviationists' themselves who spread rumors of DPAs.[34]

Looking at the CPP's ideology, two characteristics help to explain why the purges occurred and became so widespread: the idea that the party made possible a higher form of knowledge and the CPP's reductionism of political struggle to violence and identities to class.

Carrier of truth

One characteristic of the CPP's Maoism was its certainty that it would win. As Sison put it in *Philippine Society and Revolution*, the handbook of CPP ideology: 'Marxism-Leninism-Mao Zedong Thought [was] the acme of proletarian revolutionary ideology in the present era when imperialism is heading for total collapse and socialism is marching toward worldwide victory'.[35] This confidence was linked to the Maoist idea that the party is not just a political tool but an organization with an epistemological function that makes it possible to know universal truths. Adopting Josef Stalin's ideas about the party, the Maoists held that there was a qualitative difference between the consciousness of the party and that of its social base.[36] Stalin argued that knowledge is a reflection of material reality but since reality comes before any reflection, knowledge inevitably lags.[37] It is only the party that is able to 'rise above the momentary interests of the proletariat' by directing all organizations of the working class as 'auxiliary bodies' and by 'linking the Party with the class', enabling a superior consciousness.[38]

The Maoist party is what psychoanalyst Jaques Lacan called the 'subject supposed to know'. According to Lacan, humans form their personality by comparing themselves with other, often imagined, subjects – 'the Other' – just like a child who becomes familiar with its body by looking at others. The 'subject supposed to know' arises through transference: in the context of therapy, the analyst is supposed to know the meaning of the patient's symptoms. The 'subject supposed to know' is assumed to have access to a higher form

34 Jose Maria Sison, Rainer Werning, *The Philippine revolution. The leaders' view* (New York 1989) 106-108. Jose Maria Sison,and Ninotchka Rosca, *Jose Maria Sison: at home in the world. Portrait of a revolutionary. Conversations with Ninotchka Rosca* (Greensboro 2004). 125.

35 Amado Guerrero (Jose Maria Sison), *Philippine society and revolution* (np, 2005) 59.

36 J.V. Stalin, *Problems of Leninism* (Peking 1976) 98.

37 Henri Lefèbvre, *Probleme des Marxismus, heute* (Frankfurt am Main 1967) 118.

38 Stalin, *Problems of Leninism,* 99.

of knowledge.[39] The CPP was 'the subject supposed to know' for many of its supporters who lacked a clear idea of its ideology but trusted its guidance. Since crisis ensues when the chain of transference breaks down, people insist on maintaining it, even when the subject supposed to know obviously does not 'know' – such as when the party starts killing its own members.

Cadres were taught unquestioning loyalty and faith in the party and told that 'absolute devotion' to 'the cause of the proletariat and its party' was 'foremost'.[40] The purges were motivated by a certainty that spies and saboteurs were active in the party on a large scale. It was not investigations that led to the conviction that enemy agents were active, but the other way around: the conviction that spies were active led to investigations and purging. The conviction that the party enabled a superior kind of knowledge and was the instrument of history was crucial in convincing activists to accept this premise.

Reductionism

With the intensification of the armed struggle in the early 1980s, the military aspect of the revolutionary movement gained importance. The NPA had to grow to win, and as the war continued it tended to become more and more like its opponent, the government army. For the CPP, revolution was primarily a military act: the NPA was defined as 'the most important organization for defeating the reactionary state' and armed struggle 'the primary method of struggle'.[41] Sison said that 'in the more than one hundred years from Marx to Mao Zedong, revolutionary violence was the essence of Marxism in both theory and practice.'[42] One outcome of this was what one member of the caretaker committee, the group that set Kahos in motion, Frank Gonzales (aka Ka Taquio or Takyo) described as 'a tendency towards a narrow interpretation of class struggle as the physical elimination of the perceived enemy'.[43]

39 Slavoj Žižek, *How to read Lacan* (New York 2007) 27-29.

40 'There's need to systematize development of party cadres', *Ang Bayan* 10 (1984) 9-11, there 9.

41 Dominique Caouette, 'Persevering revolutionaries: Armed struggle in the 21st century, exploring the revolution of the Communist Party of the Philippines. PhD dissertation, Cornell University. 2004. 183-220. The new orientation was outlined in: Amado Guerrero, *Specific characteristics of our people's war* (Oakland 1979) and 'Our urgent tasks', *Rebolusyon* 1 (1976) 2-33.

42 *Ang Bayan*, 15 June 1971, page 23, quoted in: Randy Malay Jr., 'Some random reflections on Marxism and Maoism in the Philippines' in: Randolf S. David ed., *Marxism in the Philippines. Marx centennial lectures* (Quezon City 1984) 58.

43 'Annotations on the article by Taquio entitled "Comments on the current polemics within the party"'.

The purges can be seen as a form of class struggle because of the party's reductionist view of individuals. The party was supposed to represent the interests of the working class, which was presumed to be homogeneous. Differences inside the party were assumed to be the result of outside, capitalist influences.[44] Maoism is in agreement with Stalin that contradictions within the party are 'reflections of class contradictions'.[45] The idea that differences in the party were caused by alien class influences made it possible to regard fellow party members as tools of the enemies. Mao made a distinction between different kinds of contradictions: 'antagonistic' and 'non-antagonistic' ones. But non-antagonistic contradictions change into antagonistic ones if the minority persists in 'erroneous thinking'. Since it is the party leadership that decides when this change occurs, any opposition is at the mercy of the leadership.

For the CPP's worldview, individuals and their actions were reduced to their 'class identity': 'the political moves of each [individual or group] is actually in pursuit of its own class identity'.[46] Garcia, a former party member and survivor of the purges, shows how differences caused by different class backgrounds persisted in the movement. Those who made up the 'educational committee' of his unit all came from the city and had been students.[47] They were recognizable by the kind of work they did: their priority was not fighting but political education, a division of labor that on occasion caused resentment. Most of the time, this resentment only led to teasing remarks.[48] But in the dynamic of a hunt for infiltrators, with people tortured to give names, why not name the ones you dislike anyway? One cadre said that sometimes 'interpersonal conflicts were affecting these investigations'.[49] During the purges, the party cracked along similar lines as existed in the rest of society. Other lines along which the party fractured were sexuality and gender. Especially female suspects were subjected to sexual abuse, and a non-heterosexual orientation could be reason for suspicion.[50]

But in the CPP's thinking, there was no room for differences other than class, and class in turn was defined by one's relationship to the CPP, since it

44 Bruce Franklin (ed.), *The essential Stalin. Major theoretical writings 1905-1952* (London 1973) 276.

45 Mao Tse-Tung, 'On contradiction' in: Idem *Selected works* I (Peking 1967) 311-347, there 344.

46 'Cadres should grasp principles, methods for political analysis', *Ang Bayan* 2 (1985) 2-5, there 2.

47 Garcia, *To suffer they comrades*, 8.

48 Garcia, *To suffer they comrades*, 3.

49 Caouette, 'Persevering revolutionaries', 239.

50 Ibid., 239.

could explain differences only with the argument of alien class influences. In Maoist literature, including that of the CPP, one finds many references to 'remoulding': through study, work, and 'struggle', activists are supposed to turn themselves into 'proletarians' with certain ideas, habits and values. Deviation from the party ideal was seen as proof of the influence of enemy class influences. Because of the reduction of individuals to 'class', there was also no guarantee of human rights of the accused.[51]

The methods that so-called 'confirmed spies' caught during Kahos supposedly used according to Mindacom's initial assessment are curious: 'distorting the political line during educational sessions', 'mismanagement of money', 'breaching party discipline' and 'embezzling funds' are named as ways to sabotage the party.[52] Mindacom was not the first to believe that spies would use such impractical methods. The article on '*Kadena de Amor*' states that spies 'neglected political education to the masses', 'displayed liberalism in their work', and neglected security.[53]

It is unlikely that infiltrators used such methods to sabotage the party – it is more likely that such behavior was the result of the raw, untrained nature of many activists. Political education was lacking, and the CPP in Mindanao in particular took in large numbers of new recruits. Distortions of the political line likely had more to do with unfamiliarity with the ideology than with a complicated plan to destabilize the party. But its reductionist ideology provided the CPP with a framework in which incompetence and various weaknesses were characteristics of the enemy. Obviously referring to this mechanism, one member of the Mindanao leadership talked about a 'tendency to lump up alleged criminal violations with ordinary cases of organizational violations'.[54]

When certainty of the guilt of the accused was combined with torture, a process with a dynamic of its own was unleashed. Torture of the accused led to made-up 'confessions', more torture, and more executions. What is puzzling is how a movement with so many members familiar with torture – they had been victims themselves or knew victims – thought it could be an effective way to combat infiltration. The kind of information produced by torture is to a high degree shaped by the wishes of the torturers: many

51 Nathan Gilbert Quimpo, 'The use of Human Rights for the protraction of war', *Kasarinlan: Philippine Journal of Third World Studies* 21 (2006) 34-54, there 39, 40.

52 Abinales, 'Kahos revisited' 152.

53 'Busting a spy network: one region's experience', *Ang Bayan* 10 (1984) 13-16.

54 Draft on the Kahos question (n.p., n.d.) 5.

victims will formulate answers they think their torturers want to hear, using frameworks provided by their interrogators.[55]

Since the accused were assumed guilty, denial only made their crime worse. Those that maintained their innocence were executed, the only way to survive longer was to enter into a perverse pact with the interrogator, implicating oneself further and further with new 'confessions'.[56] Inexperienced interrogators, eager to discover enemy agents, asked loaded questions: 'How much was your salary?', 'A thousand', 'The truth!', 'Two thousand', 'I said: the truth! Or else…'[57] The combination of suggestive questions and punishment for deviating from the path laid out by these questions led to a spiral of escalating accusations, convincing interrogators there were many spies still to be discovered.

The spiral of interrogation, torture, and killing was able to continue for so long partly because of the lack of well-organized mechanisms to deal with accusations and investigation.[58] If the party is the carrier of truth, an independent judicial system seems superfluous. Organizational weaknesses were noted repeatedly but too little was done to improve this situation. As late as November 1988, one cadre felt it necessary to emphasize basic principles like the necessity of strong evidence before making arrests, the distinction between investigation and interrogation, and the assertion that arrest and interrogation should not 'preclude the possibility of eventual release'.[59]

The circumstances in which the NPA operated, that of a guerrilla movement without a secure hinterland, certainly hindered the development of a sophisticated justice system. The ramshackle justice system of the CPP was put under heavy stress as the war intensified. One CPP member described it as follows: 'Because it is a life-and-death struggle, when you are always tense, you are always living in the risk; you don't have the luxury of verification of data.'[60]

Paranoia: A Symptom of Crisis

The Standing Group, Visayas Commision – part of the anti-Sison opposition in the CPP – wrote that it was 'painful for all of us when the anti-infiltration campaigns in the history of the Party are dredged up – from what happened

55 Michel Foucault, *Discipline and punish. The birth of the prison* (London 1991) 3-32.
56 Garcia, *To suffer thy comrades,* 17.
57 Ibid., 18.
58 Bello, 'The crisis of the Philippine progressive movement', 174.
59 Bong, 'Suggestions re sanitation campaign' (mimeograph, 23 november 1988).
60 Caouette, 'Persevering revolutionaries' 398.

in ST [Southern Tagalog] in the early 1980s to Kahos in Mindanao to the anti-infiltration hysteria in Luzon including the OPML in Southern Tagalog in 1988… Many innocent comrades, red fighters and masses paid with their lives because of the insanity [*kahibangan*] that happened. These campaigns caused serious political and organizational setbacks.'[61] Where did this 'insanity' come from?

Certainly, the attitudes of comrades affected each other. When rumors of the purges started to circulate, many activists broke contact with the party, fearful that they might be next. Parts of the membership were in the grip of panic, while the persecutors saw the defections and the sudden instability of the party as proof of sabotage. This reaction could be described as paranoid if we take the word to mean not just 'irrational fear of prosecution' (there was no question that intelligence services were trying to infiltrate the party) but the 'invention' of spies to explain reality. What is to be explained is the leap from a level of anxiety that is 'healthy' for an organization like the CPP to the frantic search for saboteurs and spies.

This leap came from the combination of an intensifying civil war, shifting political circumstances, and, crucially, a worldview that could not answer the challenges these developments posed in terms other than infiltrators. Party leaders were convinced they had an objective view of reality, making it hard for them to accept that the movement's setbacks were caused by their own mistakes; 'How could that happen to us? After all, we thought we were well-trained Marxists, we should have prepared for this.'[62]

As long as the party was successful, Maoist ideas were not put into question. The principle of 'centralized leadership and decentralized operations' and the gap between rank-and-file and cadre helped to reify this ideology. The crisis of the CPP is usually traced to the 1985 snap elections, its impopular boycott decision, and the subsequent People's Power uprising that sidelined the party. But, behind a façade of glowing health, the party's worldview entered into a crisis that was parallel to that of the Marcos regime after the assassination of Benigno Aquino.

The following months saw the explosive growth of anti-Marcos sentiment and the blossoming of anti-Marcos movements in regions and among strata that were always considered secondary in the CPP's framework: the cities and what it considered 'the middle classes' (which included large parts of the somewhat better paid working class), and the United States which

61 Joel Rocamora, *Breaking through. The struggle within the Communist Party of the Philippines* (Pasig City 1994), 122.

62 Author's interview with Harry (15.04.2011).

withdrew its support of Marcos. The CPP was surprised by these developments; it had assumed that 'the middle classes' were not capable of playing an autonomous role in politics and that the United States would be unable to drop its support of Marcos.[63]

The timing of the purges was partly in response to this instability in Philippine society in the 1980s. Garcia describes the leadership as being in disarray in 1986, going from hesitating to continuing the purges to wanting to extend them.[64] This confusion was part of the overall political confusion that gripped the party in the mid-1980s. The CPP was unable to make sense of the crisis, since its political ideas had become inflexible dogma. This led to a form of cognitive dissonance between ideology and reality. To make reality 'ideologically consistent' again, it had to be reinterpreted in such a way that it would fit expectations.[65] The only way CPP members who were unable to alter their ideology could adopt such a reinterpretation was by looking for traitors in the party who stood in the way of the CPP playing its 'historical role'.

Conclusion

The purges were a symptom of a crisis in the CPP's ideological framework. This framework could only be left intact by assuming the existence of enemy spies. Its 'paranoia' was an attempt to make sense of the world and its development. As far as the label 'paranoid' can be applied to a collective process like the purges in the CPP, we should see it as part of an effort to create a new cognitive map by forcing unexpected developments in the familiar framework. Purges were responses to pressures on the party, like government counter-insurgency campaigns or the failure of NPA operations.

Because of the CPP's claim to truth, its prestige as the ideology of the party, and the low level of political debate inside the movement, many activists were unwilling or unable to change their Maoist framework. The growing isolation of the CPP, with parts of its periphery breaking away and the party being caught by surprise during the People's Power uprising,

63 In the period 1983-1986, *Ang Bayan* regularly featured articles on the non-CPP anti-Marcos opposition. A typical article is 'Bourgeois reformists: facing a cross road', *Ang Bayan* 14 (1983) 6-9.

64 Garcia, *To suffer thy comrades*, 22.

65 Patricia G. Steinhoff, 'Death by defeatism and other fables: the social dynamics of the Rengō Sekigun purge' in: *Takie Sugiyama Lebra, Japanese social organization* (Honolulu 1992) 195-225, there 207.

meant that either the Maoist framework was incorrect (or at the very least needed drastic modifications) or dark, hidden forces were active. This was a tempting conclusion for members who had been told that the party is always right. When complex social processes were simplified to conspiracies, comrades became targets of violence. This unleashed, time and time again, a murderous dynamic.

The tragedy of the purges in the Communist Party of the Philippines is that of twentieth-century communism: a movement that inspired people with a vision of equality and freedom turned on the very people it had set out to liberate. The following chapter by Korstjens examines how communism in Cambodia produced similarly destructive results. The victims of the 'anti-infiltration drives' dedicated their lives to a movement they hoped would bring freedom and justice but were killed while pursuing a noble vision. Their deaths will become a little less meaningless only if the movement succeeds in drawing lessons from what happened to the victims of the 'anti-infiltration purges'.

5 Smashing the Enemies

The Organization of Violence in Democratic Kampuchea

Sandra Korstjens

Nuon Chea, alias Brother No. 2, dressed himself well against the hostile surroundings of the courtroom. He wore a striped knitted hat and a thick jacket against the cold of the air-conditioning and black sunglasses to protect his eyes from the bright lights and the cameras. He didn't need his outfit very long. "I am not happy with this hearing", was one of the few words he spoke before using his right to leave the courtroom. It was the 27th of June 2011. Following years of preparations and more than three decades after the crimes were committed, the trial against four former Khmer Rouge leaders officially started at the Extraordinary Chambers in the Courts of Cambodia (ECCC) in Phnom Penh.

For victims of the Khmer Rouge, it was a historic moment. Eleven months earlier, former S-21 director Duch was sentenced to 35 years of imprisonment. But before the trial against Nuon Chea and the other former leaders, Duch had been the only one convicted for atrocities during the Khmer Rouge regime that ruled Democratic Kampuchea (DK) between April 1975 and January 1979. During that period an estimated 1.7 million people were killed, starved, or worked themselves to death. In the words of the Khmer Rouge: the 'enemies' were 'smashed'. Many perpetrators claimed they had no choice but to participate in the killings. They therefore believe they should not be tried. With the establishment of the ECCC, the discussion of responsibility became more prominent.

When the court in Phnom Penh was set up, it was decided that the court only had jurisdiction over those who are most responsible for the crimes committed.[1] But what exactly does that mean: most responsible? To understand the responsibility of individual Khmer Rouge cadres, it is necessary to examine how the violence in Cambodia was organized. Craig Etcheson, the principal founder of the Documentation Center of Cambodia that investigates Khmer Rouge history and manages its archives, notes that there are two groups of scholars who look at this question quite differently. The first group believes that the "primary locus of the violence was local and that it was largely the result of the spontaneous excesses of a vengeful,

1 ECCC, *Law on the Establishment of the Extraordinary Chambers*, chapter 1, article 1.

undisciplined peasant army".[2] One of the main proponents of this group is Michael Vickery.[3] The second group, by contrast, believes that the "locus of the violence was centralized and that it was largely the result of a carefully planned and centrally controlled security apparatus".[4] One of the main proponents of this group is Etcheson himself; Ben Kiernan also takes this view.[5] According to Etcheson, the controversy has been solved by new evidence uncovered by the Documentation Center of Cambodia from the mid-1990s to 2005.[6] According to him, the new evidence proves that the violence was without question centrally organized.

Etcheson categorises this new evidence into two classes. The first class consists of official documents that "illuminate the chain of command inside Democratic Kampuchea, (...) and the individuals involved in the mass killings".[7] The second class of evidence consists of an ongoing satellite mapping survey that aims to locate the prisons, execution centers, and mass graves dating back to the years of Cambodia under Khmer Rouge rule.[8] Based on this new evidence, Etcheson draws several conclusions.[9] First: "The highest officials of the Communist Party of Kampuchea were in control of the Democratic Kampuchea security apparatus". Second: "The Democratic Kampuchea security apparatus was national in scope and constituted a highly organized bureaucracy". Third: "This security apparatus directed the extermination of a still unknown, but significant, percentage of the population of the country". In other words, Etcheson strongly believes the atrocities of the Khmer Rouge were in fact centrally organized,and that the central leadership is therefore responsible for the deaths of a significant number of Cambodians.

But even though his arguments seem plausible, many questions remain. If the regime was indeed centralized, how did the chain of command work? How did the lower cadres receive their orders? And how much latitude did they have while carrying these out? Even Etcheson himself states that "not all of the killings during the Khmer Rouge regime were directly ordered by the central leadership" and that local administrations sometimes used

2 Etcheson, *After the killing fields*, 78.
3 Vickery, *Cambodia 1975-1982*.
4 Etcheson, *After the killing fields*, 78.
5 Kiernan, *The Pol Pot Regime*.
6 Etcheson, *After the killing fields*, 78.
7 Etcheson, *After the killing fields*, 79.
8 Etcheson, *After the killing fields,* 79.
9 Etcheson, *After the killing fields*, 85.

power to pursue personal agendas.[10] This all leads to the question: to what degree was the organization of violence in Democratic Kampuchea centralized? To answer this question, I will use the concepts of 'obligatory violence' and 'discretionary violence'. The concept of obligatory violence will clarify the role of the top leaders and the chain of command running down from them. The concept of discretionary violence will complete the picture by describing the violence that occurred when no specified orders were given. These concepts will prove to be essential to understanding the killing of different groups of 'enemies' by the Khmer Rouge.

Enemies in Democratic Kampuchea

The Khmer Rouge wanted to destroy their 'enemies' from the root, to 'smash' them. This mean that not only the enemy himself but also his whole family had to be destroyed to abolish all evil. To accomplish this, atomization was of the utmost importance.[11] Hannah Arendt once wrote: "violence always needs justification".[12] In the case of Democratic Kampuchea, this justification can be mainly found in the different types of enemies that could be distinguished and their consequent criminalization. In my view, these 'enemies' can be divided into four different groups.

The first group of 'enemies' consisted of former government officials, policemen, and soldiers of the Lon Nol regime, the pro-American government that ruled Cambodia between 1970 and 1975. They became the victims of the first wave of violence that broke out after the Khmer Rouge victory. They were seen as traitors and collaborators because they had worked together with the United States, the enemy of the Khmer Rouge.[13] Most of them were killed immediately after the Khmer Rouge took over Phnom Penh, while the city was being evacuated.

The second group of 'enemies' was the largest group. They were the "people who were connected with or accused of being involved with class politics"[14] – for example, intellectuals, teachers, monks, and capitalists. The Khmer Rouge tried to create a society that would not be dominated by classes, but by doing this, they actually created a new division in society.

10 Etcheson, *After the killing fields,* 84.
11 Becker, *When the war was over,* 210.
12 Arendt, *On violence*, 77.
13 Roze, "De genocide in Cambodja," 211.
14 Ea, *The Chain of Terror*, 5.

The people who used to live in the cities (those who were better educated and thus richer) were known as the 'new people' and formed about thirty percent of the population.[15] They were also referred to as the 'evacuees' (evacuated from the urban areas), the '17 (April) people' (those liberated on 17 April 1975), or the 'market people' (people from the market towns).[16] The 'old people' were also called the 'base people' (people from the liberation base areas), the '18 (March) people' (people who had joined the revolution immediately after the overthrow of Prince Sihanouk on 18 March 1970), or the 'black ones' (those dressed in black clothes and with dark skin from having to work in the sun).[17]

But "such a simplistic dichotomization" of the population was never the official policy of the Communist Party.[18] Heder states that in the official party policy, the population was not categorized in two but in three categories, based on as much as twenty criteria.[19] The first category was *penh sith* and consisted of people who had full rights. The second category was *triem*, or candidate category. The last category was *bannheu*, or deposited. The point Heder makes is that, in contrast with what is generally assumed based on the two categories, "class divisions were considered of fundamental importance, but political attitudes were also taken into account, so that a bad class background could be partially overcome by a good political attitude (i.e., loyalty to the Party's regime) or vice-versa."[20] This meant that people could move up or down in category; the lines between the categories were very vague. The second group of enemies thus consisted of new people *and* base people. Anyone with a different political opinion could be purged.

Besides the former government officials and people involved with class politics, the Khmer Rouge also targeted ethnic minorities, the third group of 'enemies'. Everyone who was not a Khmer citizen by origin was considered to be an enemy. This included all people who were Vietnamese, Chinese, Thai, Lao, Muslim Cham, or Khmer Krom (Khmer people born in Vietnam).[21] According to Becker, "the Khmer Rouge adopted a philosophy of racial

15 Kiernan, *The Pol Pot Regime*, 164.
16 Heder, *Kampuchean occupation and resistance*, 5.
17 Heder, *Kampuchean occupation and resistance*, 5.
18 Heder, *Kampuchean occupation and resistance,* 5.
19 Heder, *Kampuchean occupation and resistance*, 6.
20 Heder, *Kampuchean occupation and resistance*, 7.
21 Kiernan, *The Pol Pot Regime*, 251-302.

superiority and purity that resembled that of Nazi Germany, including the use of pogroms to eliminate minorities."[22]

The fourth group of 'enemies' consisted of "Khmer Rouge soldiers and cadres accused of treasonous activity (…) or who had expressed dissatisfaction with the party line of the socialist revolution".[23] From 1976 onwards, the leadership of Democratic Kampuchea became more and more suspicious of potential traitors, and this resulted in purges among its own soldiers and cadres. Eventually, no one was safe anymore. Anyone could become a victim. More than thirty years later, former Khmer Rouge cadre Chey Touch stated bitterly: "When I served them for a long time, they accused me of being a traitor without any reason. (…) Thus, the result of working for them was only that I was seen as a traitor."[24]

These four groups of 'enemies' were either blamed for being a threat to the revolution because they fought against the Khmer Rouge in the civil war between the Khmer Rouge and the Lon Nol regime at the start of the 1970s, or because they supported the Western enemies' lifestyle, or for not being a full blooded Khmer, because of which they could never contribute to the new society in a positive way according to the Khmer Rouge; or for trying to sabotage the revolution from the inside as in the case of the Khmer Rouge's own cadres. The atomization of these groups was an important step towards the use of violence in Democratic Kampuchea.

People in these groups were all in grave danger of becoming victims of violence. They never knew when, where, or how they would be arrested, they didn't know whom they could trust or who would reveal their true identity to the Khmer Rouge cadres. If they were arrested, there were different steps the prisoners went through: reeducation, imprisonment, interrogation, torture, and execution.[25] The punishment was decided on the supposed level of danger of an 'enemy'. The Khmer Rouge distinguished between 'very dangerous' to just "recently incited by the enemy, only beginning to believe the incitements,"[26] and everything in between. The question is, who made this decision? Were there orders from the top that had to be followed, or could lower-level cadres decide for themselves?

22 Becker, *When the war was over*, 243.
23 Ea, *The Chain of Terror*, 4.
24 Author's interview with Chey Touch (19 September 2011).
25 Ea, *The Chain of Terror*, 11-15.
26 Ea, *The Chain of Terror*, 11.

Obligatory Violence in the Zones

Decision-making in genocidal regimes is generally difficult to describe. The problem is that it is difficult to determine the exact 'location' of a decision to murder many people. Especially when looking at the lower levels in a chain of command, far away from the official party center, the puzzle becomes more complicated. To understand what really happened in Democratic Kampuchea at the different levels in regard to decisions about violence, it is important to make a distinction between so-called 'obligatory violence' and 'discretionary violence'. 'Obligatory violence' is used here to describe the violence that resulted from official orders from higher levels. In this regard, the formal structure of decision-making in the different zones of Democratic Kampuchea was crucial, and this structure will be discussed here first. 'Discretionary violence' is used to describe the violence that occurred at the lower levels while there were no specific orders given for these actions. This violence thus was not the result of a formal structure of decision-making but more the result of personal decisions of cadres. This kind of violence will be discussed in the next section.

The distinction between 'obligatory violence' and 'discretionary violence' was made by Heder, although he speaks only of 'killings' instead of 'violence'. He describes the concept of 'obligatory killings' in Democratic Kampuchea as "centrally premeditated and planned murders, ordered by Pol [Pot] and Nuon [Chea] and carried out via what was clearly a chain of command through which explicit and specific instructions were passed from the Center downward, sometimes directly to local authorities, sometimes via regional authorities to local authorities."[27] This chain of command is represented by both the administrative structure of the regime and the system of security centers in Democratic Kampuchea.

During the Khmer Rouge regime, the Communist Party governed Democratic Kampuchea. The highest body of the Communist Party was the Central Committee. The responsibilities of the Central Committee included "to put into effect the political line and the Party rules in the whole of the Party" and "to issue directives to Zone, Regional, and Town Committees, as well as to all leading bodies in the whole country".[28] Pol Pot was the secretary of the Central Committee and Nuon Chea was deputy

27 Heder, "Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes," 7.

28 Simons and White, *The Party statutes of the Communist world*, 257.

secretary.[29] But the Central Committee rarely met,[30] and therefore most powers were delegated to the Standing Committee, which was responsible for monitoring and implementing policy of the Communist Party of Kampuchea nationwide.[31] It is not exactly clear who its members were, as there are no official documents with their names. Former Minister of Foreign Affairs Ieng Sary has indicated in an interview that there were seven members as of September 1975: Pol Pot, Nuon Chea, Son Sen, Ta Mok, Sao Pheum, Von Vet, and himself. Other documents show these names and two more: Ruoh Nheum and Ke Pauk.[32] All bodies in the country had to report to the Central Committee through the Standing Committee.[33]

But most ordinary Cambodians at that time had no idea who was in charge of the country. The leaders of Democratic Kampuchea hardly "spoke in public or published information about the regime and its policies,"[34] as they wanted to maintain secrecy to protect themselves from party enemies. Cambodians often only knew the name *Angkar*. The Khmer word *Angkar* can be translated as 'organization', although Hinton states that the word contains more connotations than can be captured in an English word.[35] The word therefore can refer to several bodies within the leadership, to higher authorities like the Central Committee, but also to the Cambodian Communist Party in general. Generally, when the word *Angkar* is used, it refers to the Standing Committee.

Administratively, the country was divided into seven different zones: the Northern Zone, Northeastern Zone, Northwestern Zone, Central Zone, Eastern Zone, Western Zone, and Southwestern Zone. They were not the same as any pre-revolutionary administrative unit. "Each unit included more than one of the old provinces, and sometimes traditional provinces were split between zones."[36] There were also two other regional-level units: the Kratie Special Region Number 505 and, until 1977, the Siem Reap Special Region Number 106.

29 Heder and Tittemore, *Seven Candidates for Prosecution*, 42.
30 There are no indications that they met at all between 1975 and 1979.
31 ECCC, Trial Chamber. *Judgment Kaing Guek Eav*, 32.
32 Heder and Tittemore, *Seven Candidates for Prosecution*, 44.
33 ECCC, Trial Chamber. *Judgment Kaing Guek Eav*, 33.
34 Valentino, *Final Solutions*, 132.
35 Hinton, *Why did they kill?*, 127.
36 Vickery, *Cambodia 1975-1982*, 66.

The zones were divided into regions that were numbered.[37] The regions were in turn divided into districts, sub-districts, and villages.[38] The administrative leadership of the zone was the zone committee, which consisted of three permanent (a secretary, a deputy secretary, and a permanent member) and several non-permanent cadres. The non-permanent cadres were secretaries at the regional level. The region, district, and sub-district committees were composed in the same way.[39] The region, district, and sub-district committees were all assisted by a youth unit whose role it was to help the committees in their daily administrative work.[40] Touch Tam was appointed as a teacher in of one of these youth units in the Northern Zone. He recalls the children didn't need to work in the rice field, but they had to study in the morning and afternoon.[41] The village committee, the lowest administrative level, consisted of three members who were chosen by the permanent members of the sub-district committee.

As discussed in the previous section, the type of punishment of the assumed 'enemies' of the regime depended on their supposed level of danger. The most important prison of Democratic Kampuchea was S-21. Located in the center of Phnom Penh, many important Khmer Rouge cadres suspected of treasonous activities were brought there, most of them never to be released again. But most people in Democratic Kampuchea were not sent to S-21 when they were arrested, or at least not immediately. It was more likely that they would end up in one of the hundreds of other security centers in the country, which were located in former pagodas, schools, and hospitals, for example.[42] These security centers followed the administrative structure of the zones. The lowest level in the chain of security centers was the sub-district militia center. Next came the district re-education centers, the region security centers, and the zone security centers. S-21 came on top of everything else as the central-level security center.

The administrative structure of the regime and the chain of security centers are related to each other, because the chief of the security center in both the sub-district, district, region, or zone was usually also a permanent member of the corresponding committee at that level. The people who formed these committees were usually already important figures in their community before the Khmer Rouge rose to power and their positions can

37 Vickery, *Cambodia 1975-1982*, 67.
38 Kiernan, *The Pol Pot Regime*, 89.
39 Nhean, "Democratic Kampuchea," 67.
40 Nhean, "Democratic Kampuchea," 67.
41 Author's interview with Touch Tam (20 September 2011).
42 Documentation Center of Cambodia archives. *List of Prisons* (*196*).

be placed within the framework of patron-clientelism. Nhean argues in his thesis that the "patron-client ties during DK were strong and that none of the DK cadres were without patrons and clients".[43] Patron-clientelism is a common kind of relationship in Southeast Asia and is based on an "unequal exchange between a person of a higher hierarchy and another which is lower".[44] In other words, it is an unequal relationship in which clients are protected by their patrons. This protection creates an obligation of loyalty on the side of the client who always has to serve his patron. The relationship that arises is very personal, and comparable with real family ties.

Patron-client relationships were already common before the Khmer Rouge victory. During the civil war, there were extensive patronage networks.[45] When the Khmer Rouge rose to power, Pol Pot announced that he wanted to end these networks and establish a powerful central leadership. This was also one of the purposes of the evacuation of the cities and the reason why families were split up. Old patronage ties would be destroyed in this way.[46] These patronage networks were also the reason that when a person was arrested, his whole family and everyone he knew were purged as well. Pol Pot and the Party Center felt extremely threatened by the patronage networks, as also appears in the results of a 1976 study session: "Up to now in the ranks of our Party it has generally been (a case of) family-ism, sibling-ism, relation-ism. This problem is a very dangerous one because it flouts the Party's criteria."[47]

Pol Pot's fear of the patronage networks may be understandable, for the system of patron-client relationships remained very important during the Khmer Rouge regime. Nhean stresses: "through these patronage ties, cadres were all connected from the lowest level in the village to the highest level in the zone".[48] Contact between these different levels had always been close, as cadres at the lower levels were part of the clientele of the patrons, who were often secretaries, at the higher levels. These relationships were built on dependency and loyalty from the side of the lower-level cadres, and they would therefore wait to receive orders from their patrons. This could be dangerous for Pol Pot if, for example, the zone secretaries were to turn against him, and therefore their whole clientele with them.

43 Nhean, "Democratic Kampuchea," 6.
44 Nhean, "Democratic Kampuchea," 7.
45 Hinton, *Why did they kill?*, 134.
46 Hinton, *Why did they kill?*, 134.
47 Kiernan, "Summary of the Results of the 1976 Study Session," 176.
48 Nhean, "Democratic Kampuchea," 155.

At the same time, however, it is also possible to see Pol Pot as the ultimate and highest patron in a country that depended on these patronage networks, as the patronage networks and the chain of command in Democratic Kampuchea were clearly intertwined. This is illustrated by the fact that orders were sent from the Party Center to the zones for distribution to and implementation by the lower levels. Zone secretaries, who were very important patrons, wrote in turn to Pol Pot asking what instructions to give to the regions and districts.[49] These instructions were then given in both written and oral form to the members of the committees at the regional and district level, who passed them down again to the sub-district and the village level. This was the case, for example, with the arrests of 'enemies' who were named by other prisoners in their confessions at S-21. In the Southwestern Zone, it was zone secretary Ta Mok who commanded the lower levels, who were his clients, to implement arrest orders.[50] These orders were eventually received by unit chiefs like Bun Thean. Most of the time he would receive an order that was written on a piece of paper. "The paper was given to me by a spy chief. (…) I looked at the paper and called the names of the people who had been selected. Another guy came then to take the people away."[51] After the people were arrested and brought to a security center, a report was usually made to send to the higher levels.

Only a few documents from these lower levels have survived. But the documentation that did survive shows a similar chain of ordering and reporting, although not always all the way to the highest level. On 2 October 1977, for example, the chief of sub-district Popel sent a report to the Tram Kak district chief that several arrests were made.[52] The Tram Kak district chief then wrote to the chief of the district reeducation center to inform him that those people would be sent there.[53] Another document shows some chiefs of the security centers asking advice to the committee. "This woman is just crying. We should use a certain way for interrogation. But there is no secret place to do that. We will wait for the party decision,"[54] wrote the chief of Kraing Ta Chan prison to the district committee.

49 Heder, "Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes," 8-9.

50 Nhean, "Democratic Kampuchea," 147-148.

51 Author's interview with Bun Thean (20 September 2011).

52 Documentation Center of Cambodia archives. *D00227: The October 02, 1977 report on the sending of Nget Kun to the Party in District 105.*

53 Documentation Center of Cambodia archives. *D00266: Report to Tram Kak Police on the sending of three people.*

54 Documentation Center of Cambodia archives. *D00205: Report on prisoners' responses.*

Ea has made an overview of the way this ordering and reporting worked exactly.[55] It clarifies which decisions were taken at what levels. His overview starts with the normal people who witnessed a 'crime' and reported it to one of their unit chiefs. These unit chiefs then reported the crime to the sub-district committee. The sub-district committee received the reports from the unit chiefs, decided to make arrests or not, and reported the arrests to the district committee. The sub-district committee worked together with the sub-district militia center to arrest people and imprison them there, or they sent them on to the district re-education center. The district committee received the reports from the sub-district, inspected these, and decided whether people had to be arrested or transferred to the district re-education center. At the district re-education center, people were imprisoned and interrogated. Reports and confessions were then sent from there to the region committee for inspection. The region committee examined the reports from the district re-education centers and issued orders for the chief of the district re-education center to carry out executions. The region committee also made decisions on arrests and sent people on to the region security center. At the region security center, people were imprisoned and interrogated. Reports were sent from there to the zone committee. The zone committee inspected these reports, made decisions about the prisoners, and sometimes sent the reports to the Party Center. The zone committee also ordered the executions of people who were imprisoned at the zone security center.

The chain of command thus seemed to work in a hierarchical and top-down way, as the lower levels were ordered to arrest the 'enemies', and they reported through a chain of committee and security centers to the higher levels. Heder argues, however, that the district level appears to have been the most important level in the chain of command concerning the issuing of orders: "They stood in the key intermediate position between the central leadership and the situation in the grassroots, especially in the cooperatives where the overwhelming majority of the people, veteran [old] and new, lived."[56] According to Heder, this makes the district secretaries therefore the key figures in the organization of violence. It is not completely made clear by him why they actually had that much power. However, it seems only reasonable to suspect not all decisions about violence were made within this top-down organized chain of command, as it does not take into account any

55 Ea, *The chain of terror*, 33-34.

56 Heder, "Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes," 8.

discretionary violence. As Semelin stresses: "Rather than approaching the issue as though everything emanated from the one central power system, we also need to look closely at its *periphery*, and in particular at those local actors capable of taking decisive initiatives."[57] He also notes that the focus is often on demonstrating premeditation. This can be dangerous, because by focusing only on the top leaders, the responsibility of the lower cadres is not discussed. What if most violence was not part of a bigger plan, ordered by the highest levels?

Discretionary Violence in the Zones

Cambodia's current prime minister is Hun Sen. He has been leading the Cambodian People's Party since 1979, becoming Cambodia's sole prime minister in 1998. Hun Sen likes to emphasize his actions on the Vietnamese side when the Khmer Rouge was overthrown in 1979. However, a fact less often underscored by him is that during the first two years of the Khmer Rouge regime he was a commander in the Khmer Rouge army. It was only in 1977 that he defected to Vietnam. According to Hun Sen, he was forced to flee the country to escape purges. This is, of course, very likely, as in those years many commanders were purged. But it does not mean Hun Sen did not commit any violent acts during the civil war and in the first two years of the regime. However, Prime Minister Hun Sen is a very powerful man in Cambodia, and most people do not dare to question his past openly.

He is not the only former Khmer Rouge cadre who managed to obtain an important political position in Cambodia. Throughout the country, there are former Khmer Rouge members who remained or became village chiefs or district chiefs, and they also hold seats in the current parliament and in the senate. This is why the responsibility of lower-level cadres for violence in Democratic Kampuchea is hardly discussed in Cambodia: because most of these people are (still) very powerful nowadays. This lack of discussion about the responsibility of the lower-level cadres is also reflected in the jurisdiction of the ECCC to only try the former top leaders. But this limited scope results in impunity. Heder cites Burleigh and Wipperman who state that the assumption that orders were implemented in a top-down manner may "shield guilty subordinates from scrutiny for their genocidal crimes".[58]

57 Semelin, *Purify and destroy*, 194.

58 Heder, "Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes," 3.

This appears to be the case in Cambodia, where many former Khmer Rouge cadres now hold important positions in the current government.

As stated in the previous section, in addition to 'obligatory violence' there is the concept of 'discretionary violence', which refers to violence that occurred at the lower levels while no specific orders had been given for these actions. Discretionary violence is thus the result of the personal decisions of the cadres. Heder stresses that these 'discretionary killings' probably formed the largest part of the killings and that they "functioned as part of a looser and more diffuse hierarchical structure of delegated and discretionary authority, in which the top provided only vague and general guidelines, giving wide latitude to subordinates – all the way to the bottom – to decide who was and who was not an enemy and what to do with them."[59] The difference between 'obligatory killings' and 'discretionary killings' (or rather between 'obligatory violence' and 'discretionary violence', as this chapter is not only about executions) is not often discussed in the literature on Democratic Kampuchea. But the discrepancy between theory and practice, between ordered violence and non-ordered violence, is very important to provide a complete picture of the violence that occurred during the regime. So what exactly were the reasons this 'discretionary violence' occurred? And why is it plausible that it happened often? In my view, the following five explanations – confusion about policy, fear, radicalization, lack of control, and geographical differences – provide an answer to these questions. These explanations are sometimes related to each other, but they are discussed separately to underscore their importance and role in the execution of violence.

The first explanation is the *confusion about policy* when measures were disseminated. Policy was often disseminated orally to the lower levels. This left quite a large degree of latitude for different interpretations. And there is another problem that arises when policy is passed on orally to subordinates. You can compare it to a common game that children play. One group member makes up a sentence, he whispers it into his neighbor's ear, the neighbor does the same to the person next to him, and this way the sentence goes around the circle. It never comes back the same way it started. By disseminating policy orally, this problem also arises, as there are no documents to revert to. Differences between zones and regions thus emerge. The general policy was often clear: the enemies had to be smashed. But the 'details' were often not clear at all, and this caused confusion, particularly in the case of the questions 'who are the enemies and how do we find them?'

59 Heder, "Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes," 7.

This confusion regarding the identification of enemies is demonstrated by two different mottos that were proclaimed in Democratic Kampuchea, described by Heder. The first one was allegedly proclaimed at the end of 1975: "Don't attack the forest, attack the tiger", and it meant cadres had to "take care to hit only those who were truly enemy agents and not to harm others".[60] The second, better known motto was: "Better to kill an innocent person than leave an enemy alive".[61] As one can guess, this motto implies exactly the opposite of the first motto, which made it confusing for cadres to decide on how to act. Confusion alone is hardly an explanation for the use of discretionary violence, but combined with fear it is.

Fear is therefore the second explanation for discretionary violence. Because most cadres did not understand which people had to be arrested and smashed, they were afraid they were perhaps doing too little. This led to an increase in violence. Basically the cadres were afraid of being accused of being too 'soft' and they did not want to risk the accusation of not supporting the revolution. Heder explains: "In more and more places, cadres themselves threatened with purges hit out more or less simultaneously at Cham, Chinese, and new people (…), condemning them en masse as incorrigible enemies who, therefore, could not and should not be spared from death."[62] Justified or not, the fact that fear existed was already enough for most people to act. Chea Reurn was appointed to work as a spy in 1977. After one year he was fired because he did not do his job well and he "ran and escaped from one place to another place because many people were executed".[63] He ran away because he was afraid of being executed himself. Many cadres were even too afraid to run away and they would therefore do immediately what they were told to do. They carried out the orders even 'better' than they were asked to, which means they used more violence than was ordered, to shake off any accusations that they were not supporting the revolution.

This possible increase of violence due to fear relates to the third explanation for discretionary violence: the *radicalization* of the lower levels. This process is extensively described by Kershaw in regard to Nazi Germany, and he calls it 'working towards the Führer'. This meant that people anticipated what they believed was the 'will of the Führer', which in practice

60 Heder, "Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes," 17.

61 Heder, "Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes," 26.

62 Heder, "Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes," 36.

63 Author's interview with Chea Reurn (20 September 2011).

led to "people exert[ing] pressure on their own initiative, design[ing] new laws, all in accordance with what was presumed to be Hitler's will, and without the need of the dictator ordering those things to the people".[64] This resulted in an increasing level of radicalization of violence that made the implementation of Hitler's ideology much easier. This concept can be applied to Democratic Kampuchea as well. Instead of 'working towards the Führer', one can call it 'working towards *Angkar*'.[65] The causes of this process are probably the same for both regimes. Besides the fact that fear played an important role, self-interest and competition were also important factors. In regard to self-interest, it is known that people used the 'will of the Führer' to pursue their own personal agendas. Longstanding fights with neighbors, for example, were easily 'solved' if those neighbors turned out to be Jews – or in the Cambodian case, if they happened to be enemies of *Angkar*. And because it was so unclear who exactly were enemies of *Angkar*, this was even easier in Democratic Kampuchea, as all you had to do was convince your village or unit chief that your neighbor was sabotaging the revolution. What you also see is that when people start 'thinking' for their leader, either the Führer or Angkar, they tend to use the most extreme ideas, as they are under the influence of propaganda. Under this influence and also under the influence of group pressure, people often saw it as a form of competition to turn in as many people as possible and to use violence. If someone used more violence and turned in more people, it was less likely that he would be accused of being a traitor himself.

Even though fear is mentioned before as one of the explanations for discretionary violence, there is a paradox in this. It seems that this fear was often not justified, as there was also a *lack of control* that led to impunity. This *lack of control* is the fourth explanation for discretionary violence. Although the lower levels sometimes had to report back to the higher levels after they implemented orders, more often there was no control at all on what the cadres did exactly. Heder mentions this as well: "Zone and Sector Secretaries often merely passed on the general instructions from above to local cadre down to the district level, but paid little attention to whether subordinates were doing what they were supposed to or not."[66] It is plausible that cadres used this freedom more often than not to use more violence than was ordered. One of the best examples of discretionary violence that

64 Kershaw, *Hitler 1889-1936,* 692.

65 Weitz, *A century of genocide*, 187.

66 Heder, "Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes," 25.

occurred because of this lack of control is gender-based violence, which meant the rape and mutilation of women. Although officially prohibited by the central government, rape and other sexual violence occurred frequently during the Khmer Rouge regime.[67] Nakagawa describes the following account of a fisherman:

> A woman called Vichara, who was accused of being an enemy agent, was raped before being killed. Soldiers asked me to send her by boat to them and I was on the boat about 10 meters away from where she was raped and killed by five low-level soldiers. They raped only beautiful women sent there. The place, where those women were raped, was in a forest far away from the cooperative. The top leaders did not know the low soldiers raped women. If the high-ranking officials found the small soldiers raped women, those (small) soldiers would be killed.[68]

Most victims of rape were therefore killed after the crime so that they would not betray their perpetrators. However, even the victims that did survive often did not dare to report the crime out of shame and fear. Especially Khmer Rouge officials who committed rape presumably did not have to worry at all: "Impunity assisted powerful people to repeat the crime."[69] The real number of victims of this kind of violence will therefore remain unknown, but because of the lack of control and the resulting impunity during the Khmer Rouge regime, it is quite likely that a large number of women became victims of this kind of discretionary violence.

The fifth and last explanation for discretionary violence is *geographical differences*. In Democratic Kampuchea, there were differences in violence between zones but also between regions and districts within the same zone. These differences in violence occurred because of *geographical differences* and were not ordered by the Party Center. According to Vickery, there was, for example, a wide variety between the zones in the severity of policies adopted by local Khmer Rouge authorities based on the availability of food, the level of local development, and the personal qualities of cadres.[70] Most people died in the underdeveloped areas, where the urban people were sent to cultivate the land. While conditions were hellish in some areas, Vickery believes they were tolerable in others. The Southwestern Zone, for example,

67 Nakagawa, *Gender-Based Violence During the Khmer Rouge Regime*, 17.
68 Nakagawa, *Gender-Based Violence During the Khmer Rouge Regime*, 18.
69 Nakagawa, *Gender-Based Violence During the Khmer Rouge Regime*, 20.
70 Vickery, *Cambodia 1975-1982*, 83.

was the original power centre of the Khmer Rouge, but random executions were relatively rare, and as long as new people cooperated, they were not persecuted. But if they resisted, they could be executed.[71] In the Western Zone and in the Northwestern Zone, conditions were very harsh. Starvation was especially widespread in the Northwestern Zone because cadres did not allow the people to eat the rice they cultivated.[72] In the Northern Zone and in the Central Zone, there seem to have been more executions than there were victims of starvation.[73] Not much reliable information emerged on conditions in the Northeastern Zone, one of the most isolated parts of Cambodia. The Eastern Zone was dominated by pro-Vietnamese cadres. This is the zone in which the extreme policies of the Pol Pot leadership were not adopted (at least until 1978, when the Eastern leadership was liquidated in a violent purge). Executions were few, old people and new people were treated generally the same, and food was available for the entire population.[74] Heder also describes this occurrence of differences between areas: "In places of famine, which spread and intensified throughout the time the regime was in power, discretionary executions of ordinary new people and others by local power structures were particularly rampant."[75] So in places where there was a shortage of food, cadres sometimes found it easier just to kill new people than to re-educate them, which was the official policy of the Party Center.

Conclusion

Three years, eight months, and twenty-one days after the Khmer Rouge took over Phnom Penh, they were defeated. In the towns and villages, people at that time tried to deal with the past in their own way. Chourn Sok, a 'base person' during the Khmer Rouge regime, said for example: "Some perpetrators were killed when they came to the village, but only the perpetrators who were very cruel towards the victims."[76] And Yum Yoam, who used to work for the Khmer Rouge, said: "When I arrived in Pursat in 1980, they [the chief of the sub-district and district] did call for a meeting.

71 Vickery, *Cambodia 1975-1982*, 94.

72 Vickery, *Cambodia 1975-1982*, 120.

73 Vickery, *Cambodia 1975-1982*, 129.

74 Vickery, *Cambodia 1975-1982*, 135-137.

75 Heder, "Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes," 23.

76 Author's interview with Chourn Sok (20.09.2011).

The meeting was a kind of reconciliation by telling us former soldiers or anyone who used to work for the Khmer Rouge and the victims should not live in hatred and should reconcile by living together."[77] In most places, the victims and perpetrators did live together, sometimes even as neighbors, but whether they truly reconciled remains to be seen. Impunity reigned, until the establishment of the ECCC revived the discussion about responsibility. By using the concepts of 'obligatory violence' and 'discretionary violence', I have tried to clarify this issue of responsibility for the crimes committed in Democratic Kampuchea.

In answering the question to what degree the organization of violence in Democratic Kampuchea was centralized, this chapter has shown the role of both 'obligatory violence' and 'discretionary violence'. The 'chain of command' concerned with arrests and executions worked in a centralized manner. The chain was linked to the administrative structure of the zones, and thus the orders were being disseminated from the top leaders first through the zone committee, then the region committee, the district committee, the sub-district committee, and in the end to the villages, cooperatives, and the different work units. All the violence that was a result of this chain of command can be placed under the heading of obligatory violence. But as discussed in the previous section, discretionary violence is likely to have happened often as well due to confusion about policy, fear, radicalization, lack of control, and geographical differences.

Therefore, obligatory and discretionary violence both provide part of the answer to the central question. This makes it difficult to give an unambiguous answer to the question. On the one hand, the chain of command caused a large degree of centralization, with decisions being taken at the top. On the other hand, the occurrence of much discretionary violence shows a lesser degree of centralization, or actually more decentralization. So how do we combine these two different conclusions? Perhaps it is best to let go of the idea that we need to choose between the concepts centralization and decentralization to fully understand what happened in regard to the organization of violence in Democratic Kampuchea. The mass murder in Democratic Kampuchea happened both because of orders disseminated by the leadership and because of a large degree of latitude at the lower levels. It is in the end this dynamic, the balance between the centre and the periphery, between obligatory and discretionary violence, and between centralization and decentralization, that explains how the organization of violence in Democratic Kampuchea worked.

77 Author's interview with Yum Yoam (19.09.2011).

6 Sexual Violence in the Nazi Genocide

Gender, Law, and Ideology

Franziska Karpiński & Elysia Ruvinsky

Introduction

> [My mother and I found at the foot of the stairs] a young [Jewish] girl. She was dead. Her dress lifted and pants torn off her body. She was raped, illegally, and then killed, legally, by the representatives [...] of the 'high race'. She was shot directly in the face.[1]

This excerpt from a Krakow ghetto survivor's testimony in a post-war trial illustrates the scope of the use of sexual violence prevalent during the Nazi regime. It makes apparent the fact that violence, death, and sex were closely intertwined and seemingly dependent on each other. Wehrmacht doctors suggested as much in a medical study about their soldiers' sexual drive in 1943. They found that while many soldiers felt sexual sensation during combat, these same men complained about impotence while at home on leave of absence from the front.[2] Indeed, sex is a key weapon at the disposal of individuals acting in accordance with the new societal understandings that accompany genocide. As gender and nation fuse, masculinities and femininities are reshaped and sexualized. Sexual violence is a result of militarized, hetero-nationalist hegemonic masculinity and acts as an expression of supreme dominance. It is also a result of increasing tensions of motherhood and sexuality of feminine identities between perpetrator and victim groups. Unfortunately, the limited nature of this project precludes us from addressing the variety of functions that sexual violence plays in genocide, a topic that continues to be investigated and analyzed by many talented academics.[3]

1 Helene J. Sinnreich, "The Rape of Jewish Women during the Holocaust," in *Sexual Violence Against Jewish Women during the Holocaust*, eds. Sonja Maria Hedgepeth and Rochelle G. Saidel (Waltham: Brandeis University Press, 2010), 111.

2 Regina Mühlhäuser, *Eroberungen. Sexuelle Gewalttaten und intime Beziehungen deutscher Soldaten in der Sowjetunion 1941-1945* (Hamburg: HIS Verlag, 2010), 141.

3 For a comprehensive discussion as to the functions of sexual violence against women in wartime, including genocidal rape and sexual torture, perhaps the most influential works are: Allen, Beverly. *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia.*

Instead, this essay will explore the causes and forms of sexual violence in the Nazi genocide, focusing in the second section on the occurrence of sexual violence as perpetrated by SS and Wehrmacht men against Jewish women and other women the Nazis deemed 'racially inferior' within the framework of the military campaigns against the USSR and Poland.[4] In this perpetrator-focused approach, Nazi jurisdiction – with particular focus on the 'criminal offence' of race defilement – conceptions of masculinity, camaraderie, and soldiery brutality (*Härte*) will be explored. Conceptions of femininity and female sexual integrity (*weibliche Geschlechtsehre*) will also be discussed, as it is only within these ideological frameworks that one can properly analyze the perpetration of sexual crimes by Nazi men and the perpetrator- and regime-internal reactions to them.

Defining the Theoretical Paradigms

Defining Sexual Violence

Despite legal advancements and academic interest in the subject, there is no generally accepted definition of sexual violence in international law to date.[5] For the purpose of this discussion, we will refer to the definition used by the Special Rapporteur on Systematic Rape, Sexual Slavery and Slave-like Practices During Armed Conflict, which states that sexual violence is 'any violence, physical or psychological, carried out through sexual means or by targeting sexuality… both physical and psychological attacks directed at a person's sexual characteristics, such as forcing a person to strip naked in public, mutilating a person's genitals, or slicing off a woman's breasts' and 'situations in which two victims are forced to perform sexual acts on

Minneapolis/London: University of Minnesota Press, 1996; Seifert, Ruth. "The Second Front: The Logic of Sexual Violence in Wars." *Women's Studies International Forum* 19, no. 1/2 (1996): 35-42. For sexual violence against men and its functions, see: Sivakumaran, Sandesh. "Sexual Violence Against Men In Armed Conflict." *The European Journal of International Law* 18, no. 2 (2007): 253-276; Oosterhof, Pauline, Prisca Zwanikken, and Evert Ketting. "Sexual Torture of Men in Croatia and Other Conflict Situations: An Open Secret." *Reproductive Health Matters* 12, no. 23 (2004).

4 We will not include sexual crimes and forced prostitution in the concentration camps, because it would go beyond the scope of this article. In addition, analyzing the crime of race defilement in the camps ends up being rather inconclusive due to a severe lack of sources and witnesses.

5 Sivakumaran, "Sexual Violence Against Men In Armed Conflict," 261.

one another or to harm one another in a sexual manner.'[6] The inclusion of psychological sexual violence is particularly valuable, as it expands understandings of sexual violence beyond the physical realm. The list of acts is far from exhaustive, but provides examples of what may fall under this definition.

Defining Masculinity and Femininity

Present in both the above and the following discussion are the twin concepts of 'masculinity' and 'femininity'.[7] R. Charlie Carpenter defined gender as "social beliefs and interactions that direct our awareness to sex differentiation and regulate human interaction on that basis" as opposed to sex, which "adheres biologically rather than being socially ascribed."[8] This differentiation between gender and sex is important, as the following discussion involves the interplay between biological sex, gender, and changing societal beliefs. The fluidity in this definition is key, and it is this definition of gender upon which the following discussion will be based. It is also important to note that there is no one 'masculinity' and 'femininity'. Instead, these constructs cover a variety of differing forms of masculine

6 M. Cherif Bassiouni and Marcia McCormick, "Sexual Violence: An Invisible Weapon of War in the Former Yugoslavia, Occasional Paper no. 1," *International Human Rights Law Institute* (DePaul University College of Law, 1996), 3. And: Human Rights Watch, *Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath* (New York: Human Rights Watch, 1996), 62 as cited in: Gay J. McDougal, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery, and Slavery-Like Practices during Armed Conflict. Final Report Submitted to the UN General Assembly," in *UN Doc E/CN.4/Sub.2/1998/13* (Geneva: Office of the United Nations High Commissioner for Human Rights, 1998).

7 The concept of gender and the analysis of gender roles originates from Simone Beauvoir´s *The Second Sex* (1949). Contradicting widely held beliefs that men´s and women´s behaviors resulted from ingrained and innate differences between the sexes, de Beauvoir instead argued that masculine and feminine identities were a product of social construction. So called ´second-wave´ feminists in the 1970s and 1980s distinguished between: "Sex as the anatomical and physiological characteristics, which signify biological maleness and femaleness, and gender as socially constructed masculinity and femininity. Masculinity and femininity are defined not by biology but by social, cultural and psychological attributes, which are acquired through becoming a man or a woman in a particular society at a particular time. The term gender was hence used to describe those characteristics of men and women, which are socially defined, in contrast to those which are biologically determined." From Kanchan Mathur, *Countering Gender Violence: Initiatives Towards Collective Action in Rajasthan* (New Delhi: SAGE Publications, 2004), 25 cited in Adam Jones, "Feminism, Gender Analysis and Mass Violence: A Historiography," in *Gender Inclusive: Essays on Violence, Men and Feminist International Relations*, ed. Adam Jones (London and New York: Routledge, 2009), 139.

8 Ibid.

and feminine manifestations in societies and should be explored with a broad understanding of gender expression.[9]

Causes of Sexual Violence

Until recently, academic and empirical explanations as to the causes of sexual violence both in civilian life and in war had centered around sexual violence against women and the inability of men to control 'sexual urges'. However, rape is committed regardless of whether or not sexual needs can be met by other means.[10] According to contemporary understandings of the dynamics of rape and sexual violence, assaults are driven by the exercise of dominance and power of the perpetrator.[11] It is an aggressive act and does not fulfill sexual functions in the perpetrator's psyche.[12] Rather, "humiliation and abasement of his victim and the sense of power and dominance over a women" gives fulfillment.[13]

Sandesh Sivakumaran argues that military and civilian groups commit sexual violence as a result of power vacuums and competing dominance.[14] He claims that, in a violent atmosphere and a vacuum of stable societal structures, previously unacceptable acts become tolerable.[15] Sivakumaran's explanation addresses armed conflict in which it is appropriate to say that society is in flux. In genocidal situations, however, power balances are not being maintained or restored but completely restructured. Balance has been thrown so completely off tilt by the time that genocide is occurring that there is no longer a question of preserving power balances. Instead, the focus is on creating and enforcing new societal hierarchies based on ethno-national lines.

9 Jeff Hearn, "Foreword: On Men, Women, Militarism, and the Military" in *Military Masculinities: Identity and the State,* ed. Paul R. Higate (Westport, Connecticut and London: Praeger, 2003), xii.

10 Seifert, "The Second Front," 35.

11 Susan Brownmiller, *Against Our Will: Men, Women and Rape.* 2nd edition (New York: Penguin Books, 1976), 15. And A. Nicholas Groth and H. Jean Birnbaum, *Men who Rape: The Psychology of the Offender* (New York: Plenum Press, 1979), 126-130 cited in Sivakumaran, "Sexual Violence Against Men In Armed Conflict," 267. Also: Michael Scarce, *Male On Male Rape: The Hidden Toll of Stigma and Shame* (Cambridge: Perseus Publishing, 1997), 10.

12 Seifert, "The Second Front," 36.

13 Harry Feldmann, *Vergewaltigung und ihre psychischen Folgen: Ein Beitrag zur posttraumatischen Belastungsreaktion* (Stuttgart: Enke, 1992) cited in Seifert, "The Second Front," 36.

14 Sivakumaran, "Sexual Violence Against Men In Armed Conflict," 267.

15 Ibid.

Perhaps the most useful way to approach the causes of sexual violence in the Nazi genocide is to adopt an expanded version of Sivakumarn's explanation. If we understand sexual violence during war as the result of the radical reshaping of societal norms and extend it to encompass the complete restructuring of society during genocide, then sexual violence during the Holocaust occurred as a result of the complete restructuring of gender norms in accordance with new societal and racial identities. During the Nazi genocide, men became associated with hyper-militarized and hetero-national hegemonic masculinity, while women were characterized by ideas of appropriate mothering and sexual behaviors.

Hegemonic Masculinity

Outlined by R. W. Connell, the concept of hegemonic masculinity is the notion of a standard-setting male to which all women and other males are to be compared.[16] Hegemonic masculinity maintains several enduring attributes including physical strength, practical competence, sexual performance, and protecting and supporting women.[17] Furthermore, a certain level of aggression is tied to expectations of physical strength and sexual performance. This aspect creates the 'Other'[18] as anything that is not physically or sexually aggressive and as an enduring element of femininity.[19] These two components of hegemonic masculinity were emphasized in Nazi ideology, which respectively translated to militarized masculinity and hetero-nationalism.[20]

16 John Tosh, "Hegemonic Masculinity and the History of Gender," in *Masculinities in Politics and War: Gendering Modern History*, eds. Stefan Dudink, Karen Hagemann, and John Tosh (Manchester: Manchester University Press, 2004), 51 also cites R.W. Connell, *Which way is up?: Essays on Sex, Class and Culture/R.W. Connell* (Sydney: George Allen & Unwin, 1983), 76.

17 Tosh, "Hegemonic Masculinity," 43.

18 The term "Other" was first coined by philosopher Emmanuel Levinas and is used to describe a group that is fundamentally not the *same*. This process of "othering" is perhaps best described by Edward Said as the process of emphasizing the marginalizing groups as weak in order to stress the alleged strength of those in positions of power. See: Said, Edward. *Orientalism*. New York: Vintage, 1979.

19 Tosh, "Hegemonic Masculinity," 47-48.

20 Following 'social constructionist conceptualization', we can understand this process as depending on the fluid definitions of masculine and feminine and thus a fluid definition of hegemonic masculinity. For many, Connell's definition of hegemonic masculinity is inherently a white man of European decent. But the bar is reset according to the reshaping of societal expectations and reflects new hegemonic identities. This is not to say that in Rwanda, for example, the colonial white male did not represent the hegemonic masculinity in that state. But it does mean that the Hutu nationalist movement attempted to depose the European white hegemonic male and replace him with a new Hutu male hegemonic masculine identity.

It is important to note that hegemonic masculinity is not exclusive to all men. Though it encompasses masculine qualities, women such as Irma Grese and Ilse Kocha, as well as countless other Nazi women, broke into the male-dominated arena of hyper-militarization and hetero-nationality. Hegemonic masculinity is an explanation for the process and its associated gender qualities that ultimately lead to sexual violence, not the specific gender that embraces it.

Physical Aggression: Hyper-Militarization

Norwegian sociologist Øystein Gullvåg Holter argues that the gender system became galvanized in mid-industrial Europe and came to imply that every man is a soldier and that the nation is the nurturing article to protect. Holter argues that the European sense of a 'gendered self' was formed in conjunction with European nationalist movements and spread in accordance with European influence.[21] Men became the "universal soldier", the women the "universal parent-mother", and the homeland the embodiment of the collective parent-mothers.[22] With men disciplined for protection (war), men in the late nineteenth and early twentieth century transitioned from 'fatherly' to 'leaderlike' figures.[23] Thus, we can understand the historical gendering of the national male as intrinsically tied to the masculine, dominant male.[24]

In Nazi Germany, the universal soldier was both amplified and tied to racial identity. The 'Aryan' male was, in essence, the ideal soldier, portrayed as physically fit, attractive, active, and loyal to the Reich and the Führer.[25] Militant organizations were set up to train children to be future men-soldiers for their 'nation.' Continued references to strength and masculinity were pervasive in Nazi propaganda.[26] But not only was Nazi propaganda and the Nazi male self-image fused with frequent references to extreme masculinity and being a tough, battle-hardened soldier, but 'masculine'

21 Øystein Gullvåg Holter, "A Theory of Gendercide," in *Gendercide and Genocide*, ed. Adam Jones (Vanderbilt University Press, 2004), 70.

22 Ibid., 71.

23 Ibid., 70.

24 Though this transition to 'motherland' may at first appear Eurocentric, it is important to consider the substantial European contact with the rest of the world via colonialism at the time of this transition.

25 Todd Richard Ettelson, *The Nazi 'New Man:' Embodying Masculinity and Regulating Sexuality in the SA and SS, 1930-1939* (PhD diss., The University of Michigan, 2002), 3.

26 Ibid.

and 'soldierly' became synonymous.[27] 'Soldierly masculinity' became the norm against which every German man was measured.[28]

This creation of hyper-militarized and racialized masculine identities is perhaps most vividly illustrated in the adoption of *Härte.*[29] Indeed, *Härte* became an integral part of a distinctly masculine cultural identity (*'Leitkultur'*).[30] By fusing radical nationalism with racism, it was assumed that the soldierly character trait was innate to the Aryan man, that it ran in his blood.[31]

The masculinity of the Nazi group thus fused with the ideal of a superior national soldier. It is racial fusion, as the male members of the perpetrator group are mobilized en masse against the imagined threat. This mobilization is inherently violent. The military is "the clearest arena of social power and of course, violence and killing in their many guises."[32] As masculinities militarize, so do men and their expressions of the new hegemonic masculinity.

Sexual Aggression: Hetero-Nationality

Aggression and sexuality are interrelated, as the militarization of men is, at its core, a highly sexual process. It is no coincidence that men of 'battle age' are also of 'reproductive age.'[33] In addition to militarizing men by turning every male civilian into the national race-soldier, hegemonic masculinity in National Socialism emphasized the sexual expression of violence.

According to R. W. Connell, heterosexuality became "a required part of manliness" in the second half of the nineteenth century, when homosexuality became a distinct identity and social component in Western societies.[34]

27 Frank Werner, "`Hart müssen wir hier draußen sein.` Soldatische Männlichkeit im Vernichtungskrieg 1941-1944," *Geschichte und Gesellschaft* 34, no. 1 (2008): 9ff..

28 Ibid., 8.

29 The German term *Härte* can be translated as "hardness", "relentlessness", "cruelty", and/or "strength", but in the National Socialist sense, none of these words suffice to capture its precise meaning. In any case, the consequences that resulted from the attribute of *Härte* were only negative; the implementation of this *Härtekonzept* led to unparalleled cruelties committed by the SS, the Einsatzgruppen and the Wehrmacht. The Nazis, however, saw *Härte* as the most distinguishing characteristic in a man (soldier).

30 Werner, "Hart müssen wir sein...," 11-12.

31 Quoted in: Ibid., 9.

32 Hearn, "Foreword: On Men, Women, Militarism, and the Military," xi.

33 Adam Jones, "Straight as a Rule: Heteronormativity, Gendercide, and the Non-combatant Male," in *Gender Inclusive: Essays on Violence, Men and Feminist International Relations*, ed. Adam Jones (London and New York: Routledge, 2009), 296.

34 R.W. Connell, *Masculinities* (Cambridge: Polity Press, 1995), 196 cited in Miranda Alison, "Wartime Sexual Violence: Women's Human Rights and Questions of Masculinity," *Review of International Studies* 33, no. 1 (2007), 77.

Miranda Alison argues that since then, 'hetero-normativity' has become an integral part of hegemonic masculinity.[35] During National Socialism, hetero-normativity became fused with 'Aryan' national identity. Consequently, homosexuality was rejected as a legitimate form of 'Aryan' national identity and thus became a threat. The most striking example of this is the persecution of homosexuals. In Nazi Germany, homosexuality was not only illegal, it was punished via incarceration and excessive persecution.

The concept of hetero-normativity was also transferred from relating solely from the individual to the collective, where heterosexuality of the nation is represented in 'hetero-nationality.' Coined by Euan Hague, this term describes the process by which hetero-normativity is applied to a national group identity. In reference to the mass rapes in Bosnia-Herzegovina, Hague argues that hetero-nationality describes a perpetrator that is "a different nationality from the rape victim: By raping and impregnating women and girls, watching men rape each other in prison camps and assuming the power positions of "masculine" in all rapes, the Bosnian Serb military and its allied irregulars proved themselves their own identities as powerful, manly and *crucially Serbs*."[36] This explanation refers specifically to rape in Bosnia but can be expanded to understand sexual violence during the Nazi Genocide.

Hetero-nationality can also aid in understanding sexual violence against men. Through sexual violence, the perpetrator asserts his or her hetero-nationality, expressing their "different and superior national identity from that of the victim, who in turn has her or his national identity forced through the [sexual violence] into an inferior position as feminine."[37] Sexual victimization is thus a feminine characterization.

The assertion of hetero-nationality is manifested both through the sexual dominance of one group and the assigning of inferior sexual qualities to the other group. This is particularly evident in the homosexualization of 'opponents'. The charge of homosexuality was frequently employed as a means to eliminate political opponents and was leveled against a large number of SA during the Night of Long Knives in 1934, and "against Army Chief of Staff, Werner von Fritsch, who would not comply with Nazi policies, against Catholic clerics in order to bring the church into disrepute[…],

35 Ibid.

36 Sherene H. Razack, *Dark Threats and White Knights: the Somalia Affair, Peacekeeping, and the New Imperialism* (Toronto, Buffalo and London: University of Toronto Press Incorporated, 2004), 63.

37 Alison, "Wartime Sexual Violence," 81.

and against branches of the independent youth movement."[38] Some of these men were "known homosexuals", including the Chief of Staff Ernst Röhm, but the propaganda "highlighted Röhm's sexual predilection".[39] By homosexualizing party enemies, the Nationalist Socialists equated them with inferior masculinities.

Motherhood and Sexuality

While masculine identities underwent transformation, Nazi female identities were similarly altered. Women's roles as mothers and sexual beings were accentuated, which required the corresponding disempowerment of 'Other' female identities. By doing so, the perpetrator group destroyed the attraction of the 'Other' females as mothers and sexual beings. As the women were associated with national motherhood, by raping and violating the women of the enemy, perpetrators also attacked the "symbolic representation of the national body".[40]

As discussed above, the European nationalist movements in the late nineteenth and early twentieth century guided the gendering of the homeland into the Motherland, or the collection of national mothers. On the cusp of conflicts, there is a tangible radicalization of discourse into:

> [...] a renewal of a patriarchal familial ideology, deepening the differentiation of men and women, masculinity and femininity[...] Women are reminded that by biology and by tradition they are the keepers of hearth and home, to nurture and teach children 'our ways'. Men, by physique and tradition, are there to protect women and children and the nation, often referred to as the 'motherland'.[41]

38 Hans Günther Hockerts, *Die Sittlichkeitsprozesse gegen katholische Ordensangehörige und Priester 1936-37* (Mainz: Kommission für Zeitgeschichte, 1971) cited in Harry Oosterhuis, "Medicine, Male Bonding and Homosexuality in Nazi Germany," *Journal of Contemporary History* 32, no. 2 (1997): 189.

39 Ibid.

40 Ruth Seifert, "Krieg und Vergewaltigung. Ansatz zu einer Analyse," in *Massenvergewaltigung. Krieg gegen die Frauen,* ed. Alexandra Stiglmayer (Frankfurt: Fischer, 1993), 87-113, quoted in Brigitte Halbmayr, "Sexualized Violence against Women during the Nazi `Racial` Persecution," in *Sexual Violence Against Jewish Women during the Holocaust*, eds. Sonja Maria Hedgepeth and Rochelle G. Saidel (Waltham: Brandeis University Press, 2010), 31.

41 Cynthia Cockburn, "The Gendered Dynamics of Armed Conflict and Political Violence," in *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence,* eds. Caroline O.N. Moser and Fiona Clark (London: Zed Books, 2001), 19.

When the Nationalist Socialist movement refurbished traditional gender roles, these revived roles became the norm.[42]

These traditional roles became central to 'Aryan' identity. Hitler's opposition to the political participation of women and his low estimation of women's abilities were based on the separate spheres of the sexes.[43] Accordingly, the state was man's realm, while the home was the realm of women.[44] As Joseph Goebbels argued in 1934, "Women's proper sphere is the family. There she is a sovereign queen."[45] According to Leila Rupp, "Nazi leaders urged women [...] to bear numerous children in response to the call for a vigorously growing 'Aryan" population. Just as men served the state by fighting, so women served by bearing children."[46] This notion of their role of Aryan child-bearer clashed with the growing feminist movement of the 1920s and 1930s as well as female Nazi militants.[47] In the early years of the party, some Nazi militants engaged in dialogue, arguing that while different from men, "women were as capable and intelligent and could contribute to the German people in ways other than through motherhood."[48] These early attempts were not fruitful, however, as the government soon outlawed abortion and the sale or advertisement of contraceptives for healthy 'Aryans'.[49] Measures to promote marriage and reduce the number of women in the labor force were enforced.[50] Appropriate sexual partners were designated through extensive propaganda and eventually *Rassenschande*, laws against 'race defilement' through sexual activity with non-'Aryans'. Thus, in Nazi Germany, femininity had reverted to motherhood and keepers of the home and 'appropriate' sexual behavior.

At the same time, 'Other' female identities threatened to do exactly what Aryan women were supposed to do: make and raise racial children. Jewish, Roma, Sinti, Black, and other 'undesirable' women threatened, in the Nazi mind, to create racially inferior children who would impede Aryan supremacy. Thus, the Nazi obsession with motherhood and sexuality resulted in an attack on Jewish motherhood. Sterilization of both men

42 Ibid.

43 Leila J. Rupp, "Mother of the *Volk:* The Image of Women in Nazi Ideology," *Journal of Women in Culture and Society* 3, no. 2 (1977): 363.

44 Ibid.

45 Quoted in Ibid.

46 Ibid.

47 Ibid.

48 Ibid.

49 Ibid., 371.

50 Ibid.

and women as well as the highly regulated sexuality through race laws, gender, and family separation all aided in the prevention of births.[51] Forced abortions of Jewish, Roma, Sinti, and 'asocial' women were performed.[52] Sexual violence in the form of sterilization, gender and family separation, abortion, rape, beatings of genitalia and buttocks, and sexual enslavement in brothels in camps served to 'check' competing mothering and sexual femininities.[53] Furthermore, the separation of sexes of persecuted peoples in camps epitomized the suppression of childbearing and motherhood.

Sexual Violence Against "Racially Inferior" Women in the War of Annihilation

Sexual violence was common in the Nazi genocide, although all forms of it were considered grave crimes, both in civilian and military jurisdiction.[54] This, however, did not deter the perpetration of sexual crimes. Rape within the framework of the Nazi genocide is not considered to have been an active genocidal tool (unlike in the Bosnian Wars or Rwanda),[55] but it did have a racial dimension to it, as intimate contacts with Jews were either explicitly sought or explicitly eschewed by the perpetrators, simply because of the victims' racial belonging.

The Nazi Conception of Race Defilement

When analyzing sexual violence within the framework of the Nazi genocide, one major cornerstone to examine is the Nazi law that regulated sexuality between Jews and 'Aryans', as its observance or non-observance had an impact on how sexual crimes were perpetrated.

Pre-existing concepts that linked race and sexuality were driven to extremes when the Nazis came to power in 1933.[56] The term *Rassenschande* was embedded into the NS criminal code on September 15, 1935, when the Nuremberg Laws were passed.[57] As Alexandra Przyrembel remarks,

51 Halbmayr, "Sexualized Violence against Women during Nazi "Racial" Persecution," 37.

52 Ibid.

53 Ibid., 34 and 38.

54 Beck, *Wehrmacht und sexuelle Gewalt,* 326.

55 Sinnreich, "The Rape of Jewish Women during the Holocaust," 117.

56 Alexandra Przyrembel, *"Rassenschande". Reinheitsmythos und Vernichtungslegitimation im Nationalsozialismus* (Göttingen: Vandenhoeck & Ruprecht, 2003), 63.

57 They were comprised of two laws, the *Reichsbürgergesetz* and the *Gesetz zum Schutz des deutschen Blutes und der deutschen Ehre*.

"intimacy, sexual pleasure, [...] and even 'normal' contacts between Jewish and non-Jewish Germans were now punishable by law [...]."[58] In that sense, 'Jewish' and 'German' became two mutually exclusive identities;[59] a mixing of these two 'races'[60] was now heavily penalized and marked the beginning of an unparalleled genocide in the twentieth century. [61] The judicial definition of race defilement was encoded in the Law for the Protection of German Blood and German Honor. The decree outlawed any kind of sexual, therefore pro-creational, contact between Jews and Germans, since both marital and extra-marital sexual encounters between these two groups were forbidden.[62]

Committing race defilement was interpreted as a grave injury to the integrity of the national community, since racial segregation would prevent the mixing of German and 'impure' blood, re-enforcing the National Socialist 'utopia' of a racially pure *Volksgemeinschaft*.[63] The offence of race defilement became a tool of persecution that often had fatal consequences for the accused. This was all the more the case since race defilement was a concept that was socially accepted by the general German populace. Often, someone accused of having engaged in race defilement was branded and ostracized for life.[64]

Within the Reich's borders, charges and actual convictions made against both male and female race defilers were frequent. The Gestapo and the

58 Przyrembel, *Rassenschande*, 11.

59 Ibid., 12.

60 The National Socialist concept of race (in German, *Rasse*) was embedded in the belief that there were, in fact, different races in the world and that some of these races were more valuable (in German, *wertvoll*, which in the Nazi sense meant also more able, more productive, more honorable – in short, more eligible to simply *live*) than others; the latter ones were branded as "racially inferior" and were ascribed all kinds of deeply insulting and often times ridiculous stereotypes. The Nazis, however, took these stereotypes literally dead serious; the genocidal process was initiated under the premises of such racial categorizations. For a contemporary Nazi work on *Rassen* (deeply racist and, in terms of Nazi "logic", often inconsistent and confusing), see: Rüdin, Ernst. *Rassenhygiene im völkischen Staat*. Munich: J.F. Lehmanns Verlag, 1934.

61 The artificial creation of these two identities was accompanied by an almost obsessive need to meticulously define who was of "German blood" (*"deutschblütig"*) and who was Jewish, half Jewish, one-quarter Jewish, etc. (Przyrembel, *Rassenschande*, 12).

62 The full text of the *Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre* from 15 September 1935 is printed in Przyrembel, *Rassenschande*, 509. The general usage of race defilement was further defined as "[...] sexual intercourse with racially different people and people of color." (Przyrembel, *Rassenschande*, 12).

63 Ibid., 13-14. For a more detailed analysis of racial hygiene and racial science as it was conceptualized and practiced during the Third Reich, see: Michael H. Kater, *Doctors under Hitler* (Chapel Hill/ London: University of North Carolina Press, 1989), 111ff.

64 Przyrembel, *Rassenschande*, 12.

Criminal Police targeted these people; arrests and interrogations were often opportunities for the executive to humiliate and abuse the 'accused'.[65] Outside of the Reich's borders, the racial laws were less strictly implemented, partly to be explained by the fact that the environment at the front was much more brutal and violent, resulting in the dissolution of commonly accepted customs and laws.

Nazi Conceptions of Masculinity

As has been outlined above, masculinity is an essential category in defining self. The masculine self standardizes patterns of behavior and assigns to a person their social standing.[66] Binary oppositions such as male and female are much more easily naturalized and accepted as 'normal'. Since their definition is inevitably linked to the biological body and gender, they undergo a 'natural legitimation'.[67] During National Socialism, conceptions of masculinity reached a new extreme, fuelled by the 'Front Fighter Experience' which had found new support after the defeat in World War I.[68]

After the National Socialists came to power in 1933, the soldierly ideal of a strong man was radicalized and would be linked to nationalistic and racist ideas; Social-Darwinist conceptions of the 'survival of the fittest' reached more extremes, as 'aggressive masculinity' became an asset in the deeply racist selection process. Male *Härte* now was the new ideal that was ever more aggressively directed against external enemies.[69] After 1933, 'soldierly' and 'masculine' were used almost interchangeably,[70] and the soldier at the front became an expression of the "manlihood of [the German] race".[71] In defining the German man as a soldier, character traits such as *Härte*, which was to condition "emotionally controlled executers," became all the more distinguishing an attribute. Feeling empathy with the victims, fearing the enemy, and hiding during attacks were prohibited. The

65 For a detailed analysis of race defilement, "mixed" marriages, children of "mixed blood", and the theory and implementation of the Nuremberg Laws and what consequences this had for the German judicial system as well as the medical profession and academia, please refer to the entire work of Alexandra Przyrembel. For the purpose of this article, the book`s focus on race defilement within the Reich alone did not prove to be very conclusive about race defilement committed outside the Reich borders, i.e. at the Western or Eastern front, and the German occupation zones all over Europe.

66 Werner, "Hart müssen wir sein...," 7.

67 Ibid.

68 Ibid., 8.

69 Ibid., 9.

70 Ibid., 10.

71 Ibid., 11.

"verdict of weakness"[72] ridiculed a man. The codex of *Härte* coupled with deadly determination, lethal action, and backed up by a strict military chain of command led to an ever more aggressive conception of masculinity. Ultimately, all restraint was given up, especially at the Eastern front where the killing sprees reached a climax. Although the upholding of a strict military order and sexual restraint (*Manneszucht*) was of great concern for the military leaders, along with reminders that a German soldier would not wage war against women and children due to the Wehrmacht's code of ethics, these claims soon became nothing but statements.[73]

Although masculine *Härte* was viewed as a means to an end, it soon became clear that it was an end in itself. Brutal violence was unleashed on the locals, regardless of military necessity. There are numerous examples that illustrate how the form, duration, and intensity of violence went far beyond what was militarily and strategically 'appropriate'.[74]

Due to the harsh conditions, the war in the East was elevated to the status of a true 'proving ground' for a man to prove his own masculinity in combat.[75] It was here that concepts of masculinity were translated into soldierly camaraderie: the individual had to undergo a process of de-individuation and be re-socialized in the midst of his comrades-in-arms.[76] Camaraderie was the only bond that could withstand the horrors of war; every soldier had to submit himself to it. Those who excluded themselves were shamed and lost the in-group's protection.[77] The obligation to display *Härte* and virtues of camaraderie became an inescapable control mechanism, leading to a decrease in empathy and scruples and then to a profound shift of the generic system of morality, often within weeks after soldiers had started their frontline duty.[78] Drills, violence, and mortal danger were experienced by the soldiers, along with certain rituals of masculinity such as excessive drinking, visits to brothels, boasting about sexual escapades, and the exchange of pornographic pictures; these experiences welded them together.[79] Moreover, "peer pressure, conformity, obedience

72 Ibid., 12.
73 Ibid., 13.
74 Ibid., 35.
75 Ibid., 19.
76 Thomas Kühne, *Kameradschaft. Die Soldaten des nationalsozialistischen Krieges und das 20. Jahrhundert* (Göttingen: Vandenhoeck & Ruprecht, 2006), 82.
77 Ibid., 84.
78 Werner, "Hart müssen wir sein…," 22 and 25.
79 Mühlhäuser, *Eroberungen*, 33.

[and] the experience of violence quickly [led] to the desensitization and brutalization"[80] of the men.

The outward-directed self-image of a hard and merciless soldier was accompanied by an inward-directed expression of a male-masculine relationship among the soldiers which included caring for one another, having meals together, and washing clothes together. The following excerpt taken from an artillery general who served at the Eastern front perfectly illustrates this binary opposition:[81] "It is very hot. We bathe [...] [;] the *matkas* [derogative term for elderly Russian women], full of amazement and giggling, look on as we soap ourselves, standing in the court yard, stark naked [...]."[82] This quote further shows how little the invading soldiers cared what the (female) native population thought of them. Soldiers took pride in their muscular bodies, parading them in front of women, without any regard for their sense of shame. The witnessing women were angered and felt insulted by these displays of nakedness, because it made them aware of the fact that they were very vulnerable to sexual assaults.[83]

While outward-directed camaraderie collectively rejected enemy women as a group,[84] they became an outlet for the soldiers' frustrations. As a result, killing and raping were much easier to do. Although both the Wehrmacht[85] and the SS[86] officially did not condone sexual assaults by their members against civilians, it seems that the quest for masculinity and *Härte*

80 Ibid.

81 Regina Mühlhäuser has included in her study many diary entries and personal photos from soldiers at the Eastern front. The above quote is taken from Jürgen W.'s war diary and is dated 9 July 1942.

82 Mühlhäuser, *Eroberungen*, 35. Translation provided by me. The original quote reads: "Es ist sehr heiß. Wir machen große Wäsche, staunend und kichernd sehen die Matkas zu, wie wir uns splitternackt auf dem Hof stehend abseifen."

83 Ibid., 36.

84 Ibid., 35.

85 In a memorandum from 20 November 1941, Supreme Commander Erich von Manstein expressed that the soldiers should display "restraint in their behavior towards the other sex" and that "unruliness and the lack of discipline within the troops" had to be dealt with in a decisive manner by the commanding officers (for the German quote, see: Mühlhäuser, *Eroberungen*, 144).

86 In an advisory memo dated 26 October 1942, from Reichsführer SS Heinrich Himmler to the Main Office of the SS Court in Munich, Himmler decided that "Bei rein politischen Motiven erfolgt keine Bestrafung, es sei denn, daß die *Aufrechterhaltung der Ordnung* eine solche erfordert. [...] Bei eigensüchtigen oder sadistischen bezw. *sexuellen Motiven* erfolgt gerichtliche Ahndung, und zwar ggf. auch wegen Mordes bezw. Totschlages. [...]" The primary document "Betr.: Beurteilung von Judenerschießungen ohne Befehl und Befugnis", October 26, 1942, is printed in: Ernst Klee et al., ed., *"Schöne Zeiten" – Judenmord aus der Sicht der Täter und Gaffer* (Frankfurt/M.: Fischer Verlag, 1988), 191.

manifested itself also in sexual crimes. Thomas Kühne argues that "[the] cult of masculinity found its incarnation in the virile *Übermensch* and its social home in *the misogynistic band of brothers."* [87]

Race Defilement on the Eastern Front: The View of the Perpetrators

The war against the USSR was planned from the beginning as a war of annihilation; thus, it was waged in a radically different manner than the war on the Western front.[88] Conquering 'living space' for the Aryan race, total economic exploitation, the enslavement of the local population in forced labor, and the eradication of Jews and the 'Jewish-Bolshevist' leadership were the cornerstones of the Barbarossa campaign.[89] The 'criminal orders' of 1941 legitimized these pre-conceptions and resulted in the total disregard for the rules of war.[90]

German soldiers reacted to this reality of war differently. Despite relative impunity, one cannot generalize about the soldiers' sexual behavior: some lived up to the NS ideal of a 'race-conscious warrior',[91] while others realized their sexual fantasies in a cruel and violent manner. Military order and personal disposition played a crucial role in determining soldierly behavior; nevertheless, war does facilitate the violent expression of inner desires and urges.

Likewise, sexual crimes are multiplied in war.[92] As sexual attacks mirror the entire war dynamic where the unarmed female civilian is left at the

87 Kühne, *Kameradschaft*, 69. Translation provided by me. The original quote reads: "[…][der] Männlichkeitskult fand im virilen `Übermenschen` seine Inkarnation, im frauenverachtenden Männerbund seine soziale Heimat." Emphasis added.

88 Beck, *Wehrmacht und sexuelle Gewalt*, 179.

89 Ibid., 169.

90 The "Guidelines for the Behavior of the Troops in Russia" from 19 May 1941 clearly stated that Bolshevism was considered by the Nazis to be "the mortal enemy of the National Socialist German people" and that therefore, one of Germany´s purposes was to fight this "subversive world view". In addition, the guidelines stated that this called for a "ruthless and vigorous fight against Bolshevist agitators […], saboteurs, Jews and for the total elimination of both active and passive resistance [against the Germans.]" Translation provided by me. For this excerpt and the full text of the "*Richtlinien für das Verhalten der Truppe in Rußland*", see: Beck, *Wehrmacht und sexuelle Gewalt*, 179.

91 Ibid.

92 Nomi Levenkron, "Death and the Maidens: Prostitution, Rape, and Sexual Slavery During World War II," in *Sexual Violence Against Jewish Women During the Holocaust*, eds. Sonja M. Hedgepeth and Rochelle G. Saidel (Waltham: Brandeis University Press, 2010), 13.

mercy of the armed, male, and powerful soldier, these are never solitary crimes. Nomi Levenkron remarks, "[t]he soldier invades the woman's body just as he invades her country; he crushes her body as well as her right to autonomy and control over her life."[93]

Sexual Violence Other Than Rape and the "Observance" of the Racial Laws

Opportunities for sexual assaults by members of the Wehrmacht and the SS against civilians were manifold. Most sexual crimes were perpetrated within the framework of the mass shootings, the fight against real or alleged partisans,[94] during requisitions and lootings,[95] as well as the recruiting of forced laborers,[96] and the quartering of German soldiers in Soviet houses.[97] Having consulted eyewitness reports of survivors, historian Regina Mühlhäuser shows that, despite the Nazi racial laws, it was often especially Jewish women who were picked out to be sexually assaulted by Germans; for the attacking soldiers, these proved to be opportunities to demonstrate their boundless power and their hatred for their victims as well as further degrading and humiliating them.[98] The racial laws made enemy women all the more desirable. In raping them, the woman's humanity became even less visible to the perpetrator and her insignificance was augmented, which "engendered complete indifference with [her] suffering."[99] In that sense, the Nazis saw Jewish women both as an object of sexual pleasure and as a grave biological danger because a woman's body is the bearer of future generations and had to be eliminated at all costs.[100]

Despite strict regulations,[101] it seems evident that rules were overstepped on countless occasions, especially when the perpetrators were sure their immediate superiors had no knowledge of them breaching the racial laws. Mühlhäuser shows that members of the SS and the Wehrmacht held the view that the racial laws on the front were not to be obeyed as strictly as back home: For instance, an SS man publicly declared in early 1943 upon

93 Ibid.
94 Beck, *Wehrmacht und sexuelle Gewalt,* 221ff.
95 Ibid., 225.
96 Ibid., 226.
97 Ibid., 229.
98 Mühlhäuser, *Eroberungen*, 87 and 91. And: Halbmayr, "Sexualized Violence," 36.
99 Levenkron, "Death and the Maidens," 14.
100 Ibid., 15.
101 In mid-1942, Himmler ordered every SS and police member to be tried in court if they disobeyed military rules and had sexual intercourse with racially different Russian women. See: Mühlhäuser, *Eroberungen*, 150.

arriving in Minsk that the race defilement rules were only applicable within the Reich borders and were abrogated in the East. Apparently his public declaration did not have any consequences for him.[102] Also, SS men repeatedly raped Jewish women in the ghetto of Pinsk, and none of them were ever charged in court.[103] Patterns of order and obedience were upset under the impressions of the war`s brutality. For soldiers individually, this meant that their violent actions were either inhibited or disinhibited but in either case dangerously directed against their victims.[104]

In this respect, the eyewitness report of the Polish survivor Sala Pawlowicz is exemplary. As a fifteen-year-old in 1939, she had been a forced laborer in an SS barrack in the Polish city of Lask. After having finished her day's work she got held up by the Germans. She was forced to undress, whereupon one of the Germans remarked: "You are nothing special, but I like you."[105] When she was nude, he forcefully turned her around to show off her body to his comrades. He then touched her inappropriately and abused her with a riding crop, commenting: "You do not know how to obey… I will show you. But I cannot have you, you scum, because you are Jewish and you are dirty. What a shame! […] This is what you will get instead of me, because you are a dirty Jewess!"[106] He then beats her unconscious with the crop.

This instance of sexual violence in the absence of the actual act of penetration serves to underline the racial hatred the perpetrators were motivated by. In this case, the attacker does obey the racial laws, but he channels his anger about the fact that he desires her but is prohibited by law to 'have' her into cruel violence whereby he abuses the girl's breasts and intimate parts with a whip. The obedience of the racial laws, therefore, did not mean that they were a deterrent for sexual offenders but rather spurred them on to find other ways to abuse their victims.[107] Germans who wanted to 'obey' the racial laws often used sticks, crops,

102 Ibid., 151.

103 Ibid.

104 Gaby Zipfel, "Ausnahmezustand Krieg? Anmerkungen zu soldatischer Männlichkeit, sexueller Gewalt und militärischer Einhegung," in *Krieg und Geschlecht: sexuelle Gewalt im Krieg und Sex-Zwangsarbeit in NS-Konzentrationslagern*, eds. Insa Eschebach and Regina Mühlhäuser (Berlin: Metropol, 2008), 60.

105 Mühlhäuser, *Eroberungen*, 89.

106 Ibid. Translation provided by me. The original quote reads: "Du weißt nicht, wie man gehorcht. … Ich werd's dir zeigen. Aber ich kann dich nicht haben, du Abschaum, weil du jüdisch und dreckig bist. Was für eine Schande! […] Das ist es, was du statt meiner bekommst, dafür, dass du eine dreckige Jüdin bist!"

107 Many eyewitness accounts of survivors make apparent that these kind of sexual assaults were rather common.

and firearms to torture the intimate parts of their victims.[108] Political scientist Sheila Meintjes remarks that through these 'well-aimed' beatings, perpetrators seek to 'activate' a woman's sexuality and thereby further degrade the victims by forcing them into a 'position of a readily-available sexual object'.[109] These attacks are a means of non-verbal communication whereby the attacker establishes his dominance as an 'Aryan' occupier over a 'racially inferior', occupied woman.[110]

Rape and "Non-Compliance" with the Racial Laws

Although charges could be raised against Wehrmacht and SS members in the USSR acting in violation of other race-based decrees,[111] historian Birgit Beck has shown that in military court verdicts against sexual offenders, race defilement as an offence (although considered a problem amongst the commanding staff) did not play a role.[112] This can partly be explained by the sheer lack of witnesses in cases of race defilement, since the assaulted Jewish women were almost always killed after the deed, either directly afterwards or in the all-devouring process of genocide.[113]

The proximity of sex, death, and the routinization of killing that accompanied the mass shootings in the East is perfectly illustrated by excerpts of the following conversation between 21-year-old submarine sailor Horst Minnieur (H.M.) and his 23-year-old comrade Helmut Hartelt (H.H.).[114] Their

108 Mühlhäuser, *Eroberungen*, 90.

109 Ibid.

110 Ibid., 92.

111 The Wehrmacht Supreme Command passed a decree for the Wehrmacht in May 1941, in which the racial tenor was used to link it to the danger of espionage and sabotage (when German soldiers had intimate contact with Russian women), because many Russians understood the German language quite well (Beck, *Wehrmacht und sexuelle Gewalt*, 280). The SS linked racial ideology and military aims much more strictly in their fight in the USSR. Therefore, a decree by Himmler, dated April 1939, prohibited all SS and police members from "every form of sexual contact with women and girls of a racially different people" (Ibid., 279). Translation provided by me. Another explanatory leaflet for soldiers that was issued by the Army Supreme Command on 26 June 1942 further re-enforces the prohibition of "inter-racial" sexual contact, stating that "sexual intercourse with Jewish women violates the racial laws and will result in criminal prosecution" (Mühlhäuser, *Eroberungen*, 148). Translation provided by me.

112 Beck, *Wehrmacht und sexuelle Gewalt*, 277.

113 Mühlhäuser, *Eroberungen*, 148.

114 The conversation was recorded in Latimer House, where British intelligence eavesdropped on German POWs. The language that the soldiers use in this conversation is very vulgar; the words they use are derived from sexually explicit and very racist terminology, exposing their severe lack of respect for their victims. I assert that their choice of words was deliberate; it conveys the extreme racial hatred that informed their behavior.

talk revolves around a mass shooting of Jews in Wilna, Lithuania, probably in 1942.

H.M.: They all had to undress, all the way down to their shirts and the women down to their [underwear] and then they were shot by the Gestapo. [...] *Once, we watched* [*one of these*] *mass shootings.* [...] They [the Jews] were shot with an MP. [At that day,] we were present *when a pretty girl was shot.*

H.H.: That's too bad.

H.M.: All of them shot! [The girl] knew that she was going to be shot. We drove by with a motorcycle [...] and suddenly she called out our names [...] [and we asked her] where they[115] were going. [And the girl said], yes, they are going to the shooting site. At first we thought she was joking [...] [but] [...] she was, in fact, shot.

H.H.: *Was she still dressed then?*

H.M.: *Yes, she was dressed very elegantly. Very pretty girl.*

H.H.: Whoever aimed at her, surely missed her on purpose.

H.M.: Well, no, you couldn't do that, [...] nobody missed. [...][116]

H.H: Have you seen whether [at the time of the shooting] *that pretty Jewess* was still among [the others]?

H.M.: No, we were gone by then. [...]

H.H.: And she did not say anything beforehand? Have you met with her again [in the days leading up to the execution]?

H.M.: Yes, we had been together two days before, and then the next day we were wondering why she did not show up [for work]. [...]

H.H.: *She surely let herself get fucked?*[117]

H.M.: *Yes, she let herself get fucked, but you had to be careful not to get caught. Everybody knew that these Jewish bitches*[118] *were getting laid like nobody's business.*[119]

115 This refers to a group of Jews who had been herded together by the Gestapo and transported by train to the execution site.

116 This refers to the fact that, during mass shootings, every single shooter had to do his share of the killings, and that every fired shot inevitably hit somebody as the victims were herded together in groups or rows in front of the shooters.

117 The original German phrase reads "*Da hat sie sich auch gewiss hacken lassen noch*?" The jargon expression "*hacken lassen*" was a vulgar term to denote sexual intercourse.

118 In German, Minnieur uses the term "*Judenweiber*", which is a very pejorative and racist term for Jewish women. Moreover, such phrasing exposes a whole set of racist and sexist assumptions the speaker had about Jewish women as a group.

119 It is very difficult to adequately translate this into English, because "*umlegen*" in German refers both to the act of killing someone and, in the 1930s and 1940s, could also denote the act

H.H.: What did she say, that she ---?[120]
H.M.: Nothing at all. Ah, we talked a couple of times, [...] she went to university in Göttingen.[121]
H.H.: [*And yet*] *she let herself be used as a whore!*
H.M.: Yes. They did not realize that she was Jewish, she was a decent [girl] and all. Well, too bad for her that she also had to kick the bucket! Some 75,000 Jews were shot then.[122]

The conversation is revealing about how both sex and race defilement were understood by the soldiers themselves. First, one of the major concerns of the men seems to be that the victim was a 'pretty Jewess', which buys into the then common stereotype that only pretty and young Jewish women became victims of sexual violence.[123] For Minnieur and his comrade, her beauty is the one aspect most worthy of discussion, whereas the girl's intellectual capacities seem to surprise both. Hartl goes on to exclaim that, despite her university education, she let herself be turned into a prostitute, whereby he makes use of the racist and sexist stereotype that Jewish women were essentially all prostitutes.[124]

of sexual intercourse. In this context, it cannot be ascertained for sure which of these two meanings Minnieur uses, but probably both. In that sense, "*umlegen*" illustrates even more clearly the proximity of death and sex and underlines the normalcy the soldiers ascribed to both processes (mass executions and forced sexual encounters before that).

120 Refers to the question of whether the Jewish girl identified herself as such in front of Minnieur.

121 As an excuse for having had sexual relations with the Jewish girl, Minnieur states that she did not identify herself as a Jew. In fact, for the Nazi judiciary, these occurrences proved to be somewhat of a difficulty, because people accused of race defilement tended to stress as a defense strategy that the Jewish person they had intimate contact with did not make it visible (Przyrembel, *Rassenschande*, 46off.).

122 The entire conversation is quoted in: Sönke Neitzel and Harald Welzer, *Soldaten. Protokolle vom Kämpfen, Töten und Sterben* (Frankfurt/M.: S. Fischer Verlag, 2011), 162-165. I have provided here a shortened version of the entire conversation. The translation has been provided by me.

123 Such conceptions were, of course, not true. During the Russian campaign alone, women of all ages became victims of sexual crimes. Of those crimes that were recorded, the youngest victim was five years of age and the oldest ninety years of age. However, when in August 1941, a soldier stationed in France had raped and later killed a woman over sixty years of age, the judges felt compelled to comment in their verdict that the accused had raped "an ugly woman of more than sixty years" and took this partly as an argument to justify their assessment that the accused was driven entirely by his physical urges and had not been able to control himself and was thus to be seen as a very dangerous violent criminal. For more details about this case, see: Beck, *Wehrmacht und sexuelle Gewalt*, 198.

124 Ibid., 244.

Such an assessment buys into more elaborate Nazi conceptions about a woman's sexuality, especially when she was of non-German nationality. Even Wehrmacht courts took into account the victim's nationality whilst trying to find a verdict for the accused. Contemporaries believed that a woman's social status and identity determined her sexual behavior. Sexual integrity existed when a girl was a virgin and when a young woman engaged in extra-marital abstinence. Therefore, the act of rape deprived a woman of her sexual integrity and her honor. Based on patriarchal conceptions of society, rape was, thus, the loss of honor. Furthermore, 'dishonorable women'[125] could not be robbed of their sexual integrity and honor, something the Nazis termed *Geschlechtsehre*, and in these cases most sexual offenders often went unpunished.[126] *Geschlechtsehre* in the Nazi sense meant that a German woman was to behave honorably and that she was aware of her status as the 'preserver of the race' and her duty to keep the '*völkisch* body pure'.[127]

Racist Nazi conceptions subjected women to hierarchization: military court verdicts did recognize the existence of a woman's *Geschlechtsehre* in the traditional way when sexual crimes were committed against Western European women,[128] whereas Russian women were considered to belong to a people "who have almost no understanding at all of female *Geschlechtsehre*",[129] thus resulting in less severe sentences for the accused.

The soldiers' conversation above shows that racial laws were not as strictly observed by the troops as would have been desirable by the military leadership. Minneur is well aware of the racial laws and possibly feared

125 Women who were prostitutes, who had a polygamous sex life, who had extra-marital sex, etc.

126 Beck, *Wehrmacht und sexuelle Gewalt*, 285.

127 Ibid., 286.

128 Ibid., 287.

129 This particular case refers to a soldier who had, together with a comrade, threatened a Russian woman with his weapon and raped her behind a house. During his trial, he claimed that he had pointed the pistol at her but had put it back in his holster, and only afterwards did the woman follow him behind the house. Therefore, he claimed, he had not been aware of the threat he had subjected the woman to and claimed she had had sex with him voluntarily. His strategy was successful, because he was sentenced only to eight months in jail. The judge wrote in his verdict that he recognized the soldier`s otherwise good reputation and that he was conscientiously doing his duty on the front; moreover, it was a mitigating circumstance that he had raped a Russian woman of almost no "*Geschlechtsehre*", as opposed to raping a German woman which would have been a grave crime (Ibid., 288). Following this contemptuous line of arguments, a judge in another verdict (October 1943) – against a soldier who had forced Russian women and girls with his weapon to undress and had inappropriately touched them afterwards – stated that *"[der Schutz der Frauenehre] fällt bei Vergehen gegenüber russischen Frauen fort. Sie sind nicht so zart, dass durch ein Erlebnis, wie der Angeklagte es ihnen bereitet hat, dauernder seelischer Schaden entstehen könnte."* (Ibid., 290).

the consequences ("one had to be careful not to get caught"). One of the consequences he alludes to is that delinquent soldiers could be divested of the right to serve as a soldier.[130] Since the soldierly male was part of the 'fighter's community', the soldier's status was elevated to that of a 'status of honor'.[131] If a soldier was declared as 'unworthy of being a soldier',[132] he was expelled from the soldierly community and lost his honor. Nevertheless, the deterring effect of such punishment remained minimal.[133]

Nowhere in the above quote does Minnieur allude to the fact that the Jewish woman he had been intimate with on numerous occasions was really used as a sex slave. Moreover, he generalizes perceived sexual attitudes of Jewish women as prostitutes: by stating that the girl 'let herself get fucked', he takes away from the victim any kind of active agent, degrading her to the point where she becomes a passive object who does not protest to the sexual encounter that is forced upon her; the attackers use women as a means to satisfy their sexual desires.[134] Using the passive construction to describe the fact that there were numerous sexual encounters between Jewish women and German men, Minnieur shows that he thinks these women were even *willing* to engage in sexual intercourse with these men. Hartl, too, assumes that as a forced laborer (and as someone who is marked for destruction anyway), the girl was automatically at the men`s disposal to use her sexually.[135] His comment is exemplary for how soldiers and SS members interpreted forced sexual intercourse. For instance, many soldiers who stood trial for sexual assaults would state that they had not perceived the sexual act as rape because the women had not fended them off.[136] In saying this, they made use of the contemporary conception that

130 In German: *Aberkennung der Wehrwürdigkeit.*

131 Werner, "Hart müssen wir sein…," 15.

132 In her extremely valuable study about sexual crimes and the Wehrmacht, Birgit Beck cites countless examples where the accused were sentenced to go to jail in addition to the "*Verlust der Wehrunwürdigkeit.*" It would go beyond the scope of this paper to cite all of these examples but for matters of illustration, I would like to quote two examples here. Within the framework of the Wehrmacht fight against Russian partisans, in May 1944, a soldier had tried to rape a young Russian woman and had shot her dead when she had put up a fight. Next to ten years in jail, he was also punished with the *"Verlust der Wehrwürdigkeit."* (Beck, *Wehrmacht und sexuelle Gewalt*, 232). In another case from June 1940, a soldier had brutally raped a French woman several times in her own house. He was sentenced to six years in jail and also to "*Verlust der Wehrwürdigkeit.*" The judges had especially reprimanded the defendant`s utter brutality and the fact that he had raped a middle-aged woman, who was married to a reserve officer (Ibid., 248).

133 Werner, "Hart müssen wir sein…," 14.

134 Beck, *Wehrmacht und sexuelle Gewalt*, 246.

135 Neitzel, *Soldaten*, 165.

136 Beck, *Wehrmacht und sexuelle Gewalt,* 241.

rape had to be provable by recognizable efforts of resistance on the part of the woman.[137] Many accused would say in court that, "[the] woman had only put up resistance at the beginning in *the usual manner*"[138] but then had voluntarily allowed sexual intercourse.

The conversation above shows how common and normal the issue of sex and sexuality was among soldiers. They talk openly about 'fucking' despite the fact that they are not close acquaintances or friends. As Neitzel correctly remarks, "stories about [sex] belong to the normal inventory of soldierly conversations and do not cause any kind of irritation."[139] The soldiers' conversational attitude again reveals more general and firmly established trends about male sexuality, which was an essential part in the daily life of a soldier at the front.[140] Just like in peacetime, escapisms from reality were part of the everyday lives of frontline soldiers; therefore, sexuality amidst extreme violence cannot be understood as something 'exotic'.[141] SS and Wehrmacht officials held the view that only a controlled sex drive was helping to optimize a soldier's performance in combat,[142] as love and combat were seen as the essential experiences of male existence. Soldierly sexuality was interpreted as being 'the fuel of the military apparatus' as a whole.[143] Sexuality is militarily exploited and becomes combat-effective.[144]

Within the context of the long front duty tours[145] that soldiers had to take, questions about sexual abstinence became important for the leadership and military judges. The basis for this was the view that the male sexual drive could not be suppressed endlessly and needed an adequate outlet. Military judges would recognize long sexual abstinence of the perpetrator

137 Ibid., 242.

138 The original quote reads: "[…] Die betreffende Frau habe sich nur am Anfang *in der üblichen Weise* gewehrt." This refers to the fact that women allegedly always at first protest against sexual intercourse so as not to appear as "easy." The above quote is taken from: Beck, *Wehrmacht und sexuelle Gewalt,* 242. Emphasis added by me.

139 Neitzel, *Soldaten*, 165. Translation provided by me. See also: Mühlhäuser, *Eroberungen*, 37.

140 Neitzel, *Soldaten*, 218.

141 Ibid.

142 In fact, Hitler himself declared in April 1942: "Wenn der deutsche Soldat bereit sein soll, bedingungslos zu sterben, dann muss er auch die Freiheit haben, bedingungslos zu lieben." (Mühlhäuser, *Eroberungen*, 39).

143 Ibid.

144 Zipfel, "Ausnahmezustand Krieg?," 59. The important attributes here are "controlled" and "effective." The sex drive of men at the front was not be left to run freely. For instance, rape and subsequent killing was, according to the SS and Wehrmacht leadership, a grave breach of a taboo (Mühlhäuser, *Eroberungen*, 42).

145 At the Eastern front, soldiers were sometimes denied leave of absence for as long as two years.

as a mitigating circumstance because they themselves had been victims to their body's needs.[146] Sexual violence against women was thereby trivialized; it was normalized as being an inevitable by-product of war. As exemplified by Minnieur's and Hartelt's comments, the perpetration of sexual violence was even blamed on the women themselves.

Conclusion

From the discussion above, we can conclude that sexual violence during the Nazi genocide occurred when concepts of masculinity and femininity were reconstructed. For men, new racial and ethnic hegemonic masculinities required the hyper-militarization of all men, while it emphasized the heterosexuality and vitality of their nation through hetero-nationality. Sexual violence was an expression of these transforming masculinities. Femininity also underwent drastic changes. Traditional roles of motherhood and sexuality were celebrated, while sexual violence symbolically violated the motherhood and attractiveness of the racial 'Others'. Hence, sexual violence was the product of shifts in – and the reconstruction of – identity that occurred during the Holocaust. Sex and killing are, in essence, part of the same process of destruction.

Specifically, this meant that being a man and being a soldier became interchangeable concepts. The Nazi soldier had to live up to these concepts by displaying extreme soldierly *Härte* directed against his enemy and the enemy's women. In the war of annihilation on the Eastern front, soldiers had numerous opportunities to demonstrate the implementation of this concept of *Härte*. In this framework, sexual violence was a common occurrence. Although the Nazi racial laws and similar decrees prohibited both sexual contact with 'racially inferior' women and sexual assaults, the deterring effect for the perpetrators remained minimal, as both the observance and the non-observance of these laws resulted in racially motivated attacks. The Nazi view of the racial inferiority of Eastern European peoples was also mirrored in verdicts by SS and Wehrmacht judges: the sentences they handed out against sexual offenders tended to be less severe for sexual crimes committed on the Eastern front, as Eastern European women were considered persons lacking sexual integrity and honor, whereas German women served as bearers of the future of the Nazi *Volksgemeinschaft*.

146 Beck, *Wehrmacht und sexuelle Gewalt,* 275.

Part III
Consequences of Genocide

7 Sarajevo's Markers of Memory

Contestations and Solidarities in a Post-War City

Laura Boerhout

Introduction[1]

On 6 April 2012, the city of Sarajevo and its citizens prepared for a day of remembrance to commemorate the start of the siege of the capital of Bosnia and Herzegovina (BiH)[2] twenty years earlier. 11,541 plastic empty red chairs were lined up in the city's main street as a reminder of those who were killed during the war between 1992 and 1995 in BiH. A special area was reserved for smaller chairs honoring the children who were killed during the siege. Thousands of Sarajevans walked along the 'Sarajevo red line' of almost a kilometer, placing flowers on the chairs. They remembered the war collectively and shared their grief and sorrow in public during this powerful and emotional gathering.

During the siege, which lasted more than three and a half years, between 11,000 and 15,000[3] people lost their lives and many were forced to flee the city. The city, surrounded by sloping hills with endless rows of gravestones, became scattered with pockmarked walls and gaping grenade holes as reminders of the intensive violence. Aside from the urgent need to repair the tremendous material and infrastructural damage to the city and its

1 This article is based on material collected during fieldwork conducted between June and September 2011, resulting in my Master's thesis 'Sarajevo's legacy of war. War memorials in the city and contested identities among the young' (May 2012, University of Amsterdam). Fieldwork consisted of participant observation at commemorative ceremonies and interviews with representatives of victim associations, NGOs, activists and twenty (young) people living in Sarajevo and Istočno Sarajevo [East-Sarajevo]. These interviewees remain anonymous, as the focus of this chapter on public remembrance cannot do justice to each of their individual stories. I thank all interviewees for their valuable input as well as Lamija Landžo, Valerie Hopkins, Wouter Reitsema and Ton Zwaan for their intellectual and editorial support. All interpretations are my own. Contact details author: L.A.Boerhout@uva.nl

2 Hereafter referred to as BiH (Bosna i Hercegovina).

3 These statistics are based on findings of the Research and Documentation Center in Sarajevo (RDC), but the numbers depend on whether pre-war Sarajevan territory is included in the calculations or not. The entire death toll in BiH ranges from approximately 97,000 (according to the RDC) to approximately 105,000 (according to the International Criminal Tribunal for the former Yugoslavia).

cultural heritage,[4] Sarajevans themselves (just like all Bosnians)[5] needed to rebuild their lives. This happened in a post-war climate filled with a wide variety of memory narratives disputing the start of the war, its terminology, issues of responsibility, and what and how to remember.[6]

Such contested and often politicized narratives also surrounded the ceremony of 6 April 2012. The fact that the organizers purchased the red chairs from a factory in neighboring Serbia sparked off fierce resistance from victim associations, given Serbia's share in the war. At the same time, a deliberate choice was made to exclude victims outside of the besieged territory and to commemorate only those who were killed within the siege. Finally, the presence at the ceremony of the international community – blamed for their lack of support during the war – was also disputed. These contestations show how individual memories over the years have been transformed into more tangible and public acts of remembrance that reveal as much about present-day power relations as they do about Sarajevo's wartime history.

In this chapter I will focus on the public articulation of memory narratives in Sarajevo's post-war memorial[7] landscape related to the war in the 1990s.[8] Sarajevo's 'cultural memory'[9] reveals both contestations and solidarities in

4 One of the major landmarks in the city, the National Library (*Vijećnica*), was burned down in 1992, destroying over 2 million books, and was only opened after renovation in May 2014. Robert Donia, *Sarajevo. A biography* (UK: Hurst and Co., 2006), 314.

5 By Bosnians, I mean all the people living in the territory of Bosnia and Herzegovina, regardless of their background and self-identification. The same applies to Sarajevans.

6 For an overview of the various memory narratives in BiH, see Nicolas Moll, "Fragmented memories in a fragmented country: memory competition and political identity-building in today's Bosnia and Herzegovina," *Nationalities Papers: The Journal of Nationalism and Ethnicity* 41:6 (2011).

7 I follow James Young who sees memorials as all the commemorative, tangible and intangible, practices that are part of the public culture of remembrance. James E. Young, *The Texture of Memory. Holocaust Memorials and Meaning* (New Haven and London: Yale University Press, 1993), 4.

8 Within the scope of this chapter, I will not be able to focus on all existing initiatives nor on the ties with processes of memorialization related to the other Yugoslav wars in the 1990s or in (neighboring) countries, nor on the influence of memorializing the Second World War in BiH. See, for example, Moll, "Fragmented memories" and Hariz Halilovich, *Places of Pain. Forced Displacement, Popular Memory and Trans-local identities in Bosnian war-torn communities* (New York: Berghahn, 2013). An excellent work with ethnographies in post-war BiH is Xavier Bougarel, Elissa Helms and Ger Duijzings, *The new Bosnian mosaic. Identities, memories and moral claims in a post-war society* (Farnham: Ashgate Publishing, 2007).

9 *Cultural memory* embodies oral and material aspects and is 'always shared with the help of symbolic artefacts that mediate between individuals and, in the process, create communality across both time and space'. Astrid Erll and Ann Rigney (eds.), *Mediation, Remediation and the Dynamics of Cultural Memory* (Berlin: Walter de Gruyter, 2009), 1.

the struggle over memory and recognition following different agendas in Sarajevo's 'commemorative arena'.[10] Notwithstanding the dominance of the government-sponsored narrative in Sarajevo, politicians are not the only facilitator of cultural memory.[11] I will therefore not only outline the hegemonic narratives, but also explore how various non-institutionalized actors have produced alternative and creative knowledge to counter dominant remembrance practices. This exchange and opposition between different actors make memory and remembrance subject to constant change and negotiation, as it not 'owned' by a specific group and does not operate as a fixed entity.[12] Contested memory narratives of war are, of course, not exclusively 'Bosnian' or 'Sarajevan'; they are inherent to the complex issue of remembering war and conflict all around the world. This chapter therefore aims to give local insight into the multi-layered dynamics of memorialization issues. I will first focus on the role of the Sarajevo government before moving on to initiatives spearheaded by victim associations and several activists and artists, illustrating these remembrance practices with the personal perceptions of several young Sarajevans.

Post-War Socio-Political Climate

After the Dayton Peace Agreement ended the war in late 1995, BiH was confronted with an extensive set of problems related to its constitution and political culture. To begin with, BiH's first post-war elections saw no real regime change, and nationalist politicians continued to be unwilling to govern the country together, let alone reconcile. Second, BiH's peace agreement effectively institutionalized the ethno-national divisions that had been exacerbated during the war. The Dayton Agreement split the territory into two semi-autonomous entities headed by a weak central government: the Bosnian Serb-dominated *Republika Srpska* (RS) and the mainly Bosniak/Bosnian-Croat-dominated *Federation of Bosnia and Herzegovina* (FBiH).[13]

10 Timothy G. Ashplant, Graham Dawson and Michael Roper, eds., *Commemorating war. The politics of identity* (New Brunswick: Transaction Publishers, 2004), 19-20.

11 Astrid Erll, *Memory in Culture* (New York: Palgrave Macmillan, 2011).

12 Michael Rothberg, *Multidirectional Memory. Remembering the Holocaust in the Age of Decolonization* (Stanford 2009).

13 In BiH, private notions of national and ethnic belonging are blurred. Politically speaking, the divisions between the different categories are dominant and presented as fixed, focusing on three main categories of ethno-national identification: Bosniak, Bosnian Croat, Bosnian Serb (sometimes overlapping with the religious identification of Catholic, Orthodox and Muslim

Since most power is located at the entity level and both entities stand in opposition to each other, this power vacuum and geographical segregation of largely ethno-national homogeneous communities have resulted in enormous economic, institutional, and social problems. Third, the existence of the state BiH as such continues to be challenged by the Bosnian-Serb elite in the RS and to a lesser extent by Bosnian-Croats.[14] Generally speaking, it became acceptable in the public sphere of BiH to spread distrust and fear of the 'Other' based upon wartime rhetoric, leaving oppositional and non-nationalist voices marginalized in the public debate, the media, and education.[15]

Given this repressive socio-political climate and the intensive process of nation-building and 'imagining communities',[16] monuments have served merely as a source of division rather than as a unifying story of, for instance, collective victimhood. In BiH, no uniform national strategy on public remembrance has been agreed upon, leaving room for multiple interpretations on what happened and how to remember. As a result, local decision-makers in each entity have the power to determine which

respectively; depending on personal viewpoints) identifications. In 1993, the term 'Bosniak' became the new official designation in the constitution to refer to Bosnian Muslims. After Yugoslavia ceased to exist, no umbrella identification, such as 'Bosnian-Herzegovinian' has been institutionalized in BiH including all citizens on the territory of BiH, even though there are people that continue to identify this way. In the Dayton Peace Agreement, Bosniaks, Bosnian-Serbs and Bosnian-Croats became recognized as the three 'constituent peoples' that are recognized politically. A fourth category of undefined 'Others' also exists (including minority identities, such as Roma and Jews) but cannot be elected into office as such and are not recognized equally in the constitution. This discriminatory policy violates minority rights (see, for example, the famous Sejdić-Finci case at the European Court of Human Rights) and solidified possible identifications in public debate, economic life and academic research. For this research I tried to stay as close to the way people or organizations self-identified during their interviews. For more on identifications in post-war BiH, see Bougarel, Helms and Duijzings, *The new Bosnian mosaic. Identities, memories and moral claims in a post-war society* (2007).

14 Examples are numerous, such as the statement by the president of the RS, Milorad Dodik, announcing that he would organize a referendum hinting at secession. See International Crisis Group, 'Bosnia: State Institutions under Attack' (2011).

15 On media, see for example: Lejla Turčilo, 'Bosnia's Media Truly Reflects Its Divided Society,' *Balkan Insight*, November 29, 2010. On education, see for example: Pilvi Torsti, "Divergent Stories, Convergent Attitude Study on the Presence of History, History Textbooks, and the Thinking of Youth in post-War Bosnia and Herzegovina" (PhD diss., University of Helsinki, 2003) and Clare McGill, 'Education and fragility in Bosnia and Herzegovina' *Research papers UNESCO* (International Institute for Educational Planning, 2010). An infamous example is the 'two schools under one roof' system where students with different backgrounds attend the same school building while being physically separated and taught from different (history) textbooks.

16 Benedict Anderson, *Imagined Communities. Reflections on the origin and spread of nationalism* (London: Verso, 1983).

memorials receive funding, and it became the norm for victim associations trying to establish a monument in a community where they are part of the minority to encounter political obstructions. This does not mean, however, that the political elite completely dictates the memorial landscape. There are in fact local varieties and a marginalized but consistent production of counter-memories in each entity, supported by the work of investigative journalists, youth activists, and networks of victim associations.[17]

The existence of resistance against the nationalist hegemonic narratives is particularly visible in Sarajevo as the urban capital but also as a city that has always been praised for its multicultural and tolerant character (particularly with regard to religions).[18] Many Sarajevans often (nostalgically) describe the peaceful co-existence within the city prior to the war. As the city was besieged, this cosmopolitan identification was challenged, and ('mixed') relationships were put to the test. And yet the so-called 'Sarajevan spirit' helped to sustain the belief that progressive urbanites – regardless of their background – could together resist the attack on their multinational city by nationalists.[19]

However, this makeup of the city changed dramatically due to the exodus of at least half of the pre-war inhabitants at the start of the war, mainly Bosnian-Serbs, while an almost equal number of people from villages in Eastern BiH fleeing from the VRS Army sought refuge in Sarajevo.[20] The war thus greatly altered the composition of Sarajevo's population, and the pre-war territory of the city was literally split along an 'inter-entity boundary line' – a division that continues to this day. Sarajevo became part of the Federation of Bosnia and Herzegovina, while Istočno Sarajevo [East-Sarajevo], became part of the Republika Srpska. These effects of the war explain how various – competing – memory narratives became connected to Sarajevo's post-war landscape, illustrated by the story of the first monument in Sarajevo.

17 See Nicolas Moll, "Division and Denial and Nothing Else? Culture of History and Memory Politics in Bosnia and Herzegovina," *Cultures of History Forum, Imre Kertész Kolleg University Jena* (April 2015).

18 Rusmir Mahmutćehajić, *Bosnia the good. Tolerance and Tradition* (Budapest: Central European University Press, 2000), 46. Sarajevans indeed identified relatively often as Yugoslavs (in contrast with other Yugoslav cities or more rural areas) and had a high proportion of 'mixed' marriages. Fran Markowitz, *Sarajevo: A Bosnian Kaleidoscope* (Urbana, Chicago and Springfield: University of Illinois Press, 2010), 13, 79.

19 Ivana Maček, *Sarajevo under siege. Anthropology in wartime* (Philadelphia: University of Pennsylvania Press, 2009), 119.

20 Robert Donia, *Sarajevo. A biography* (2006), 314.

Suada's Site of Memory

> It was the 5th of April 1992. Morning. City of Sarajevo. In front of the Assembly building of RBiH [Republic of Bosnia and Herzegovina] thousands of people already gathered, including most of the youth. Below are the flags, pictures of Tito, banners with phrases 'We are for peace.' Morning is slowly becoming noon and Vrbanja bridge is already shaking under the weight of people. A few minutes later, shots were fired. Two bodies lay frozen on the sidewalk. Both women. Evening of the 5th of April. Newspapers, TV and radio stations report on the demonstrations and every one of them points out that the FIRST victim fell on Vrbanja bridge – Suada Dilberović.[21]

In April 1996, the government of Sarajevo revealed a memorial plaque on the railings of the Vrbanja bridge to commemorate the place where the alleged first victim of the war was killed in one of Sarajevo's anti-war demonstrations. The bridge was renamed after Suada Dilberović, and the inscription reads poetically that the river *Bosna* will not dry up as long as a drop of her blood continues to flow. Yet the other woman who died there that day on the sidewalk was not mentioned. Olga Sučić was all but forgotten.

A Sarajevan woman tried to explain to me why she thinks Olga is not remembered as much as Suada is. 'I don't know who that is. But perhaps [because] she's Olga, because Suada is really a Bosnian name. Suada is kind of ours. Olga, I don't know where she is from.'[22] Another young Sarajevan man was more straightforward in his reaction, saying: 'Both died for the same reason. The only problem is that she [Olga] was a Serb',[23] adding that he rejected the fact that the government 'forgot' to mention Olga. Interestingly enough, although Suada is perceived by some as 'kind of ours', she comes originally from Croatia and was a student in Sarajevo. Her name reveals a Bosniak/Muslim connotation. Olga, on the other hand, was a somewhat older mother who worked for the government in BiH. Her name is commonly seen as Serb or Croat. The labels for both of these women obviously say nothing about their self-identifications, but it does raise the question of why the government selected Suada as their symbolic first victim.

21 Brief reproduction of a translated story in a Bosnian news weekly. Snjezana Mulić-Bušatlija, 'Trči, Nora, trči! O mostu, Suadi i Olgi...' [Run, Nora, run! About the bridge, Suada and Olga.] *Dani,* 5 April 2002.

22 Interview by author, Sarajevo, summer 2011.

23 Ibid.

Every monument communicates certain values that the initiator deems worthy of sharing with its audience. It is not a coincidence that the government of Sarajevo specifically chose this young, innocent woman as a symbol of (national) suffering, as it suited the formation of a post-war narrative of exclusive identification and victimhood, in this case supporting Bosniak nation-building. Within this framework, there is little room for the suffering of those considered to be Bosnian-Serb or Bosnian-Croat, even though they might have been citizens of Sarajevo – as in Olga's case. By means of selective remembering and strategic forgetting, the history of what occurred at the bridge was being rewritten to serve present needs of reconstructing a collective narrative of identification. But Olga was not entirely forgotten. Years later, together with relatives of the deceased, a journalist was to demand that Olga's name be added to the plaque. They were able to convince the government to correct the story, and a new plaque was revealed in 2001 mentioning both names of the alleged first victims.[24] This snapshot reveals the ever-changing nature of memorials and the ability of individuals to exercise their power in producing oppositional knowledge. The selective narrative of the government continues to linger in the public sphere, however, as the bridge continues to be commonly referred to as the Suada Dilberović bridge.

Sarajevo's Government: Honoring the Fallen Soldiers

The example of Suada's bridge shows how the government plays a key role in shaping remembrance practices, as it is the major decision-maker and often has the greatest access to (financial) resources.[25] With the majority of Sarajevo's citizens voting for Bosniak nationalist parties,[26] it is important to shed light on the construction of their narrative. After the (Bosnian) Serb and (Bosnian) Croat elite began to flex their nationalist muscles in the 1980s and 1990s and following the devastating war years, the Bosniak elite also embarked on an intensive process of nation-building.[27] After the war, one of the first steps supporting this process was the renaming of almost half

24 Obviously, as several people pointed out to me, before these two women there had been victims of violence who never received attention due to factors such as their assumed ethno-national background or gender.

25 Paul Connerton, *How societies remember* (Cambridge: Cambridge University Press, 2011), 3.

26 Donia, *Sarajevo. A biography,* 342-349.

27 Ger Duijzings, 'Commemorating Srebrenica,' in Bougarel, Helms and Duijzings, *The new Bosnian mosaic. Identities, memories and moral claims in a post-war society* (2007), 150.

of the streets in the city of Sarajevo. Many non-Muslim and communist figures and events were removed, while the Osman legacy of the city was highlighted.[28] These attempts clearly reveal a form of 'organised forgetting',[29] by means of emphasizing the distinctiveness of the Bosniak nation.

This establishment of a strong military narrative was also reflected in the various memorials established by the Ministry of Veteran Affairs of the FBiH, with up to 150 cemeteries for fallen soldiers who fought in the Bosnian army (ARBiH) and almost 800 memorials spread throughout the city.[30] However, the location of the plaques did not always correspond with the place where these soldiers lost their lives, and some of the soldiers listed clearly have questionable reputations, being linked to possible war crimes.[31] These issues reveal that the aim of the government is not only to honor those who died but to also have these memorials serve as a legitimization of the exclusivist narrative of nationalist parties. In Sarajevo's case, for example, unwelcome facts about crimes committed by the ARBiH against are often downplayed.[32] By avoiding this type of moral responsibility, a black-and-white picture is presented of who is the victim and who is the perpetrator, while in practice several soldiers in the ARBiH fought for a multinational BiH and identified themselves in a wide variety of ways.

A few years ago, however, a counter-initiative was announced. In 2011, a politician from the non-nationalist Social Democratic Party (SDP) initiated a monument to commemorate the victims – mainly Bosnian-Serbs from

28 Guy M. Robinson, Sten Engelstoft and Alma Pobrić, 'Remaking Sarajevo. Bosnian nationalism after the Dayton Accord' *Political Geography* 20:8 (November 2011) 966-970.

29 Connerton, *How societies remember,* 14.

30 Xavier Bougarel, 'Death and the Nationalist. Martyrdom, War Memory and Veteran Identity among Bosnian Muslims,' in Bougarel, Helms and Duijzings, *The new Bosnian mosaic. Identities, memories and moral claims in a post-war society* (2007), 172. It was no coincidence that the Ministry of Veteran Affairs gained so much control over the process of memorialization. With about two-thirds of the adult male population being veterans, they became a politically interesting group to secure votes from, although these veterans should not be considered a homogenous group with a clear-cut Bosniak identification. Ibid.: 167, 190-191. It is also important to point out that male veterans receive a relatively large share of the allocation of social benefits compared to female civilian victims of war and rape; see 'Whose Justice? The women of Bosnia and Herzegovina are still waiting,' (London: Amnesty International Publications, 2009), 41.

31 'Criteria for School Names and Symbols. Implementation Report,' *OSCE Mission to Bosnia and Herzegovina* (2007), 3. On the initiative of the OSCE, many schools in both entities had to erase offensive names, such as local war heroes suspected of war crimes, but this has yet to be fully implemented. Author's written correspondence with political officer of OSCE Tuzla, summer 2011.

32 Eldin Hadžović, 'Sarajevo Shuns Recognition of Bosniak War Crimes,' *Balkan Insight,* 23 December 2011.

Sarajevo – who were executed and thrown into the infamous *Kazani* pit by a brigade of the ARBiH near Sarajevo. The role of the brigade and its leader, Mušan 'Caco' Topalović, is heavily contested, with some glorifying his part in the war and others vehemently rejecting him.[33] The SDP politician publicly condemned the actions by Topalović's brigade, emphasizing that these soldiers 'did the very same thing as those who were surrounding us'.[34] Such a monument would have been the first honoring the death of victims for which the ARBiH was responsible, but to this very day the monument has not been established.[35] In the meantime, several journalists and individuals started to raise awareness about the commemorations that told a one-sided story. In 2014, the Sarajevan history teacher Haris Jusufović dared to speak out on behalf of those killed by the ARBiH, writing: 'we have to face the skeletons from our past in order to have a future'.[36] His attempt to call attention to stories about the fate of Bosnian-Serbs in Sarajevo became the topic of a documentary. These individual initiatives in arts and journalism, however marginalized, show the potential for civil society to open up the selective commemorative narrative of the government.

Sarajevo's Government: Blaming the Perpetrator

Another example of a contested site commemorates one of the largest massacres at an outdoor market in the center of Sarajevo. On 5 February 1994, mortar shells were fired by the army of the Republika Srpska (VRS), killing 68 persons and wounding 144 more.[37] Tucked away behind the fruit and vegetable stands at the bustling *Markale* market, a large red glass wall lists the names of the victims with a white memorial board that reads: 'On this spot Serbian criminals on 5.2.1994 killed 67 citizens of Sarajevo', followed

33 For a detailed study on this topic, see Nicolas Moll, "Sarajevska najpoznatija javna tajna": Suočavanje sa Cacom, Kazanima i zločinima počinjenim nad Srbima u opkoljenom Sarajevu, od rata do 2015. *Friedrich Eberhard Stiftung* (2015).

34 Hadžović, 'Sarajevo Shuns Recognition'.

35 'Sarajevska podrška spomen-obilježju na Kazanimam' [Sarajevo supports the memorial at Kazani], *Radiosarajevo.ba,* 5 March 2012.

36 Haris Jusufović as quoted in Nidzara Ahmetašević, "NEMA ALI: Sarajevo se mora suočiti s "vlastitim" zločinima [Sarajevo must face "own" crimes]," *Slobodna Bosna,* 1 April 2015. His story builds upon the work of several investigative journalists who have been concerned with this topic since the end of the war.

37 Donia, *Sarajevo,* 327.

by an Islamic verse.[38] The site, which was hit a second time in August 1995, is full of painful memories and considered to be a very important place of remembrance in the city.

A closer look at the text of the memorial shows that besides a sincere mourning of those who were murdered by the grenades, the government decided to mention the perpetrator in an unambiguous way. The text on the memorial board urges citizens never to forget who caused their grief, and instead of holding the army or specific perpetrators responsible, it blames and condemns the entire Serbian nation.[39] In the context of BiH's post-war climate, this reveals a polarizing message along ethno-national lines clearly separating 'us' from 'them', comparable with narratives apparent in the media and in public debates all over the region during and following the disintegration of Yugoslavia.[40]

In 2011, the then mayor of Sarajevo, Alija Behmen, a member of the non-nationalist Social Democratic Party (SDP), reacted with surprise when confronted with the text during an interview. He responded that he had never seen the text and that he rejected its phrasing.[41] Since he attends the commemorations frequently, it is rather unlikely that he did not know of the phrasing. In a later interview, he emphasized that Bosnian-Serbs were also victims during the siege in Sarajevo, using the variety of names on the monument of the Markale massacre as proof that all Sarajavans were exposed to grenades and snipers.[42] Indeed, it is a fact that grenades killed indiscriminately and that all people suffered enormously in besieged Sarajevo, regardless of their background. But why does the government emphasize that Bosnian-Serbs were victims as well during the war in Sarajevo while at the same time allowing a monument to serve as a warning signal against the entire Serbian nation?

The problem again is the difficulty of trying to uphold a black-and-white, victim-and-perpetrator binary, especially when these cannot be easily

38 This standardized text can be read on all governmental commemorative plaques that mark massacre sites in the city.

39 The ICTY sentenced various commanders of the Bosnian-Serb VRS army, such as Stanislav Galić and Dragomir Milošević, for their responsibility in crimes against civilians in besieged Sarajevo.

40 Sabrina P. Ramet, "The Dissolution of Yugoslavia: Competing Narratives of Resentment and Blame," *Southeast Europe. Journal of Politics and Society* No. 1 (2007).

41 'Na ovom mjestu su srpski zločinci ubili 67 građana Sarajeva [On this spot Serbian criminals killed 67 citizens of Sarajevo],' *DEPO,* 18 January 2011.

42 F. Vele, 'Nova inicijativa za izgradnju spomenika artiljercima i snajperistima koji su pucali na Sarajlije [A new initiative to build a monument for artillerists and snipers who shot at Sarajevans],' *Dnevni Avaz,* 5 May 2011.

drawn along supposedly 'neat' ethno-national lines, such as in Sarajevo. The capital was heavily and systematically attacked by the VRS, whose soldiers consisted mainly of Bosnian-Serbs, which seemingly provides an answer to the perpetrator question. Yet this did not mean that all those considered to be Bosnian-Serbs were automatically perpetrators during the war, as several also fought in the ARBiH. In Sarajevo, a distinction was therefore made between those who decided to stay in the city and those who did not. Those Bosnian-Serbs who stayed were considered innocent co-citizens, and those who left were often seen as traitors or enemies (even if they did not fight for the opposing army and were equally forced to flee). Whether you had the chance to flee the city or stay and resist therefore served – generally speaking – as a test to separate the 'good guys' from the nationalist 'bad guys'.[43]

Mayor Behmen's supposed ignorance may therefore be explained against the backdrop of a post-war persistence of such divisive stories surrounding innocence and heroism as well as a sense of pragmatism: the non-nationalist SDP frequently cooperates with nationalist parties and is therefore also dependent on the votes of Bosniaks.[44] His intention to rectify the perpetrator part on the memorial may thus be sincere, but the fact that the same text is still there and to date continues to serve as a text for new memorial boards shows that the BiH government feels no urgency to distance itself from it. In this case, a monument promoting a concrete reflection of the past sponsored by the government says just as much as a rectification that continues to be postponed.[45] In other words, the mayor's words remain hollow if no action is undertaken, and the debate surrounding this monument shows the government's paradoxical and problematic way of dealing with the past while trying to combine both the multinational narrative as well as the one of Bosniak victimhood.

Some of the young Sarajevans I talked to did not notice anything special about the text, either because they supported the notion that 'Serbians' were the perpetrators or, as a Bosnian human rights activist pointed out to me, because they just did not realize the possible offensiveness, as they

43 Maček, *Sarajevo under siege,* 116. However, what I found in my interviews was that during the war there was much distrust, fear and discrimination within the city against those considered to be Bosnian-Serbs and Bosnian-Croats, a topic that is not often discussed and perhaps is sometimes deliberately concealed, as it threatens the multi-ethnic image of the city.

44 Florian Bieber, *Post-war Bosnia. Ethnicity, Inequality and Public Sector Governance* (London: Palgrave, 2006), 104.

45 Iwona Irwin-Zarecka, *Frames of Remembrance. The Dynamics of Collective Memory* (New Brunswick: Transaction Publishers, 1994), 13.

have become used to the divisive nationalist rhetoric.[46] Supporters of a non-nationalist approach rejected the phrasing more often by expressing discomfort when they would walk past it. Their feelings of uneasiness proved to resonate with everyday reality, since those who identified themselves as Bosnian-Serbs expressed how they felt offended by the text and feared it might give the impression that Bosnian-Serbs did not suffer at all.[47] This competition over victimhood was also reflected in the discussion surrounding another monument, one dedicated to the children who were killed during the siege of Sarajevo.

Competing Memory Narratives

Many of the victim associations that were formed after the war were forced to ally themselves with political parties in their struggle to survive and to claim recognition. Their goals might not have been political from the start, since all they wanted was to share their wartime experiences and to have their suffering recognized, but their narratives of victimization confirmed and supported non-reconciliatory and nationalist political aims. As a result, their memories became instrumentalized by nationalist politicians and in turn they were offered (partial) financial support for their campaigns and monuments. As a Bosnian human rights activist explains: 'They [the politicians] encouraged victims not to talk only about "my son", but to replace it with the suffering of "my people".'[48] The establishment of the children's monument serves as an illustration of such ties and tensions.

A significant number of those who were killed or injured in Sarajevo during the war were children.[49] To commemorate these victims, a large monument was established in 2009 on the initiative of the Parents' Association 'Children Killed under the Siege' and supported by both the city government and the Ministry of Veteran Affairs. Along one of the main central roads, two green glass sculptures were constructed. They stand on a fountain base that fills itself continuously with water that is lit by night, representing a mother holding her child as well as an unfinished sandcastle left in the sea.[50] The text reads: 'Monument for killed children

46 Human rights activist, Sarajevo, interview by author, summer 2011.

47 Interviews by author in Sarajevo and Eastern Sarajevo, summer 2011.

48 Human rights activist, interview by author, summer 2011.

49 The number of approximately 1500 children who were killed in besieged Sarajevo is the number most frequently cited. This excludes those children killed outside of the siege.

50 Architect of the Sarajevo children's monument, interview by author, summer 2011.

under the siege of Sarajevo 1992-1995'. The subsurface on which the sculpture stands is imprinted with irregular footsteps, put there by the siblings of the killed children. A few meters away from the monument stand five rotating cylinders on a pedestal with the names of over 500 killed children.

Young Sarajevans were often ambivalent about this very prominent monument, ridiculing the aesthetics and protesting against its size and the costs to build it. But many said they appreciated the message of innocence, as it could have been their names listed on the cylinders. Their reflections, however, hardly gave mention to the heated public debate that was generated by the text of the monument before it was built. After the idea of the monument was approved, an expert team was appointed by the government, which turned out to have ambiguous ideas on who the monument should commemorate.[51] During the war, some parts of Sarajevo were under Bosnian-Serb control, and years of political discussion revolved around the question of whether the victims of these areas should be included in the monument or not. Some prominent figures, such as the director of the Research and Documentation Center, quit the team, commenting that the initiators were being put under too much political influence.[52] The discussion about the message came to an end when a new mayor was elected who was a member of the Bosniak nationalist party Social Democratic Action (SDA). A new expert team was put together, and it was decided that the monument would include only those children who died *under the siege*. This would exclude those children who lost their lives in parts of the city outside the siege (even if those areas would fall under present-day Sarajevo). This triggered protests from victim associations from the Republika Srpska who not only wanted 'their' child victims to be recognized but who also argued that the monument had been constructed on the very site where eight soldiers, presumably Bosnian-Serbs, had been killed.[53]

Why did the Sarajevan government decide to exclude child victims from Bosnian-Serb-occupied areas of the city? A city government official

51 Internal document of the Sarajevo City Government, 'Children's Monument,' 6 December 2006, acquired by the author.

52 Director of Research and Documentation Center in Sarajevo, interview by author, summer 2011.

53 Representative of Missing Persons Association of East-Sarajevo, interview by author, summer 2011. This story was also dealt with in an article in the Bosnian weekly magazine *Dani*. It is assumed that the ARBiH is responsible for the killings of eight soldiers of the Yugoslav People's Army in 1992, but to date no one has been prosecuted for this event and it remains under-researched. Vildana Selimbegović, 'Zločin u velikom parku [Crime in the great park],' *DANI*, 29 March 2002.

explained to me that the government may have been put under pressure from the parents and relatives.[54] In an interview, a representative of the Parents' Association indeed confirmed that they preferred a separate monument for the children who were killed under the siege, arguing that the circumstances of these children who lost their lives could not be equated with those who were killed outside of the siege.[55] This is an understandable opinion, given the individual loss these parents had to deal with and given that some Bosnian-Serbs continue to deny responsibility for these crimes in Sarajevo.[56] Yet at the same time, the exclusion of certain child victims happened to be in line with the position of the Sarajevo government towards victims outside of the siege, so the standpoint of the Parents' Association must have been welcomed wholeheartedly by the city government.

Constructions of victimhood originate from individual traumatic experiences during a war and are often centered on mechanisms of inclusion and exclusion. In terms of collective feelings of victimization, this results in highlighting one's own victimhood over that of others, especially if these 'others' are considered perpetrators, as is the case in BiH.[57] The fact that the Bosnian-Serb elite regularly downplays and denies the Sarajevo siege may explain why it is difficult for survivors and relatives of the deceased to recognize 'the other' victims as equals. It has been clearly established that the VRS army was responsible for the majority of the massive crimes that were committed in and around Sarajevo, and understandably this suffering has become the center of attention. Yet the result is that, with the government allying itself with a victim association, a form of exclusive victimhood is promoted, with some victims more 'deserving' of a monument than others. By silencing certain forms of victimhood and making some lives more 'grievable', in Judith Butler's words,[58] the government in its

54 Government official on urban planning, Sarajevo City Government Council, interview by author, summer 2011.

55 Representative of Parents' Association Sarajevo, interview by author, summer 2011.

56 It is common for politicians in the RS as well as former wartime generals currently on trial at the ICTY to deliberately deny and avoid responsibility for alleged war crimes by the VRS in Sarajevo (and other places). Rachel Irwin, 'Karadzic denies Sarajevo Siege,' *Institute for War and Peace Reporting,* 6 March 2010.

57 Historian Elazar Barkan explains that there was little compassion from Czechs for the suffering of expelled Sudeten Germans after World War II. Their claims were considered immoral, coming from people who were considered to belong to a nation that was responsible for much worse atrocities. Koen Feyter, *Out of the Ashes. Reparation for Victims of Gross and Systematic Human Rights Violations* (Antwerp: Intersentia Publishers, 2005), 90-99.

58 Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London and New York: Verso, 2004).

position as the final decision-maker chose for a divisive, non-reconciliatory message. And by doing so, it rejected the opportunity to include all innocent victims as part of this monument.

As mentioned above, several young Sarajevans did not know or realize that the text was contested, as they were not always cognizant of the way politicians misuse this division of inside or outside the siege for their own nationalist goals. An NGO employee explained: 'Ordinary citizens do not know or care about victims in Grbavica or Lukavica [areas under Bosnian-Serb control], and Bosniak parties are not interested in it.'[59] Only a few interviewees were bothered by the discussion, seeing it as ugly and perverse. As one of my interviewees expressed: 'the government decided that children inside Sarajevo suffered more.'[60] For another young man, this approach makes the war more useless than it already was, saying: 'I would prefer [a monument] for all the children of Sarajevo, or even Bosnia. A child is a child.'[61]

There are, however, ordinary citizens who do try to focus on the silences the government deliberately tries to uphold. By publishing his article and participating in the aforementioned documentary, Haris Jusufović decided not to look away but instead confront his fellow citizens with the blind gaps in the dominant commemorative narrative:

> I want to hear about what happened to my Serbian neighbors in Sarajevo. I want to know who is responsible for these crimes, who gave the orders, who carried them out, and in what political context the war crimes of Sarajevo took place. (...) I would like to know the number of killed Serbs in Sarajevo...[62]

These are precisely the questions that are also important for the representatives of Bosnian-Serb victim associations in East-Sarajevo. With Bosniak nationalist parties having majority power in Sarajevo, it is difficult for them to obtain recognition for Bosnian-Serb victims or to set up monuments in Sarajevo itself. A representative of one of the victim associations in East-Sarajevo tells me how they are continuously confronted with the argument that nobody seemed to have killed Bosnian-Serbs in and around Sarajevo.

59 NGO employee Sarajevo, interview by author, summer 2011.

60 Interview in Sarajevo, summer 2011.

61 Ibid.

62 Haris Jusufović as quoted in Nidzara Ahmetašević, "NEMA ALI: Sarajevo se mora suočiti s "vlastitim" zločinima," *Slobodna Bosna,* 1 April 2015.

This organization is determined to organize commemorations and to find out the stories of those who remain missing.[63] Their objective of keeping alive the memory of these forgotten victims is obviously legitimate and their attempts to set up monuments are not prioritized by the Bosniak political elite. Nonetheless, their stories also reveal an exclusivist attitude. For example, these associations supported the establishment of a large religious cross commemorating mainly Bosnian-Serb soldiers of the VRS army. The cross was to be placed on *Trebević* hill overlooking the city of Sarajevo, the very hill from which Bosnian-Serb snipers of the VRS army used to shoot during the war. After years of discussions and a week before Bosnia's general elections took place in 2014, the large cross was indeed placed on the hill. Most Sarajevans I talked to considered the cross to be a classical provocation, given its size and prominent location, and it was quickly taken down by an angry Sarajevo citizen.[64] Bosnian-Serb victim associations felt they had the right to establish such a monument, especially since Bosniaks claimed their right to put a children's monument on the site where Bosnian-Serb soldiers were supposedly killed.[65]

The main disagreement concerning this monument dominating the Sarajevo skyline concerns the responsibility of the VRS army for the majority of the crimes committed in Sarajevo during the siege. By setting up a cross engraved with the names of Bosnian-Serb soldiers who lost their lives in the area, the monument was an exclusive symbol for Bosnian-Serb suffering towering above a city that had suffered from the violence of soldiers from that same army. This is not to say that these Bosnian-Serb soldiers should not be commemorated. However, the form of this monument and the moral equation of the crimes committed on both sides reveal a confrontational and competitive attitude that fosters antagonism and reflects a downplaying of the suffering of Sarajevans.

The discussion concerning the children's monument and the *Trebević* cross reveals different forms of silencing, denial, and a lack of empathy towards 'the other'. Both do, however, point to a struggle for recognition that is blocked by both sides, leaving it up to individuals to produce alternative knowledge on how the past can be remembered in less exclusivist ways.

63 Representative of Missing Persons' Association in East-Sarajevo, interview by author, summer 2011.

64 "Hatić: Ja sam srušio krst na Zlatištu [Hatic: I crashed a cross at Zlatiste]," *Nezavisne novine,* 5 December 2014.

65 Representative of Missing Persons' Association in East-Sarajevo, interview by author, summer 2011.

Memory Activism

Sarajevan artists and active citizens were known for their creativity and resilience during the war,[66] and they have continued their civic disobediences and local inventiveness in the post-war memorial landscape. One such example is the so-called *Sarajevske ruže* (Sarajevo Roses) – a reference to the grenade craters marking spots where Sarajevans lost their lives. They are filled with blood-red paint and lack any specific explanation, simply popping up when one walks through the city's streets. An employee of the NGO *Akcija Gradana* (Citizens' Action), an organization that has tried to preserve this memorial, calls them 'dead poetry'.[67] When and on whose initiative these roses appeared is shrouded in myth,[68] making it mysterious sites of memory open to multiple interpretations. Without mentioning a perpetrator or favoring one victim over the other, this monument presents a more civic message showing the enormous impact of war on the city and its citizens. For some Sarajevans, this is precisely why they perceive it as an 'ugly' mark that obstructs the modern development of the city, regarding it as a monument for tourists. Many appreciate the monument, though, explaining that they are unconsciously aware of it: 'It's like a blind vision. Even when I do not look on the floor, I constantly skip that place.'[69] Despite the efforts of citizens' associations to preserve this war memory, only a few of the fifty original markers are left. Until recently, the government did not bother to protect these monuments, but in 2013 the Ministry of Veteran affairs started a process of renovation. They did not refrain, however, from ascribing their official message to the monument, stressing the roses 'symbolize the suffering of besieged Sarajevo'[70] and thereby transforming the non-nationalist site of memory into a politicized one.[71]

66 Maček, *Sarajevo under siege*.

67 Employee of NGO *Akcija Gradana* [Citizens' Action], interview and written correspondence by author, 25 July 2011. For more citizens' perceptions of the Sarajevo Roses, see the film clip made by young Sarajevans and East- Sarajevans as part of an educational film workshop organized by Bosnian-based *Youth Initiative for Human Rights BiH* and the Dutch-based *Anne Frank House*: https://www.youtube.com/watch?v=cbZLMMrJJEw

68 Azra Junuzović, *Sarajevo Roses. Towards politics of remembering* (Sarajevo: ArmisPrint, 2006).

69 Interview by author in Sarajevo, summer 2011.

70 Safet Huremović, 'Počela rekonstrukcija Sarajevskih ruža [The reconstruction of the Sarajevo Roses],' *Oslobodenje*, 25 May 2012.

71 It is important to emphasize that focusing on the memory of the siege of Sarajevo is not in itself nationalist. Exhibitions at the Historical Museum in Sarajevo and the work of the FAMA collection show how one can remember the siege in more creative and less antagonistic ways.

Another more creative monument is a statue of a large can of beef representing food from the humanitarian aid packages that were supplied by the international community during the war. The monument is more than two meters high and represents the 'gratitude' from the 'grateful citizens of Sarajevo' towards the international community. It was set up as part of an initiative by the *Centar za Savremenu Umjetnost Sarajevo* (Sarajevo Centre for Contemporary Art) and presents a very ironic message:[72]

> Political aid we have received from the West is the same as the one we received as food: mysterious in content and with unknown ingredients, by mysterious manufacturer and with an undetermined period of validity.[73]

A young Sarajevan called the monument a 'false, inaccurate prize' that stands for the past and exhibits the passivity of the international community, while others appreciate the cynicism behind it or regard it as a sincere thank you. The government was not keen on supporting the monument, fearing that it would offend the international community they are so reliant on, so they had the monument placed in a less prominent spot.[74]

Both of these monuments receive little attention from the government. The roses were neglected for seventeen years, and the ICAR canned beef monument has been covered with graffiti for a long time. In its negligence and in its decision to move the monument, the government clearly shows a reluctance to acknowledge a more civic message that does not blame or honor a specific group. Yet, despite this imposed memory narrative, the citizens of Sarajevo continue to find ways to re-claim their public space. Groups of young activists are annually re-painting the Sarajevo Roses[75] and travelling to Belgrade to celebrate and commemorate the *Dani Sarajeva* (Days of Sarajevo) with their Serbian colleagues.[76] Although these young

My point here is that the non-nationalist memory of the siege can be misused for an exclusive nationalist narrative.

72 Bosnians are famous for their dark humor. See Anna Sheftel, 'Monument to the international community, from the grateful citizens of Sarajevo. Dark humor as counter-memory in post-conflict Bosnia-Herzegovina,' *Memory Studies* 5 (2011).

73 Written documentation from Sarajevo Centre for Contemporary Art, acquired by the author.

74 Director of Sarajevo Centre for Contemporary Art, interview by author, summer 2011. For more on the attitude of the international community towards monuments, see Moll, "Fragmented Memories." Ironically, the new United Nations building looks out over this specific monument.

75 "FOTO: Bojom podsjetili na krv iz sarajevskih ruža," *AlJazeera Balkan,* 2 May 2015.

76 Website *Dani Sarajeva:* http://www.danisarajeva.com/category/vesti/

activists are too few in number to counter the hegemonic narratives, their resilience reveals a possible new defined spirit of Sarajevo coming to terms with a war they did not even experience themselves.

Closing Thoughts

In BiH, competition between multiple memory narratives has resulted in a polarized post-war environment with competing narratives. Generally speaking, various groups in and around Sarajevo avail themselves of a pronounced victimhood narrative resulting in different forms of denial concerning their culpability, while at the same time excluding the victimhood of others. As emphasized before, this is not something that is exclusively Bosnian. The downplaying of one's own responsibility occurs in every post-conflict situation, and Sarajevo's public culture of remembrance is no exception.

Sarajevo's government mainly focuses on the remembrance of the fallen soldiers of the ARBiH and the victims of the siege, while divergent narratives that do not fit the Bosniak victimhood narrative are given less priority. The government's attitude encourages division by pointing and blaming (the texts on the memorial plaques), by excluding 'less deserving' victims (the children's monument), or by neglecting more civic stories (Sarajevo Roses). This standpoint is perpetuated by a rhetoric of denial and provocations from neighboring East-Sarajevo in the Republika Srpska.

These hegemonic narratives are not alone in the commemorative arena, revealing the heterogeneity of remembering war. Over the years, several citizens have come to resist the exclusive and selective narratives. Despite their marginalized status, their civic initiatives show cross-border solidarities in which acknowledging one's own responsibility and a more creative stance towards remembrance are deemed important and necessary in order to be able to move on. Recovering from war may take a few generations, but the bottom-up engagement to confront silences and to promote an open discussion appears to be growing slowly. This has not resulted in a sincere acknowledgement of the diversified experiences of all innocent victims yet. To counter the denial and selective commemorative narratives in and around Sarajevo depends, therefore, on the continued effort of activists and individuals.

8 *Ingando*

Re-educating the Perpetrators in the Aftermath of the Rwandan Genocide

Suzanne Hoeksema

Thirteen years after the Rwandan genocide of 1994, thousands of prisoners accused of genocidal crimes were transferred to *ingando* solidarity camps for re-education and rehabilitation before being released. The six-week stay in *ingando* followed a decade in prison. How can we understand *ingando* solidarity camps in post-genocide Rwanda, and what impact does *ingando* have on its participants? For eleven weeks, I followed nineteen men and two women during and after their transit from prison to home. They were charged with lower-category crimes, such as burglary, pillaging, causing bodily harm, and in some cases, complicity to murder. Before 1994, they were farmers, tailors, shopkeepers, teachers or chauffeurs. In the absence of an operating judiciary, their cases had not been investigated. After having passed through *ingando*, they would come up before the *gacaca* village courts. The National Community and Reconciliation Commission (NURC) was in charge of organizing the *ingando* camps. My research shows that Rwandan society, including the ex-prisoners themselves, consider the *ingando* a transit space. *Ingando* presents the new order of wrong and right; the period of genocide is an evil episode in a bright past. Ex-prisoners appreciated the practical information about work, housing, and health, but they also felt humiliated, indoctrinated, and stigmatized. Based on the stories of ex-prisoners, this chapter interprets the *ingando* 'passage' using three different levels: the political, social, and psychological.

A wide range of authors have focused on the historical context and causes of the Rwandan genocide, the documentation of the genocide from the perspective of the survivors as well as the perpetrators, the role of the international community and the United Nations, the aftermath of the genocide and the politics of the Rwandan Patriotic Front, and the various tools for justice and reconciliation that the government has applied. Except for one study, there are no scholarly publications on the *ingando* solidarity camps.[1] The following chapter in this volume will deal with aspects of

1 Susan Thomson, "Re-education for Reconciliation: Participant Observations on Ingando", in: Scott Straus and Lars Waldorf (eds.), *Reconstructing Rwanda: State Building and Human Rights*

ingando within a broader analysis of transitional justice mechanisms in sub-Saharan Africa.

The Rwandan Patriotic Front (RPF), a well-trained rebel army of exiled Tutsi living in Uganda, invaded Rwanda in October 1990 and fought a bitter civil war against the regime of Habyarimana. In April 1994, after an airplane of Habyarimana was shot down in Kigali, the war suddenly escalated into the large-scale killing of Tutsi and moderate Hutu at the hands of the extremist Hutu militiamen. In July 1994, the RPF was able to put an end to the genocide, which had killed an estimated 800,000 Rwandans. The genocide and the failure of the international community to intervene are at the core of RPF's political legitimacy. In front of national and international audiences, the RPF portrayed itself as the liberator of Rwanda. A new national identity replaced the former ethnic categories, and divisive speech (such as using the words 'Hutu' and 'Tutsi') was penalized. The government encouraged the adoption of this new national identity by introducing a new flag, creating the National Unity and Reconciliation Commission, inaugurating a national Liberation Day, setting up re-education camps (*ingando*) to learn about Rwandan culture, and holding ceremonies to commemorate the genocide and to disseminate the message of Never Again.

The (Re-)Invention of *Ingando*

***Ingando* is the beginning. There we cut the weed and plant the seeds.**[2]
According to the Rwandan National Unity and Reconciliation Commission (NURC), *ingando* originates from the old tradition of *kugandika*, meaning "a halt to one's usual preoccupations to contemplate issues of great national concern such as war and disaster".[3] Unofficially, *ingando* is said to originate from *kugandura*, meaning "to change, to give another image, like repainting an old house".[4] Change may also mean inner change or retrospection. "The *ingando* used to be a place to retreat and rethink one's life, it was meant to enrich oneself with knowledge, to deal with the challenges of life."[5] Most likely the first *ingando*s of national concern were organized in the

after Mass Violence (Madison, WI: University of Wisconsin Press, 2011), pp. 331-9. Chi Mgbako, "Ingando Solidarity Camps: Reconciliation and Political Indoctrination in Post-Genocide Rwanda" in: *Harvard Human Rights Journal*, vol. 18 (2005), p. 201.

2 Interview with Clémence, officer at RDRC office in Ruhengeri, 28-05-2007.

3 Ndangiza, 'Community Sensitization: Case of Ingando in Rwanda', 7.

4 Interview with Serge, 25-year-old ex-prisoner, 07-05-2007.

5 Interview with Christophe, ex-combatant, Mutobo, 07-05-2007.

nineteenth century by the *mwami*, the Rwandan king, to mobilize young men for battle.[6] Young peasants and cattle-keepers were taught discipline, patriotism, and "true Rwandanness" to resist the enemy.[7] In contrast to most other African states, in Rwanda a sense of national consciousness existed long before colonization due to the centralized administration of the kingdom. The *ingando* lost its relevance and legitimacy during Belgian colonial rule, as the governors were quite suspicious of these "royal military training camps". When Rwanda became independent in 1959, *ingando* was formally abolished by the ruling Hutu elite, just as most other traditions that were associated with the (Tutsi) monarchy.

Whereas inside Rwanda the practice of *ingando* disappeared, the rebel movement Rwandan Patriotic Front (RPF) recruited young men for a revolutionary war against the Habyarimana regime very much in the same *ingando* style as the *mwami* recruited his soldiers a century ago. RPF's revolutionary thought was (and still is) based on a type of nationalist romanticism that is typical of refugee communities.[8] During the 1980s and early 1990s, the RPF recruited thousands of soldiers among Rwandan refugees whose parents had fled during the 1959 massacres.[9] RPF training curricula contained a high degree of ideological spirit to create togetherness among the combatants, who had grown up in Uganda, Congo, Kenya, Burundi, Tanzania, Europe, and the United States. Knowledge of Rwandan history and culture was an essential part of the military training.[10]

Different understandings of *ingando* exist among Rwandans. Genocide survivor Simon said that "once it [*ingando*] meant the search for solutions, now it means the presentation of solutions. The new *ingando* is much more organized from above".[11] One of the few scholars who did fieldwork on *ingando*, Chi Mgbako, states very clearly that "the government claims that *ingando* is simply an updated version of Rwandan tradition, [but] *ingando* in its present form appears to be a modern RPF political creation that serves to

6 Paul Nantulya, *Evaluation and Impact Assessment of the National Unity and Reconciliation Commission*. Executed by the Institute for Justice and Reconciliation (Kigali 2004).

7 Eveline de Bruijne, *Ingando*. Internship Report, Embassy of the Kingdom of the Netherlands (2005) 11.

8 Liisa Malkki illustrates and analyzes the phenomenon of exile nationalism in her book, *Purity and exile: Violence, memory, and national cosmology among Hutu refugees in Tanzania* (Chicago 1995). Another example is Halleh Ghorashi, *Ways to Survive Battles to Win. Iranian Women Exiles in the Netherlands and the United States* (New York, 2003).

9 Former employee of Congolese sensitization program of Rwandan Patriotic Front.

10 Eveline de Bruijne, *Ingando*. Internship Report, Embassy of the Kingdom of the Netherlands (2005) 13.

11 Conversation with Simon, 28-year-old genocide survivor, Kigali Province, 02-04-2007.

consolidate the RPF's power."[12] She does not deny that indigenous practices certainly have the potential to provide fertile ground from which reconciliation processes may bloom, but in the process of reinforcing the nation, the RPF – similar to other post-colonial governments – has an interest in 're-inventing traditions' that legitimize current forms of social control or practice. Additionally, the government's appeal to culture may be an attempt to "de-emphasize the political utility of *ingando* as a mechanism of pro-RPF ideological indoctrination".[13]

Ingando Today

Rwanda is a small and landlocked country. From hilltop chief to king or president, the country has always been sophisticatedly and centrally organized.[14] Top-down rule provides the ruler with far-reaching control over the population. Because local leaders at all administrative levels need to follow their superior leaders to retain their position, the ruling party's power was – and still is – felt in the farthest corners of the country.[15] Gérard Prunier speaks of a "Rwandan political tradition" through the ages before, during, and after colonialism as "one of systematic, centralized and unconditional obedience to authority".[16] This unquestioned obedience to authority has not changed after the genocide. Rwandans perceive themselves and their surrounding world in collective terms of the community and not as independent individuals. Yet, the community of which one is now a member and with which one must identify has changed. The principal community to which one is supposed to contribute has been stretched to the nation-state. Rwanda's post-genocide nationalism aims to overcome Hutu and Tutsi divisions by reinventing national culture, history, and symbolism. One particular place where this reinvention takes place is *ingando*.

12 Chi Mgbako, 'Ingando Solidarity Camps: Reconciliation and Political Indoctrination in Post-Genocide Rwanda', *Harvard Human Rights Journal* 18 (2005), 202-224, q.v. 208.

13 Mgbako, 'Ingando Solidarity Camps', 208.

14 In 2007, there are five *provinces*: Northern Province, Western Province, Eastern Province, Southern Province and Kigali Province. Each province has been divided in about five *districts*, each district includes a similar number of *sectors*, each sector covers several *villages*, each village contains a few *imidugudu*, which is the lowest administrative level, containing a hundred households. Every level has its own leaders and all leaders have to answer to higher levels for their tasks.

15 For information on Habyarimana's one-party system, see for example ICTR-96-4-T, 2 September 1998, Prosecutor v. Jean-Paul Akayesu, 'Historical context of the events in Rwanda 1994'.

16 Prunier, *The Rwanda Crisis*, 141-142.

The National Unity and Reconciliation Commission called upon a period of *kugandika* (reconsideration) after the shock of the 1994 genocide and the displacement of millions of people.[17] It was believed that the traumatization and mixture of ideologies would result in renewed hatred and bloodshed.[18] Therefore, "*ingando* offers the opportunity to people from various backgrounds to come together for some time to share common programmes or exercises and [share] the mutual consensus on the causes of Rwandan conflicts, historical disunity, good governance and subsequently discovering a way towards lasting peace, unity and socio-economic development".[19]

Today's *ingando* is designed to eliminate "bad" and "divisive" ideologies and correct "historical and ethnic distortions".[20] History education and the "redefinition" of ethnicity are central to the *ingando* program. Moreover, the *ingando* is meant to give Rwandans a "proper and positive understanding of politics as a way of managing the society and not as a dirty game".[21] Another objective of *ingando* is to help local leaders "transcend petty thinking and raise them to a new level of competence in the best interest of Rwandans".[22] The *ingando* activities and curricula aim to "inculcate healthy, liberated minds with a clear vision about issues of national interest and development".[23] The NURC and RPF use a heavily polarized discourse: 'distorted' versus 'positive' ideology and 'petty thinking' versus 'liberated mind'. Negative words such as 'racist', 'genocidal', and 'divisive' are ascribed to the previous government; positive words such as 'united', 'peaceful', and 'clean' refer to the RPF government. *Ingando* has tailor-made programs for special target groups: politicians, businessmen, teachers, students, demobilised soldiers, and released prisoners. This article only focuses on released prisoners.

The Prisoners of *Ingando*

By 1999, thousands of alleged genocidaires were being kept in overcrowded prisons. The situation was unbearable. Rwanda had no justice system that was able to handle such a massive number of (real and imagined) perpetrators. The government decided to gradually release prisoners and have

17 Ndangiza, 'Community Sensitization: Case of Ingando in Rwanda', 7. Note that only the labels 'perpetrators' and 'victims' are used.

18 Ndangiza, 'Community Sensitization: Case of Ingando in Rwanda', 7-8.

19 NURC, 'The *ingando* concept and its syllabus reform', *NURC documents* (2004).

20 Ndangiza, 'Community Sensitization: Case of Ingando in Rwanda', 10.

21 Ndangiza, 'Community Sensitization: Case of Ingando in Rwanda', 11.

22 Ndangiza, 'Community Sensitization: Case of Ingando in Rwanda', 11.

23 Ndangiza, 'Community Sensitization: Case of Ingando in Rwanda', 11.

them tried in the public *gacaca* sessions. The first release (21,385 prisoners) followed the presidential pardon in January 2003. In 2005 (22,678 prisoners) and 2007 (10,000), similar acts of release were carried out. [24] The majority of these prisoners were men between thirty and fifty years of age, poorly educated, who had been farmers or craftsmen before the genocide. They were classified as second-, third- or fourth-category genocide perpetrators, meaning they participated in raids, robberies, pillaging, and also killings in 1994.[25] They were not ringleaders of the genocide. Most of them were arrested between 1994 and 1998 after accusations by their neighbors and by genocide survivors, and some were taken to prison without an explanation. The arrests were often violent and sometimes involved the kidnapping and killing of family members.[26] Memories of arrests were therefore painful and traumatic, with those who had been arrested displaying a deep fear of RPF soldiers and the current government.

Prisoners had to confess their crimes in order to be released.[27] The confession was to be assessed by the *gacaca* judges and the community members. When the confession was deemed true, an appropriate punishment was given, taking into account the years already spent in prison. This could be in the form of a financial compensation to the victims or community service like the construction of houses and schools.[28] All ex-prisoners knew they had to pass through *ingando* before going home, but few knew what it actually meant. "The smell of freedom was so attractive, we did not even think about *ingando*. We would have done anything to be released, so we just went there and put on a show, even willing to sing the praises of the president."[29] *Ingando* had to function as a transit phase between prison and home. *Ingando* is the place "where genocidal ideologies

24 The 2003 act of release and its consequences have been reported by Felix Muramutsa of the League of Human Rights for People in the Great Lakes Region, 'Etats des Lieux de la Liberation de certains Detenus, suite au Communiqué de la Présidence de la Republique du Rwanda du 1er Janvier 2003' (Kigali 2006).

25 2nd category perpetrators are those accused of committing one or more killings during the genocide but who were not ringleaders; 3rd category perpetrators are those who committed assaults without the intention to kill; 4th category perpetrators are those accused of looting or destroying property.

26 Interviews in Kigali Province with Eugène (27-03-2007), Jean-Baptiste (03-04-2007), Moses (09-04-2007), Vincent (13-04-2007) and Boniface (30-03-2007).

27 Most ex-prisoners said that they had participated in the plundering and robbing of houses and fields. Only rarely did they confess to having killed. See also Hatzfeld, *Machete Season*, about the psychology of the perpetrators in Rwanda.

28 The practicing of the *gacaca* courts is well illustrated in the documentary of Bernard Bellefroid, 'Rwanda – Les Collines Parlent' (Belgium 2005).

29 Interview with Léon, 38-year-old ex-prisoner, Kigali Province, 16-05-2007.

have to be eliminated"[30] and "where those men learn to live as humans, not as animals".[31]

The ex-prisoners explained their transit through *ingando* in different ways. Jean Baptiste, one of the prisoners accused of robbery, said that "we really had to change, because the genocide made a mess of us. In the camp, we got new ideologies for a new society... I learned so many things. I think I know more about my country than my neighbours!"[32] Boniface, on the contrary, said: "They just want to wash our brains [and] empty our minds and fill them with new ideas. As if we are children! It is only to serve the current power."[33] In general, younger participants (25-35) were more positive than older participants (40-55).

A Day in *Ingando*

By 2007, every province has its own *ingando* solidarity camp, each hosting around 2,000 ex-prisoners. The camps I had access to were *Kinyinya* in Kigali province and *Iduha* in Eastern province, located in a remote valley. The place felt like a quiet refugee settlement. The women's area was divided from the men's area by an assembly hall made of wooden sticks where lectures and cultural activities were organized. A few other tents contained a simple kitchen, a grocery shop, and a bathing spot. The camp was not a prison, as the territory was not surrounded by wire or fences, but nonetheless the inmates were closely watched by soldiers and the local defence officers. The atmosphere was tense.[34]

The morning was meant for community work. Ex-prisoners constructed houses for genocide survivors living in the neighborhood. Most interviewees were happy to use their bodies and energy with a purpose. For those who had confessed and shown remorse (which was a minority), building a house for a survivor was felt as atonement and a reconciliatory gesture.[35] The afternoon brought education. Ex-prisoners were taught about HIV/Aids, gender equality, conflict management, modern farming, and entrepreneurship,

30 Conversation with Noel, 4th year student KIST, about the purpose of *ingando* for ex-prisoners, Kigali City, 05-04-2007.

31 Conversation with Germaine, female genocide survivor, about the purpose of *ingando* for ex-prisoners, Kigali Province, 05-05-2007.

32 Conversation with Jean Baptiste, thirty-nine-year-old ex-prisoner, two weeks after *ingando*, Kigali Province, 06-04-2007.

33 Conversation with Boniface, 34-year-old ex-prisoner, one month after *ingando*, Kigali Province, 28-04-2007.

34 Observations, *ingando* Kinyinya, Kigali Province, 14-03-2007.

35 Interview with Marcel, 50-year-old ex-prisoner, Kigali Province, 17-04-2007.

which were appreciated by most participants, especially those without an educational background. The gatherings were very much a collective experience. Participants were told to applaud enthusiastically after every lecture, which contributed to an uncanny atmosphere. The evening was filled with culture. Ex-prisoners sat together, sang songs, and danced traditional dances. These activities were meant to stimulate togetherness and 'Rwandanness' but had a rather involuntary character.

Shaping the National Narrative

Ingando aims to address the 'roots of the genocide'. The root causes of the genocide, as explained by the RPF government, are to be found in the Belgian occupation and their ethnopolitics. Ethnic identification must be removed from the national consciousness and the identification with the Rwandan nation. Therefore, *ingando* camps pay attention to the 'elimination' of ethnicity and the 'correction' of genocidal ideologies that have 'possessed' the minds of the perpetrators. Genocidal ideology is seen as an external threat to unity and reconciliation and can therefore be 'eliminated' by treatment. The new history is one of pre-colonial Rwandan unity, of peaceful coexistence among the different groups (Hutu, Tutsi, and Twa). The old history of racism and divisiveness had to be revised. This revision starts in *ingando*.

Age, religiosity, and education explain the extent to which my informants accepted the new historical conduct. Young, religious, and uneducated ex-prisoners embraced the new story: it gave them comfort and relieved them from the burden of individual guilt. They now say they fell victim to a trick of history. Bernard explained: "When I was a child, I was told about the differences [between Rwandans]. The majority [Hutu] should rule the country; that is what we learned in school. Now I see we are just the same, members of one nation. We should forget about ethnicity completely. […] We were taught to kill, and we did. Now we are taught to reunite, and we will do so."[36] This type of ex-prisoner is pragmatic. They accept the new discourse in exchange for security. Female ex-prisoners in particular felt a strong wish to return to a normality: "I just want to forget about all this. My children missed me long enough […] I want them to grow up without fear and violence, without knowing about Hutu or Tutsi. I will tell my children what they told me in there [in *ingando*], because they need to know these things."[37]

36 Interview with Bernard, 30-year-old ex-prisoner, Kigali Province, 18-05-2007.

37 Interview with Rose-Marie, 47-year-old female ex-prisoner, Kigali Province, 18-05-2007.

The second type of ex-prisoner was older, better educated, enjoyed a higher social status before the genocide, and was more openly critical of the RPF regime. They did not confess. It was difficult to assess their innocence or guilt; their attitude shifted from cautious criticism to genocide denial. Theonèste, a forty-year-old ex-prisoner, described the large-scale imprisonment of Hutu men (1994-1998) as 'biological genocide': "Guilty or not, every healthy Hutu in his twenties was put in prison. We all thought the RPF would come and kill us. They didn't kill us. But did we live?"[38] The perceived victimization of Hutu as a people was central to the justification of their misery.

The new narrative about the genocide and pre-colonial harmony was confusing; it did not correspond with the old story, what they were once told and taught: "My parents always told me that [before the Belgian occupation] this time was full of injustice, but now they tell us we all lived in harmony. About [what happened in] 1959, we used to say this was a revolution to overthrow the monarchy, but now we hear this was the starting point of the genocide. So can you [pointing at me] tell me what is true? Was my teacher lying to me? Was our government that led us through many good years as bad as they tell me now?"[39] They (want to) remember pre-1990 Rwanda as peaceful and prosperous. Every discussion between Hutu and Tutsi boils down to the same thing: responsibility.[40] Who is to blame for the genocide? For the fate of Rwanda? The ex-prisoners look for arguments to shake off the burden of collective guilt: "they attacked us", "we were misled", "it is the *bazungu*".[41] The colonial argument gives comfort and justification. This narrative puts responsibility outside the individual and even outside national borders, enabling coexistence with oneself and with fellow nationals.

For the second type of ex-prisoner, the new history was a masquerade. They were bitter and disillusioned, and scoffed at the *ingando* history lessons: "The ten-cow story is a myth. The Hutu were the servants, the housekeepers of the Tutsi. We carried the Tutsi on our shoulders! There was a reason for the '59 genocide, we should not forget that. We suffered double colonisation, [...] the Belgians were invisible, the bazungu didn't bring the division, it was the Tutsi who dominated us".[42] This narrative does not

38 Interview with Theonèste, 40-year-old ex-prisoner, Kigali Province, 16-05-2007.
39 Interview with Moses, 35-year-old ex-prisoner, Kigali Province, 09-04-2007.
40 Eltringham, *Accounting for Horror*, 177.
41 See similar justifications in Hatzfeld, *Machete Season*.
42 Interview with Boniface, 34-year-old ex-prisoner, Kigali Province, 28-04-2007.

necessarily mean these men were all Hutu extremists. They were critical of all authoritarian regimes, including the Habyarimana government. "The dance is just the same, it is the dancers who have changed."[43]

The evenings in *ingando* were devoted to songs, dances, and plays in which Rwandan culture was celebrated in order to create a "sense of Rwandanness inside the hearts of the perpetrators". The songs honored the new regime and its achievements of peace, national unity, and reconciliation. Singing together is energizing and emotional; they provide a safe space for sharing feelings of hope, pride, and friendship. When repeatedly chanted, songs are also powerful for indoctrinating purposes.

"The songs we were singing really helped me to clean [my mind], it made me feel happy. We sang about unity and reconciliation and I wanted to believe these words [...] But I did not like the songs about the liberation war [of the RPF] because it was our defeat, not our liberation. It made me feel weak."[44] The polarization between the liberators and the defeated was apparent in all songs. Singing the praises of the victors' superiority made many ex-prisoners feel inferior. The perception of collective humiliation of Hutu was a powerful element of Hutu extremism and may find another fertile ground in these songs.

The atmosphere was tense. David recalls: "We had no choice. If we did not go there [assembly point] we would get punished. So we just went there and sang these songs. Of course we did not complain, we did not want to ruin our release."[45] They had to sing songs repeatedly while standing straight and clapping hands for hours with an empty stomach. "They [authorities] wanted to make us feel ridiculous. It was not only very tiring, it was just indoctrination. The way we had to stand there every night touches the brain, the heart and the stomach [...] Due to the bad food in prison many of us have aching eyes and bones, but we still had to go."[46]

The believer type, however, loved singing and dancing together. For them, the closing ceremony after six weeks of *ingando* was much appreciated. At the ceremony in the Kinyinya *ingando*, two thousand ex-prisoners sat together in the assembly hall covered with orange canvas and waited for the authorities to speak: the secretary executive of NURC and the mayor of Kigali. The speeches were full of positive energy but also patronizing. The

43 Interview with Boniface, 34-year-old ex-prisoner, Kigali Province, 31-03-2007.
44 Interview with Léon, 38-year-old ex-prisoner, Kigali Province, 16-05-2007.
45 Interview with David, 59-year-old ex-prisoner, Kigali Province, 02-05-2007.
46 Interview with Gérard, 44-year-old ex-prisoner, Kigali Province, 25-05-2007.

ex-prisoners were addressed as children.[47] They were instructed to applaud after every speech while shouting "*nibyiza*!", meaning "good".

Ex-prisoners who confessed and showed remorse were more willing to accept the new narrative and considered the singing and dancing as a positive experience. For them, *ingando* is a *rite de passage*, the ethnographic term used for rituals marking a change in a person's social status.[48] *Rites de passage* have three phases: separation, liminality, and incorporation. The *ingando* camp is the liminal phase – no longer a prisoner, not yet a citizen – and feels like redemption or purification: "It [*ingando*] really changed me. I feel so much better now. These negative thoughts in me are gone. I do not even feel like a Hutu anymore."[49] The transition was described as a passage from wrong to right, dirty to clean, and even from blind to 'able to see'. Ex-prisoners appear to see *ingando* as having a quasi mystic dimension, being experienced as a sort of purgatory through which everybody must pass.[50] The *ingando* is imagined as a filter, not only by ex-prisoners but also by authorities and survivors. The wish "I hope they come out clean" was a common expression among genocide survivors.

Ingando wants to civilize or re-civilize its participants into proud Rwandan nationals: "The *ingando* made me feel Rwandan as something to be proud of. I felt like shit in prison, unwanted and useless. Now they say they want to develop the country. They need us."[51] The sceptical type did not want to be healed, educated, or civilized. They explained the "obsession with national unity" as ongoing 'Tutsification'.

After the Camp

The return of ex-prisoners was often disappointing: "The house I started to build is gone now, the land is taken by a neighbour and my wife had left me for another man. Where to start?"[52] Children did not recognize them,

47 This approach was not only used towards ex-prisoners. Reyntjes quoted the former general secretary of the NURC, Aloysia Unyumba: "The ordinary citizens are like babies. They will need to be completely educated before we can talk about democracy". See Reyntjes, 'From Genocide to Dictatorship', 182-183.

48 Often ceremonies surrounding events such as childbirth, menarche, or other milestones within puberty, coming of age, weddings, menopause, and death.

49 Interview with Marcel, 50-year-old ex-prisoner, Kigali Province, 17-04-2007.

50 PRI, 'Gacaca Report VI', 19.

51 Interview with Regine, 46-year-old female ex-prisoner, Kigali Province, 13-05-2007.

52 Interview with Daniel, 39 -year-old ex-prisoner, Kigali Province, 02-05-2007.

family members felt ashamed, neighbors took their land, survivors were scared and suspicious. Ex-prisoners were outcasts. The stigma of prison has had deep personal and social consequences for both the ex-prisoner and his relatives.[53] Poverty is the most poignant problem for ex-prisoners. Until their case is handled by the *gacaca* judges, they cannot apply for jobs nor buy a piece of land. They depend on their family. *Urugo rubi rurutwa na gereza*, they say,: "you are better off in prison than in a poor family". Poverty in Rwanda is a serious obstacle to durable peace. This is what Eugenia Zorbas calls the "you-can't-eat-peace argument". Rose-Marie, who spent eleven years in prison, explained: "What does this security mean when there is no security for the stomach?"[54] Her friend Regine agreed: "Hunger does not bring us [Hutu and Tutsi] together, it makes us envious and greedy."[55]

The image of a new Rwanda portrayed in *ingando* appeared to be an illusion. Ex-prisoners could not access the promised seed money to start up a small business: "There [in *ingando*] they said they'd help me to restart my tailor business. I lost my sewing machine in the war, so I went to the local office to ask about possibilities to buy or rent one. The officers didn't know about this arrangement, they sent me away, saying I was cheating."[56] The attitude of local authorities was problematic; the gap between the government's words and deeds caused frustration and fear. The villages in the Kigali province are more heterogeneous than before the genocide. Now '59 Tutsi refugees, returned '94-'96 Hutu refugees, Tutsi (and some Hutu) genocide survivors, genocide perpetrators, Francophone as well as Anglophone Rwandans all live among each other. Ex-prisoners felt insecure in this new social reality with sifted power structures they did not understand. I will shortly display the interaction with survivors, local authorities, and the local defence.

The sector's office was responsible for informing and preparing genocide survivors about returning prisoners, but the office did not always do its job well. Too often, survivors were taken by surprise and felt very upset. In the villages where local leaders did prepare the community in a sensitive manner, the atmosphere was less tense. Some local leaders organized meetings between survivors and prisoners, where survivors were given the opportunity to ask questions about what happened to their family

53 See also Ervin Goffman, *Stigma: Notes on the Management of a Spoiled Identity* (New York: 1963).

54 Interview with Rose-Marie, 47-year-old female ex-prisoner, Kigali Province, 18-05-2007.

55 Interview with Regine, 46-year-old female ex-prisoner, Kigali Province, 13-05-2007.

56 Interview with Eugene, 44-year-old ex-prisoner, Kigali Province, 07-06-2007.

members. Only the confessor type attended these meetings. The refuser type complained that survivors were inventing accusations, just to get money out of them.[57] In some cases, indeed, these sessions including *gacaca* hearings have been used for revenge, blackmail, and intimidation.[58]

Ex-prisoners did not always understand they had to play an active role in the 'reconciliation'. "Why don't they stop accusing me? I thought it was reconciliation time! Let us just forget about everything".[59] The returned prisoners discovered that *ingando* had not prepared them for real life, but for a life that did not (yet) exist. The lion's share of the leading positions in the villages are taken by '59 Tutsi returnees, because they were close to the RPF and because in the aftermath of the genocide there was no one else left to run the country. The new inhabitants did not match easily with the Rwandans – both Hutu and Tutsi – who had lived in those villages for decades. Growing envy frustrated them as the newcomers had clearly open access to leading functions and fertile pieces of land.

Ex-prisoners felt very uncomfortable when local authorities were around. Voices and faces changed quickly when village mayors approached. Every Friday, all ex-prisoners had to report to the sector's office. When office manager John was around, ex-prisoners were timid and submissive. Boniface recalls: "These men [of the sector office], you can just see they are nasty people. Especially that one who is counting us every Friday. He feels so superior. He knows he has power and we have not."[60] Jean-Baptiste also said that the "Friday-man acts this way, because he won the war. Now he thinks he can treat us like animals."[61] When I spoke to office manager John about the ex-prisoners he was supervising, he said that "those men are killers. They even killed babies. How monstrous. Look at them. They have nothing but a shirt and shorts, that's just what they deserve."[62]

57 Interview with Jean-Baptiste, Kigali Province, 06-04-2006; interview with Moses, Kigali Province, 09-04-2007; interview with Boniface, Kigali Province, 28-04-2007.

58 Observations of *gacaca* session, Kacyru, Kigali City, 10-05-2007. See Human Rights Watch, 'Rwanda: Gacaca Trial Condemns Activist to Prison', 30 May (2007), Website Human Rights Watch, www.hrw.org.

59 Comment by an ex-prisoner in the documentary "In Rwanda we say the family that does not speak dies" from Anne Aghion, used by the NGO Réseau de Citoyens (RCN) Justice et Democratie in *ingando* sessions for ex-prisoners. RCN is one of the few NGOs in Rwanda that has gained access to the *ingando* camps.

60 Interview with Boniface, 24-year-old ex-prisoner, Kigali Province, 28-04-2007.

61 Interview with Jean-Baptise, 39-year-old ex-prisoner, Kigali Province, 02-05-2007.

62 Conversation with James, head of executive of administrative sector, Kigali Province, 27-04-2007.

In public discourse, there is no space for variety and nuance: victims are victims, killers are killers. Society portrays the ex-prisoners as a homogeneous group of genocidaires, a term only used for Hutu.[63] How can they be human? Just like office manager John, the official narrative dehumanizes genocidaires as 'animals' or 'psychopaths' or at least something very unlike the Good Rwandan Citizen. Subjects of dehumanization, however, could turn into 'dehumanizers' themselves, as Rwandan history has shown. The term 'genocidaire' was considered by ex-prisoners as 'verbal revenge'. One ex-prisoner called Léon declared that "there is no Rwandan family that did not lose a family member, that was killed before, during, or after the genocide. So I ask myself, why are *we* the genocidaires, while they [RPF] are killers too?"[64] Gérard stated that the word made him feel as if he belonged to an evil mankind: "I have confessed I did bad things, so I was punished. But the word keeps sticking to me as if it has been written on my forehead."[65] In *ingando*, the crime of genocide was already attached to the ex-prisoners, when each of them was photographed with a cardboard with his or her name, and below that, 'genocide' written in bold. The event had a deep impact on the ex-prisoners.[66]

Another group that ex-prisoners had to deal with is the security service, including the army, the police, and the Local Defence Force.[67] The latter was the most visible and perceived as the most threatening for ex-prisoners, resulting in an uneasy relationship full of suspicion. "Civilians carrying weapons? I do not trust them. They do not get paid, so of course they will use their weapon to get money from other people. I am not stupid."[68] The Local Defence is composed of young unemployed Rwandans, "trained in an *ingando*-like camp for several months, but with a stronger military character",[69] who patrol in red uniforms holding wooden sticks and sometimes guns. Many ex-prisoners saw the Local Defence as an RPF version of the *Interahamwe*. Initially, these militia were likewise meant to guarantee security at the local level. The Local Defence is not a militia nor a killing

63 The term genocidaire in Rwanda is problematic, as it not only distinguishes perpetrators of genocide from perpetrators of war crimes, it also separates Hutus (a group of perpetrators found guilty of genocide) from Tutsis (individual perpetrators accused of war crimes): the first group is seen as a morally lower kind of people.

64 Interview with Léon, 38-year-old ex-prisoner, Kigali Province, 16-05-2007.

65 Interview with Gérard, 44-year-old ex-prisoner, Kigali Province, 25-05-2007.

66 See Goffman, *Stigma: Notes on the Management of a Spoiled Identity* (New York: 1963).

67 The Local Defence Force is established by the government to involve citizens in guarding security and resolving the problem of police shortage.

68 Interview with Ferdinand, 39-year-old ex-prisoner, 01-05-2007.

69 Conversation with police officer, Ruhengeri City, 23-05-2007.

machine, but it resembles the way in which political parties in Rwanda have always organized civil defence forces.

Ingando Revisited

Although the *ingando* solidarity camp has an authoritarian character, the curriculum includes some elements that help ex-prisoners to reintegrate into their communities. All participants appreciated the practical classes about entrepreneurship, modern agricultural, and health care. A new understanding of 'right' and 'wrong' is necessary for those still believing in Hutu supremacy. The use of rituals for 'cleansing' oneself of bad thoughts and bad behavior is meaningful to those who have confessed and feel guilty. These ex-prisoners felt a strong wish to purify themselves and start all over; ingando facilitates that process.[70] On the other hand, this 'civic education' program of the National Unity and Reconciliation Commission needs a critical assessment. How does education differ from indoctrination? Max Hocutt writes that the difference lies in the means they use.[71] Indoctrination resembles education in being a form of instruction, but it differs by seeking to inculcate *belief* or *conviction* – which may or may not be true – while education seeks to provide *knowledge* or *training*, i.e. belief in proven truth.[72] From this point of view, *ingando* is indeed a form of indoctrination. In all organized education systems, including those of democratic societies, we find elements of indoctrination, but in authoritarian states such as Rwanda, education is interwoven with indoctrination.

The gap between *ingando*'s image of society on the one hand, and the socio-political reality on the other hand, is the most problematic. There is no unity and reconciliation in the village; there is poverty and there is fear. Ex-prisoners reported humiliating practices in the camp such as the photos being taken of them labelled as 'genocidaire', the drilling songs, and the arrogance of the camp management. The perception of humiliation continues outside the camp when interacting with local authorities and security forces. Humiliation, when orchestrated collectively, is a dangerous emotion in fragile people.[73]

70 See also Kelsall, 'Truth, Lies, Ritual', 363.

71 Max Hocutt, 'Indoctrination v. Education'. In: *Academic Questions* (2005) p. 35-43.

72 Hocutt, 'Indoctrination', 35-36.

73 See for example Adam Jones, *Genocide*, 265-270.

The gap between the image and reality is fed by the silences that are imposed on ethnicity and RPF crimes. Although ex-prisoners were sceptical of the so-called 'elimination of ethnicity', most of them would have preferred to return to their villages as Rwandan, not as Hutu. All were relieved to discover that ethnicity was no longer mentioned in identity cards and that it was used to differentiate between people. The imagination of being *only* Rwandan made them feel safer. But, reality was different. One ex-prisoner explained: "In the village everybody knows each other; we don't need cards to know if someone is Hutu or Tutsi. Kigali is different. In a big city you are not confronted with ethnicity all the time, because people are mobile and independent, but in the village we rely on each other. Now we just pretend that Rwandan is all we are, as they said in *ingando*, but it is not true. It is still here [points at his heart]."[74] One of them added that "the [ethnic] feeling is still there [touches his chest], it only needs a reason to be lit [...] if something bad will happen to our people [Hutu], I know this feeling will erupt again."[75]

The silencing, and mythmaking, of alleged RPF crimes impedes the reintegration of ex-prisoners and the process of Rwandan reconciliation in general. Experiences of RPF crimes and the stories told about them were the main reason for ex-prisoners to distrust the new authorities. The imagined Rwanda and the new historical narrative do not include RPF crimes. In the camp, ex-prisoners are instructed on how to deal with feelings of guilt or self-hatred, and how to react to the traumatization of survivors of genocide, which is important. Yet their own memories of abuse and violence are not recognized and form a fertile ground for mythmaking about '*le double genocide*'.[76] In the absence of any objective investigation, myths and memories will continue to circulate among the population. "Where are my parents' bodies, where do I go in April [the month of commemoration], how can they expect me to show up at *gacaca* sessions when I am not allowed to speak out about my missing family members?"[77]

74 Conversation with Boniface, 34-year-old ex-prisoner, Kigali Province, 28-04-2007.

75 Interview with Aurore, 25-year-old ex-combatant, Mutobo *ingando*, 30-04-2007.

76 *Le double genocide* has developed into a story that is told and retold mainly among the Hutu population in and outside Rwanda. 'The double genocide' refers to the alleged killing of innocent Hutu civilians by the RPF army during the civil war (1990-1994) and since RPF's victory (1994 until the present day). Reliable numbers do not exist, but estimates of between 100,000 and 3 million are made – including the Hutu Eastern Congo. Scholars agree on the fact that many more Hutu have been killed than is acknowledged by the government, but most agree that the word genocide does not apply to these killings. See Philip Verwimp, 'Testing the Double-Genocide Thesis for Central and Southern Rwanda, *The Journal of Conflict Resolution*, vol. 47, no 4 (2003) 423-442; and Reyntjes, 'From Genocide to Dictatorship', 195-199.

77 Conversation with Innocent, 30-year-old ex-combatant, Ruhengeri City, 14-05-2007.

Ingando and National Unity

Rwandan national consciousness is at the core of RPF ideology and its historical narrative. The powerful nation-building exercise is what Pottier called the 're-imagination' of Rwanda,[78] drawn from Anderson's theory on nation-states as 'imagined communities'.[79] The construction of Rwanda's identity is an emotional and symbolic effort to 're-imagine' a new Rwanda. National consciousness is, just like ethnic consciousness, a construct, but it is not 'unreal'. Nationhood, says Eriksen, is a matter of belief: "The nation, that is the *Volk* imagined by nationalists, is a product of nationalist ideology; it is not the other way round. A nation exists from the moment a handful of influential people decide that it should be so, and it starts, in most cases as an urban elite phenomenon. In order to be an efficient political tool, it must nevertheless eventually achieve mass appeal."[80] Kigali has its urban elite that is responsible for spreading Rwandan nationalism. Nations tend to imagine themselves as old, even when they are in fact modern. "Nationalism, which is frequently a traditionalistic ideology, may glorify [...] an ancient tradition shared by the ancestors of the members of the nation, but it does not thereby re-create that tradition."[81] The use of 'typical' ethnic symbols in nationalism aims to stimulate reflection on one's own cultural distinctiveness and thereby to create a feeling of nationhood.[82] The glorification of the language *Kinyarwanda*, the *gacaca* courts, the *umuganda* community work, *ingando* solidarity camps, and the visibility of the national colors are examples of this re-imagined Rwanda.

> To overcome the boundaries of ethnicity among their citizens, the elites turned the nation into a 'super-ethnos'. The nation is [...] both post-ethnic, in that it denies the salience of old ethnic distinctions and portrays these as a matter of a distant past, and super-ethnic, in that it portrays the nation as a new and bigger kind of ethnos. Most nation-states, *however*, have failed to complete this project in that they included some ethnic groups and excluded others, or privileged some and marginalised others.[83]

78 Pottier, *Re-Imagining Rwanda*, 2-8.

79 Benedict Anderson, *Imagined Communities, Reflections on the Origin and Spread of Nationalism* (London 1983).

80 Eriksen, *Ethnicity and Nationalism*, 105.

81 Eriksen, *Ethnicity and Nationalism*, 101.

82 Eriksen, *Ethnicity and Nationalism*, 103

83 Gerd Baumann, *The Multicultural Riddle. Rethinking National, Ethnic and Religious Identities* (New York 1999) 31.

The phenomenon Bauman describes is illustrated by the performance of a Rwandan traditional dance I attended. Young men dressed in the national colors of blue and green, decorated with bells and beads, danced in praise of cows and milk. The dance is presented as 'national', as 'super-ethnic'. However, some Hutu claimed the dance was actually typical for cattle-keepers, mostly Tutsi.[84] To re-imagine the cultural expressions of a powerful minority as 'national', the minority guarantees its safety and justification. The current regime created a paradox: the political dogma is one of national unity and Rwandanness, while at the same time the definition of what is 'Rwandan' has been strictly narrowed. It is the exclusiveness of the imagined national unity that causes friction, because the unity is only true for those who commit themselves to the creators of the unity. When the nation does not provide national citizenship including civil rights, identification with the nation remains fragile. The boundaries of what is imagined as Rwandan, as opposed to 'anti-Rwandan' and 'divisive', are shaped by a minority of urban elites.[85]. The nation-state, writes Baumann, would be nowhere if it had not taken possession of education.[86] An important aim of nationalist ideology is to re-create a sentiment of wholeness and continuity with the past; "to transcend that alienation or rupture between individual and society that modernity has brought about".[87] If we replace 'modernity' by 'genocide', it explains the purpose of *ingando*: to overcome the disturbing reality of the genocide and to cover an inconvenient truth, namely the responsibility question and the complexities of Rwandan history.

The genocide does not fit into the story of historical harmony and national unity, but at the same time, it strengthens the story. The post-genocide regime draws a continuum with pre-colonial Rwanda – as if the period in between was not purely Rwandan but damaged by external influences. For a majority of Rwandans, however, the imagined Rwanda is unimaginable.

84 Observations (and conversation with Didier) in Kacyru, Kigali City, 10-04-2007.

85 What is important to note here is that the division is more political than ethnic. The majority of Hutu and Tutsi have little power. Not all Tutsi, in particular genocide survivors, feel represented by the RPF. In fact, some feel their identity and victimhood is captured by the RPF as a moral justification of its power.

86 Baumann, *The Multicultural* Riddle, 40.

87 Eriksen, *Ethnicity and Nationalism*, 105.

Ingando and Reconciliation

Reconciliation means different things to different people. The ex-prisoners in this research thought reconciliation was about asking forgiveness and being forgiven. They used the word 'reconciliation' just like the government, as if it were a thing or medicine to heal the problematic past. Some ex-prisoners who had just arrived in their village said they "could not see the reconciliation"[88] or they were annoyed by the hostility of survivors: "it is reconciliation time now".[89] Genocide survivors who lived next to returned prisoners thought this attitude was disrespectful and arrogant. For them, forgiveness was a 'gift' and not a 'given'.[90] Some ex-prisoners said they confessed only so that they could be released from prison; when there was no real charge against them, some even made up crimes they never committed.[91] Only those few who felt ashamed and disturbed by the crimes they committed asked for forgiveness.

The rules for reconciliation are strictly defined by the government. Rwandans are not really forced but rather pushed into a blueprint of reconciliation. There is no space for questions about who should reconcile with whom, how, and why. The government is the manager of truth, justice, and reconciliation but does not subject itself to this process. In the South African context, the African National Congress (ANC) was itself the subject of investigation by the Truth and Reconciliation Commission (TRC). Both crimes of the apartheid regime and the ANC were included in the hearings. In Rwanda, this is not the case. The reconciliation discourse is exclusive and biased, which has nourished feelings of frustration and fear among Rwandans, in particular among survivors of all sorts of violence, including RPF crimes, who cannot voice their concerns.

When I revisited several ex-prisoners in 2011, it turned out that three of them had been acquitted by *gacaca*. As with many other guilty or bystander or innocent Hutus in 1994, Boniface had fled to DRC out of fear of RPF reprisal killings. Upon his return in 1997, he was taken into custody. The logic was simple: a young, well-educated Hutu who was not killed by the extremists and who fled to DRC was suspicious and must have had a

88 Interview with Daniel, 39-year-old ex-prisoner, Kigali Province, 02-05-2007.

89 Interview with Ignatius, 39-year-old ex-prisoner, Kigali Province, 20-04-2007.

90 This was also shown in the documentary "In Rwanda we say the family that does not speak dies" from Anne Aghion, used by the NGO Réseau de Citoyens (RCN) Justice et Democratie for *ingando* sessions.

91 Both Regine and Rose-marie, two female ex-prisoners, said they had made up stories in order to be released, Kigali Province, 13-05 and 18-05 2007.

connection to the genocide regime. In the chaos and turmoil of 1994-1997, many suspects were put in prison without a trial. Boniface showed me his certificate of acquittal signed in 2007 by the *gacaca* judges, declaring he was innocent. He did not get compensation for the ten years he spent in prison.

Truths and Trust

In Rwanda, people like to joke that hypocrisy and suspicion are typical Rwandan characteristics. In a country where a thousand truths go around a thousand hills but only one is recognized at the top, it is difficult to let the process of transitional justice depend on truth telling, like in *gacaca.* Instead of a truth commission – encouraged by scholars such as Jeremy Sarkin[92] – the government established a Commission of National Unity and Reconciliation. Truth commissions investigate past crimes and ideally operate independentlt of the government. The NURC is a governmental institute and focuses on the future rather than the past. In its drive to create national unity and reconciliation, the NURC chose one truth to be true. The new historical narrative not only misinforms Rwandans about their history, it takes away the opportunity to reflect upon individual and collective responsibility.

The story of national unity and reconciliation is spread throughout Rwanda, but the top-down relationship between citizen and government does not contribute to mutual trust. Ex-prisoners said they would be more willing to take responsibility for their behavior and apologize if they would be given the opportunity to speak about the harm inflicted upon them and their families in the years after the genocide. Truth and trust are intertwined. From the government's point of view, citizens cannot be trusted and need re-education to believe in the new Rwanda. By controlling the information, the government also shows a lack of confidence in itself. Off the record, one civil servant explained: "The existence of RPF power and ideology is based on fear; the fear to be uprooted and threatened forever. I really do think they [RPF] did some good things for Rwanda […]. But the fear is still in them, and not only there. It has impregnated the whole society."[93] Mamdani asked himself "how to build a democracy that can incorporate a *guilty majority* alongside an aggrieved and *fearful minority* in one single

92 Jeremi Sarkin, 'The Necessity and Challenges of Establishing a Truth and Reconciliation Commission in Rwanda', *Human Rights Quarterly*, vol. 21 (1999) 767-823.

93 Conversation with officer of Ministry, Kigali City, 27-04-2007.

political community?"[94] A majority wishes democracy and freedom of space; the minority prefers security and unity.

Conclusion: Facing the Façade

The *ingando* solidarity camps can be analyzed at three different levels that follow the levels of transition that *ingando* stands for: the political, the social, and the individual. First of all, *ingando* is part of managing the political transition from an evil genocidal regime to a government of 'national unity'. Second, *ingando* indicates a social transition from an imprisoned life to a civil life. Third, *ingando* performs a psychological transition in the minds of the prisoners. The lectures, prayers, songs, and ceremonies not only inform the prisoners about the new imagined Rwandan, they may also relieve the burden of guilt and shame. Some prisoners, in particular the young and uneducated ones, appreciated the 'cleaning' aspect; the purifying experience of changing oneself from a bad person into a good person. For them, the closing ceremony was a special happening. In countries where rituals facilitate transitions, they may positively contribute to processes of reintegration and reconciliation.

How does *ingando* function as a reintegration tool? For ex-prisoners, the 'cleansing' experienced during the closing ceremony did not last very long, since they were not seen as clean at all by the community. Interactions with local leaders, security officers, and genocide survivors remained very tense and troublesome. The ex-prisoners have been released, but the community and its leaders do not see them as 'free'. For them, the gap between the imagined Rwanda in *ingando* and reality was very large. The reconciliation appeared to be a "décor",[95] "performance", or "shop-window success" to guarantee foreign aid.[96] National unity and reconciliation cannot be imposed upon citizens through re-education. The authoritarian ambition to 'eliminate' all evil from the hearts and minds of Rwandans builds a façade of peace and stability. The economy flourishes and the government deserves credit for rebuilding a devastated country into a functioning state in a very volatile region. But a façade will remain fragile. The forceful and humiliating character of *ingando* overshadows its potential benefits of ceremonial healing. Is the *ingando* like the regime itself: too good to be true?

94 Mamdani, *When victims become killers*, 266.

95 Jeroen Corduwener, 'Donor Darling, De explosieve situatie in Rwanda', in *Groene Amsterdammer*, 18 September, week 38 (2007) PAGE.

96 Reyntjes and Uvin quoted in Corduwener, 'Donor Darling'.

9 Unravelling Atrocity

Between Transitional Justice and History in Rwanda and Sierra Leone

Thijs B. Bouwknegt

> Q: [Mr. Biju-Duval]: "[…] Can you tell us precisely on the basis of which document or what other source you can make such a claim?"
> A: [Dr. Gerard Prunier]: "Well, sir, we're dealing with Africa. Pity, please, a little common sense. This isn't how things work there."
> ICC Trial Chamber[1]

Quality fact-finding is vital in the study of mass violence, and transitional justice offers a tempting pallet of formulas to exhume the violent past. Its privileged truth-finding protagonists are [international] tribunals and truth commissions. International criminal justice systems are credited in particular as reliable, truth-ascertaining forums. However, when confronted with African conflicts, this claim appears simplistic. Recent International Criminal Court (ICC) decisions highlight substantial failures to adequately investigate mass crimes and generate solid proof. The bulk of collected evidence consists of [unverified] eyewitness testimony and NGO reports.[2] However, judges have discredited some witnesses as being possibly manipulated or as providing testimonies that were unreliable, inconsistent or vague.[3] In remote non-documentary contexts, answering seemingly simple questions such as what happened to whom, where, and when proves to be problematic. While journalists, human rights researchers, academia, and

1 International Criminal Court (ICC), *Situation in the Democratic Republic of Congo: The Prosecutor vs. Thomas Lubanga Dyilo: Transcript* (Case No. ICC-01/04-01/06; The Hague, 26 March 2009) 94-95. Historian Prunier testified on behalf of the prosecution.

2 Former ICC investigation team leader Bernard Lavigne compared the procedure of investigation of humanitarian groups to general journalism. ICC, *Prosecutor vs. Lubanga: Transcript Rule 86 Deposition* (The Hague, 17 November 2010) 47.

3 ICC, *Situation in the Democratic Republic of Congo in the Case of the Prosecutor v. Callixte Mbarushimana; Decision on the confirmation of charges* (Case No. ICC-01/04-01/10; The Hague, 16 December 2011); ICC, *Prosecutor vs. Lubanga: Judgment pursuant to Article 74 of the Statute* (The Hague, 16 March 2012); ICC, *Situation en Repubublique Democratique du Congo. Affaire le Procureur c. Mathieu Ngudjolo: Jugement rendu en application de l'article 74 du Statut* (Case No. ICC-01/04-02/12; The Hague, 18 December 2012).

the public easily pinpoint culprits, criminal investigators face problems corroborating these charges beyond a reasonable doubt.[4]

What can we know, what do we know, and how do we know it? With these epistemological queries in mind, this article seeks to examine the uncomfortable equilibrium between legal findings and historiography in the context of mass atrocities in sub-Sahara Africa. The post-violence experiences in Rwanda and in Sierra Leone are good illustrations of this dichotomy. The sections below detail how prosecutors at the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) struggled to unveil the rationales behind the Rwandan genocide and the civil war in Sierra Leone. By examining the cases of Theoneste Bagosora and Charles Taylor, this essay presents a roadmap to understanding how these discrepancies come about and assesses the impact of atrocity trials on historical records.

Truth Strategies

As the full scale of mass atrocities gradually comes to light after the dust has settled, the question becomes how this should be confronted. There are roughly five strategies to deal with the aftermath of genocide and mass murder: the first three – forgetting, denying, and explaining – concern the violence itself, while purging and judging concerns punishing the perpetrators.[5] However, there is no globally accepted formula for watertight metamorphoses. Although violence occurs in distinct temporal, political, and cultural contexts, it is commonly framed in universal norms [genocide, crimes against humanity, war crimes, torture]. Yet the aftermaths of the violence vary as much as their internal dynamics. Some societies place a moratorium on the past, or deny it or look forward, while others document, open up archives, or discuss. Perpetrators can be punished, rehabilitated, or amnestied. Victims can be heard, compensated, or silenced. Some countries seek external humanitarian, judicial, or truth interventions, whilst local communities retreat into customary practices. Most often, however, societies choose a melange of these strategies.

4 William A. Schabas, *The UN International Criminal Tribunals. The Former Yugoslavia, Rwanda & Sierra Leone* (Cambridge: Cambridge University Press, 2006) 463-467.

5 Antoon De Baets, 'After the Genocide: Truth Strategies of Judges and Historians', in: Frank Ankersmit et al (eds), *The Srebrenica Drama: Historical-Theoretical Reflections on the NIOD Report* (Assen: Van Gorcum, 2003), 28-46 [in Dutch].

The discourse that frames and generates post-violence responses and policies embraces historical adages like 'never again', 'historical clarification', or 'closing the books'. The imprescriptability[6] of breaches of international humanitarian law has pulled past violence back into the contemporary realm. In lieu of the globalization of legal norms – jus cogens[7] and universal jurisdiction – atrocities no longer have nationalities. Although history is the spine, law, politics, and pragmatism constrict it. Mandates, policies, and funds frequently confine and straitjacket investigations into the past. Judicial institutions or truth commissions single out and criminalize specific historical episodes and actors, while related events or broader contexts remain untouched. Throughout transitional periods, brutalities are often treated as sealed events, as the aim is to symbolically send the violent past back to the past.[8]

The last three decades have seen the industrialization of past, present, and future scenes of large-scale human rights abuses. Policymakers, activists, lawyers, and academia all assembled under the umbrella of transitional justice. This human rights framework is occupied with [re-] establishing openness [truth], accountability [justice], social cohesion [(re) conciliation], and the rule of law [democracy]. [9] Among its regime change strategies and instruments, the quest for justice and truth has particularly triumphed, as they are often credited as vehicles for peace, reconciliation, and democratic rule. Fact-finding through criminal investigations, commissioned inquiries, and human rights monitoring has been directed towards unveiling brutality, unravelling its architecture, and pointing out those responsible. Truth politics [seeking, revealing, establishing, as well as distorting, veiling and burying] are the core of transition schemes. On the one hand, these rites de passage are the closing ceremonies of violent eras as well as windows to non-violent futures. On the other hand, transitional justice instruments can be used to veil impunity, to whitewash prior crimes, or to legitimize social engineering or foreign intervention.

6 Antoon De Baets, 'Historical Imprescriptibility', *Storia della Storigrafica,* 59-60 (2011) 125-146.

7 Mark Drumbl, *Atrocity, Punishment and International Law* (New York: Cambridge University Press, 2007) 8: note 54.

8 Berber Bevernage. *History, Memory, and State-Sponsored Violence. Time and Justice* (New York: Routledge, 2011).

9 Other TJ mechanisms include: amnesties, purges, reparations, cleansing rituals, symbolic apologies, academic study and literature, *lieux de memoirs*, naming and shaming, trauma counselling, education, or a mixture thereof. See: Lavinia Stan and Nadya Nedelsky (eds.), *Encycplopedia of Transitional Justice* [*III Volumes*] (Cambridge: Cambridge University Press 2013).

Transitional truths are both contentious and instrumental. Judging and fact-finding rituals are creative processes and generate normative experiences [guilt and punishment] and narrative representations [verdicts, testimony, and reports] of the past. They are the accounts of mass violence through the prism of transitional justice. Meanwhile, in the process of historical explanation, accounts of the past continually evolve in response to the needs of the present, in dialogue with others and with our own imagination.[10] Current facts can later be revealed as semi-truths, lies, or vice versa. The discovery of new facts as well as debate and reinterpretation continually improve our insight into and understanding of historical events. Historians therefore not only study the past but also the way in which the past is dealt with – how is it used and how it is abused.

Agents of Justice and Truth

A dominant response to mass crime is supranational criminal justice. Its agents aim to pursue the chief violators of international humanitarian law and to discourage potential offenders. The ICC is the system's permanent representative. It took the ICC one decade to complete its first trial, against Thomas Lubanga Dyilo.[11] The Congolese militiaman joined the assembly of mass atrocity convicts, alongside Herman Goring, Adolf Eichmann, Théoneste Bagosora, Charles Taylor, and Kang Kek Iew. Their faces are emblematic of historical injustices and illustrate the twentieth-century evolution and application of international criminal law.[12]

10 Michael Jackson, *The Politics of Storytelling: Violence, Transgression, and Intersubjectivity* (Copenhagen: Bjørnlund, 2002) 15.

11 Lubanga Dyilo was convicted for enlisting, conscripting, and using child soldiers in Congo and was sentenced to 14 years' imprisonment. ICC, *Prosecutor vs. Lubanga: Judgment*; and ICC, *Prosecutor vs. Lubanga: Decision on Sentence pursuant to Article 74 of the Statute* (The Hague, 10 July 2012).

12 International Military Tribunal (Nuremberg; IMT); International Military Tribunal for the Far East (Tokyo; IMTFA); United Nations International Criminal Tribunal for the Former Yugoslavia (UN/ICTY); United Nations International Criminal Tribunal for Rwanda (UN/ICTR); Special Court for Sierra Leone (SCSL); Extraordinary Chambers in the Courts of Cambodia (ECCC); Regulation '64 panels in Kosovo ('64 Panels); War Crimes Chamber in the Court of Bosnia and Herzegovina (CtBiH); Iraqi High Tribunal (IHT); Special Panels for Serious Crimes in East Timor (ETSPSC); Special Tribunal for Lebanon (STL); Extraordinary African Chambers (EAC). Similar models have been discussed in relation to Burundi, Sudan, Afghanistan, Palestine and the Occupied Territories, Liberia, Democratic Republic of Congo and Sri Lanka. Sarah Williams, *Hybrid and Internationalised Criminal Tribunals. Selected Jurisdictional Issues* (Hart Publishing 2012) & Yves Beigbeder, *International Criminal Tribunals Justice and Politics* (New York 2012).

After the Nuremberg and Tokyo trials, the Genocide Convention defined and criminalized organized, large-scale, and destructive violence targeted at national, ethnic, racial, or religious groups.[13] The United Nations simultaneously explored the 'desirability and possibility' of a judicial organ to try violators of the Convention.[14] But it was not until 1993 that the first international court to investigate and prosecute genocide was established – the UN International Criminal Tribunal for the Former Yugoslavia (ICTY).[15] Its counterpart for Rwanda (ICTR) was the first international court to convict on the basis of the Convention in 1998.[16] The ICC has enduring jurisdiction to try genocide crimes – alongside crimes against humanity, war crimes, and aggression[17] – although only if these crimes were committed after July 2002.[18] Out of thirty-one suspects, the ICC has so far only charged President Omar Al Bashir with genocide, allegedly committed in Sudan's Darfur region.[19]

The ICC is a court of last resort. It may only intervene when states are unwilling or unable to investigate and prosecute crimes.[20] In those cases, ICC member states, the UN Security Counci,l[21] or the Office of The Prosecutor (OTP) can trigger investigations. The prosecutor then decides if there are reasonable grounds to proceed.[22] So far, the court has opened

13 United Nations General Assembly (UNGA), *A. Adoption of the Convention on the Prevention and Punishment of the Crime of Genocide* (UN-doc. A/RES/260 (III); 9 December 1948) art. 2.

14 UNGA, *Convention on the Prevention and Punishment of the Crime of Genocide* art. I & IV & UNGA, *B. Study by the International Law Commission on the Question of an International Criminal Jurisdiction* ((UN-doc. A/RES/260 (III); 9 December 1948).

15 United Nations Security Council (UNSC), *Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991* (UN-doc. S/25704; 3 May 1993) art. 4.

16 United Nations International Criminal Tribunal for Rwanda (UN/ICTR), *Prosecutor versus Jean Paul Akayesu: Judgement* (Case No. ICTR-96-4-T; Arusha, 2 September 1998) and UN/ICTR, *Prosecutor versus Akayesu: Sentence* (Arusha, 4 October 1998).

17 Jurisdiction commences in 2017. ICC, 'Amendments to the Rome Statute of the International Criminal Court on the crime of aggression (Annex 1), *Resolution RC/Res. 6* (11 June 2010) art. 8 bis.

18 *Rome Statute of the International Criminal Court* (UN-doc. A/CONF/183/9*; 17 July 1998) & United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. Rome, 15 June – 17 July 1998, *Official Records. Volume II: Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (UN-doc. A/CONR183/13(Vol. II); New York 2002) 121.

19 ICC, *Situation in Darfur, in the case of the Prosecutor v. Omar Hassan Ahmad Al Bashir: warrant of arrest for Omar Hassan Ahmad Al Bashir* (Case No. ICC-02/05-01/09; The Hague 12 July 2010).

20 *Rome Statute,* art. 17.1.

21 The United States of America (USA) has signed (2000) but not ratified the Rome Statute. The Russian Federation has also signed (2000) but not ratified the statute. The People's Republic of China has not signed.

22 *Rome Statute,* arts. 13-15.

formal investigations in Uganda, the Democratic Republic of Congo, the Central African Republic, Sudan, Kenya, Libya, Cote D'Ivoire, and Mali. It has conducted preliminary examinations in seven other countries.[23] Whereas the UN ad hoc tribunals – and other multinational courts – dealt with specific geographical areas, the ICC can potentially investigate crime scenes around the world. Nevertheless, Africa remains its only playground.

Except for the Ethiopian Red Terror truth prosecutions (1992-2008),[24] African atrocity trials have not been designed to expose the past or to write history. Instead, they present simplified glimpses of it as they apply the law to cases they are presented with. Truth commissions are alternative or complementary venues for a rendezvous with past violence. They are better equipped to reveal the underbelly of mass atrocity and to meet the longing or the right to know.[25] Although Ugandan President Idi Amin Dada was the first to initiate such an organ in 1974,[26] truth commissions became prevalent instruments to settle with past repressive regimes in

23 Preliminary examinations assess whether to proceed with a formal investigation. ICC, Office of The Prosecutor (OTP) *Policy Paper on Preliminary Investigations: Draft* (The Hague, 4 October 2010). As of February 2013: Afghanistan, Georgia, Guinea, Columbia, Honduras, Korea, and Nigeria. The Prosecutor closed pre-investigations in Iraq, Palestine, and Venezuela. ICC, OTP, *OTP Briefing*, Issue 131 (12 September – 1 October 2012). The OTP issued public indictments against thirty-one persons, of whom six persons have been arrested and have come to The Hague voluntarily. Its judges have delivered two verdicts [Lubanga & Matthieu Ngudjolo Chui] and are set pronounce a third in 2013 [Katanga]. For a critical review on the case selection, see: Human Rights Watch (HRW), *Unfinished Business. Closing Gaps in the Selection of ICC Cases* (1-56432-810-4; New York 2011).

24 The Office of the Chief Special Prosecutor of the Transitional Government of Ethiopia (SPO) was tasked to prosecute perpetrators but also record the crimes of Ethiopia's Red Terror. Sarag Vaughan, 'The Role of the Special Prosecutor's Office', in: Kjetil Tronvoll, Charles Schaefer & Girmachew Alemu Aneme (eds.), *The Ethiopian Red Terror Trials: Transitional Justice Challenged* (Rochester 2009) 51-67.

25 The right to truth about historical injustices is commonly accepted as an inalienable and non-derogable right recognized in multiple international treaties, jurisprudence, and UN resolutions. It explicitly brings along the duty of states to meet this rights. United Nations Economic and Social Council (UNESC), *Question of the impunity of perpetrators of human rights violations (civil and political): revised final report prepared by Mr. Joinet pursuant to sub-commission decision 1996/119* (UN-doc. CN.4/Sub.2/1997/20/Rev.1; 2 October 1997); UNESC, *Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights* (UN-doc. E/CN.4/2006/91; 8 February 2006); and Jasmin Naqvi, 'The right to the truth in international law: fact or fiction', *International Review of the Red Cross*, 862 (June 2006) 253-254.

26 Commission of Inquiry into the Disappearances of People in Uganda since the 25th of January 1971, *Report of the Commission of Inquiry into the Disappearances of People in Uganda since the 25th of January 1971* (1975) .

South America.[27] In Africa, at least fifteen truth-revealing mechanisms were set up, including the famous post-Apartheid Truth and Reconciliation Commission for South Africa (1995-1998).[28] Although these truth-seeking or truth-revealing bodies differ in scale, mandate, and name, they share the common feature that they have sought to investigate past human rights abuses, unravel its architecture, and fashion a final record.[29] They produce a collective, authoritative, and reconciliatory narrative about the past.

Truth commissions are ambitious projects, and critics have argued that they can merely uncover partial truths.[30] Nevertheless, they can at least reduce the number of lies about the past[31] and possibly defy distorted versions of history, propagated by an outgoing regime or defeated military junta. Besides, they can bring the scale and impact of a violent past to the public consciousness and identify what has happened to people who 'disappeared' or are buried in unknown mass graves.[32] Truth and reconciliation commissions – like trials – opt for 'usable truths' and employ the process of truth-finding as a vehicle to promote reconciliation, prevention, and national unity.[33] Some organize public hearings [oral history events] and

27 Subsequently: Bolivia; Argentina; Uruguay; Chile; El Salvador; Honduras; Haiti; Ecuador; Guatemala; Uruguay; Panama; Peru; Chile; Paraguay; Ecuador; Brazil; and Suriname.

28 Uganda [II]; Chad; Zimbabwe; Ethiopia; Rwanda (II); South Africa (III); Democratic Republic of Congo; Ghana; Guinea; Togo; Morocco; Liberia; Sierra Leone; Rwanda; Nigeria; Kenya; Cote D'Ivoire. A TRC for Tunesia is the making and there are prospects for one in Burundi.

29 See for references: Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (New York: Routledge, 2011); Mark Freeman, *Truth Commissions and Procedural Fairness* (Cambridge: Cambridge University Press, 2006); Paul Gready, *The Era of Transitional Justice. The aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (New York: Routledge, 2011); Berber Bevernage. *History, Memory, and State-Sponsored Violence. Time and Justice.* (New York: Routledge, 2011); Robert I. Rotberg & Dennis Thompson (eds.), *Truth versus Justice. The morality of Truth Commissions* (Oxford: Oxford University Press, 2000); Mark Freeman & Priscilla Hayner, 'Truth-Telling', in: David Bloomfield, Teresa Barnes & Luc Huyse (eds.), *Reconciliation after Violent Conflict. A Handbook* (Stockholm: IDEA, 2003); Trudy Huskamp Peterson, *Final Acts: A Guide to Preserving the Records of Truth Commissions* (Baltimore: Johns Hopkins University Press, 2005).

30 Janet Cherry, 'Historical Truth: Something to fight for' in: Charles Villa-Vicencio & Wilhelm Verwoerd (eds.), *Looking back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa* (Cape Town: UCT Press, 2000), 134-143, there: 143; Charles Villa-Vicencio & Wilhelm Verwoerd, 'Constructing a report. Writing up the "truth"', in: Robert I. Rotberg & Dennis Thompson (eds.), *Truth versus Justice. The morality of Truth Commissions* (Oxford: Oxford University Press, 2000) 288-289.

31 Michael Ignatieff, 'Articles of faith', *Index On Censorship*, 5/96 (September 1996) 113.

32 Mark Freeman & Priscilla Hayner, 'Truth-Telling', in: David Bloomfield, Teresa Barnes & Luc Huyse (eds.), *Reconciliation after violent conflict. A handbook* (Stockholm: IDEA, 2003)125.

33 The South African TRC held four different notions of truth and utilized them at various levels: (1) factual and forensic truth on a personal [who, what, where, and when] and social

catalyze collective debate on complex social, political, and legal issues. Alternatively, truth commissions can also be used to veil the past. New regimes use them as a façade for impunity, to whitewash criminal records, or to accept non-legal responsibility. Truth commissions can also distort, falsify, or revise the historical record and use it for social engineering, gaining trust, and feigning legitimacy.

Fact-finding Without Facts?

Whereas truth commissions are a kind of proto-historian,[34] courts appear to be less competent chroniclers.[35] Instead, the courts themselves end up becoming historical events. Nevertheless, criminal tribunals are factories of historical evidence [sources]. Their trials are the workshops of detailed fact and the forum in which conflicting narratives [prosecution vs. defence vs. victims] are contested. The end products [decisions and judgements] of trials, however, are just condensed digests. Through the lens of law, they submit a narrative representation of individual transgression within its immediate circumstances. Nonetheless, when confronted with non-documentary societies, their groundwork is often uncertain. This ultimately results in simplistic and distorted images of African violence. [36]

International judges are required to determine individual guilt or innocence 'beyond any [a] reasonable doubt'. It is for prosecutors to meet that threshold and detect, collect, and record convincing evidence that supports the scenario of events listed in their charge sheet. Ideally, in a Western-style

[context, causes, and patterns] level; (2) personal and narrative truth [stories, myths, and experiences]; (3) social truth [through interaction, discussion, and debate]; and (4) healing and restorative [public acknowledgement, disclosure]. Truth and Reconciliation Commission of South Africa (TRCSA), *Truth and Reconciliation Commission of South Africa: Report,* Volume 1 (October 1998) 110-114.

34 See: "Truth Commissions as Protohistorians", *V.V.N.-Berichten, Tijdschrift van de Vereniging voor de Verenigde Naties,* jg. 26, nr. 117, 2002, nr. 4, p. 3-19 [in Dutch].

35 See: William Schabas, 'History, International Justice and the Right to Truth', in *Unimaginable Atrocities. Justice, Politics, and Rights at the War Crimes Tribunals* (Oxford: Oxford University Press 2012) 153-172; Fergal Gaynor, 'Uneasy Partners: Evidence,Truth and History in International Trials,*Journal of International Criminal Justice*, 10 (5) (2012) 1257-1275; and Richard Ashby Wilson, *Writing History in International Criminal Trials* (Cambridge: Cambridge University Press, 2011).

36 See: Gerhard Anders, 'Testifying about 'Uncivilized Events': Problematic Representations of Africa in the Trial against Charles Taylor', *Leiden Journal of International Law*, 24 (2011), pp. 937-959; Richard Ashby Wilson, 'Through the Lens of International Criminal Law: Comprehending the African Context of Crimes at the International Criminal Court', *Studies in Ethnicity and Nationalism*, 11 (1) (2011) 106-115.

criminal trial, investigators follow a paper trail: documents, forensics, and physical artefacts link the crime to a person. The Nazi archives, for example, proved to be of great assistance to the Nuremberg prosecution in presenting its cases.[37] However, torturers, genocidaires, or warlords share a survival technique of denial: they do not keep records and annihilate all possible traces. The consequence is that contemporary tribunals – especially when working in oral societies – are forced to rely heavily on witness testimony. It poses a complex fact-finding challenge: the data of atrocity crimes is embedded in the minds of those who were close to the events as victim, perpetrator, or bystander.[38]

Recent studies demonstrate how this state of affairs impairs fact-finding processes and truth-ascertaining capacities. Eyewitness testimony at international tribunals proves to be of questionable reliability.[39] Nancy Combs showed that witnesses at the Rwanda and Sierra Leone tribunals had a hard time providing the kind of testimony that fact-finders need to determine, with any kind of certainty, basic facts like who did what to whom. Oral testimony at these tribunals is frequently vague, lacks detail, and is often inconsistent with earlier written statements. These deficiencies stem from multiple causes: witnesses' lack of education, investigator errors, language interpretation, cultural divergences between the witnesses and the courtroom, evasion, or perjury.[40] In addition, due to physical and psychological erosion of the brain, witnesses' memories tend to simply fade, distort, or become influenced over time.

In this scenario, judges face the near-impossible task of considering witness credibility and of ensuring that the content of what has been said has been accurately conveyed in the trial setting. International tribunals assert a fact-finding competence they do not possess. On the surface, they appear to be Western-style trials, but in practice they constitute a much less reliable fact-finding mechanism.[41] Thus, the recollection of mass crimes in non-Western contexts is embedded in the memories of witnesses, and these recollections can be fractured, misinterpreted, or orchestrated. These

37 Nancy Amoury Combs, *Fact-Finding Without facts. The Uncertain Evidentiary Foundations of international Criminal Convictions* (Cambridge: Cambridge University Press, 2010) 11.

38 For an analysis, see: Robert Cryer, 'A Long Way from Home: Witnesses before International Criminal Tribunals', *International Commentary on Evidence*, 4 (2006) art. 8.

39 Combs, *Fact-Finding Without facts,* 4; Caroline Buisman, *Ascertainment of the Truth in International Criminal Justice* (Ph.D. dissertation; January 2012).

40 Julia Romasevych & Paul Anstiss, 'When facts are thin.' Interview: Nancy Combs', *International Justice Tribune*, 112 (8 September 2010) 4.

41 Romasevych, 'When facts are thin', 4 & Combs, *Fact-Finding Without facts,* 176.

risks pose epistemological questions as to how to evaluate testimonies, judgements, and facts and how to assess their implication for the historical record of mass crimes.

Mass Accountability: Rwanda

Between 1990 and 1994, Rwanda experienced insurgency, intra-state warfare, and genocide. The Rwandan Armed Forces (FAR), Interahamwe and Impuzamugambi militias, civilians, and the Rwandan Patriotic Army/Front (RPA/F) all committed human rights violations. The dust settled on 19 July 1994, and in the subsequent eighteen years, Rwanda used prosecutions, truth-finding, reconciliation initiatives, reintegration, re-education, and reparations to move towards internal peace.[42]

During the war, an international non-governmental commission of inquiry documented government and rebel human rights violations and concluded that the Rwandan state committed acts of genocide against Tutsis.[43] Days into the massacres – on 13 April 1994 – the RPF envoy at the UN requested the UN Security Council to found a "war crimes tribunal and apprehend persons

42 Besides the mechanisms further discussed in this chapter, Rwanda established various post-genocide TJ initiatives: National Unity and Reconciliation Commission (NURC 1999); *ingando* solidarity camps (see the previous chapter by Hoeksema); Abakangurambago (reconciliation volunteers); Ubusabana (community celebrations); Itorero (civic education); National Commission for the Fight Against Genocide (CNLG, 2007); Compensation and Reparation policy. See: Charles Villa-Vicencio, Paul Nantulya Tyrone Savage, *Building Nations. Transitional Justice in the African Great Lakes Region: Burundi, The DRC, Rwanda, Uganda* (Cape Town, UCT Press, 2005) 86-95.

43 Human Rights Watch (New York), the International Federation of Human Rights (Paris), the International Center of Human Rights and Democratic Development (Montreal), and the Interafrican Union of Human Rights (Ouagadougou). Among its members were two trained historians: Alison Des Forges and William Schabas. *Rapport de la commission internationale d'enquête sur les violations des droits de l'homme au Rwanda depuis 1er Octobre 1990* (*7-21 janvier 1993*). *Rapport Final* (March 1993) or Human Rights Watch, *Report of the International Commission of Investigation on Human Rights Violations in Rwanda since October 1, 1990* (*January 7-21, 1993*) (New York: Human Rights Watch, 1993). At the request of the RPF, the commission planned a second trip that never took place since the genocide unfolded. Human Rights Watch (HRW) 'Rwanda: Human Rights Developments.' In: Human Rights Watch (HRW), *World Report 1994: Events of 1993* (www-text: http://www.hrw.org/reports/1994/WR94/Africa-06.htm; last accessed September 20 2012); Priscilla B. Hayner, "Fifteen Truth Commissions – 1974 to 1994," *Human Rights Quarterly*, 16 (1994) 597-633: 629-632; Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (New York: Routledge, 2011) 16; and Paul Christophe Bornkamn, *Rwanda's Gacaca Courts. Between Retribution and Reparation* (New York: Oxford University Press, 2012), 22.

responsible for the atrocities",[44] but no official request was endorsed as the Rwandan regime held a rotating seat.[45] The transitional government filed a new request,[46] and the ICTR was set up shortly thereafter. It was tasked with 'prosecut[ing] persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994'.[47] The tribunal charged 92 Rwandans and one Belgian of whom 83 were tried (the other nine suspects remain at large).[48] Its residual work has been taken over by the Mechanism for International Criminal Tribunals (MICT) since July 2012. [49]

On a national scale, the RPF arrested an estimated 120,000 people, intending to criminally prosecute everyone involved in the genocide.[50] Simultaneously, Rwanda convened an international conference to discuss its transitional justice strategy,[51] resulting in the establishment of specialized

44 UNSC, *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda* (UN.doc.: S1999/1257, 15 December 1999), 68.

45 Kingsley Moghalu, *Rwanda's Genocide: The Politics of Global Justice* (New York: Palgrave, 2005) 20.

46 UNSC, *Letter Dated 28 September 1994 from the Permanent Representative of Rwanda to the United Nations addressed to the president of the Security Council* (UN-doc. S/1994/1115, 29 September 1994) 4.

47 UNSC, *Resolution 955. Annex: Statute of the International Tribunal for Rwanda* (UN-doc. S/RES/955 (1994), 8 November 1994). The only country voting against its establishment was Rwanda.

48 As of 11 May 2012, the Tribunal had completed the work at the trial level with respect to 83 of 93 accused. This includes 52 first-instance judgements involving 72 accused, six referrals to national jurisdictions (three apprehended accused and three fugitive cases), two withdrawn indictments, and three indictees who died prior to or in the course of the trial. Appellate proceedings have been concluded in respect of 45 persons. See: Security Council, *Report on the completion strategy of the International Criminal Tribunal for Rwanda* (*as at 11 May 2012*), (UN-doc. S/2012/349, 22 May 2012) para. 3. For a detailed and up-to-date list: UN/ICTR, *Status of Cases* (www-text: http://www.UN/ICTR.org/Cases/tabid/204/Default.aspx, accessed: 4 February 2013).

49 UN/ICTR, *Mechanism for International Criminal Tribunals* (*MICT*) *begins work in Arusha* (press release: ICTR/INFO-9-2-725.EN, 2 July 2012). The MICT carries out a number of essential functions of the UN/ICTY and UN/ICTR after the completion of their respective mandates. UNSC, 'Annex 1: Statute of the International Residual Mechanism for Criminal Tribunals,' *Resolution 1966* (UN-doc. S/RES/1966, 22 December 2010).

50 Paul Christophe Bornkamn, *Rwanda's Gacaca Courts. Between Retribution and Reparation* (New York: Oxford University Press, 2012) 22.

51 The conference stressed the need to bring perpetrators of genocide to justice, rejected any consideration of amnesty, and discussed two alternative proposals of specialized tribunals: a specialized court for genocide cases or a specialized chamber in ordinary courts. Besides criminal prosecutions, the conference discussed the possibility of a truth commission, traditional courts (*gacaca*) and alternative sanctions. *Recommendations of the Conference held in Kigali from November 1st to November 5th, 1995* (Kigali, December 1995) 8-9 & 16-24.

chambers in the ordinary and military courts to try genocide and crimes against humanity committed since October 1990.[52] Genocide offences were categorized,[53] and a confession procedure[54] was put in place. The first trials began in December 1996, and from 1997 through June 2002, 7,211 persons were tried – of whom 1,386 were acquitted.[55] Several hundred people were sentenced to death, but no public executions have been carried out since 24 April 1998.[56] Classic trials soon proved to be inadequate in criminally prosecuting all suspects in and outside the country. Rwanda therefore established *inkiko gacaca* – or lawn courts in Kinyarwanda – in 2001.[57] Thousands of *inyangamugayo* (lay judges) were nominated to oversee the process of: "(1) truth-finding; (2) speeding up trials; (3) combating impunity; (4) sparking national unity and reconciliation; and (6) demonstrating that Rwandans can resolve their own problems'.[58] From 10 March 2005 until the closing of *gacaca* in June 2012, 12,103[59] grassroots courts throughout

52 *Organic Law No 08/96 of 30th August 1996 on The Organization of the Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed since 1 October 1990*, Official Gazette of the Republic of Rwanda, Year 35, No. 17 (1 September 1996) article 1.

53 Category 1: a) planners, organizers, instigators, supervisors, and leaders; 1b) official, military, religious, or militia perpetrators and fosterers; c) notorious murderers; d) sexual offenders; Category 2: perpetrators, conspirators, or accomplices of murder; Category 3: persons who assaulted others; Category 4: persons who committed offences against property. *Organic Law No 08/96 of 30th August 1996*, art. 2.

54 Confessions required: (a) a detailed description of all the offences, including the date, time, and the scene of each act as well as the names of victims and witnesses; (b) information with respect to accomplices, conspirators, and all other information useful to the exercise of public prosecution; (c) an apology; (d) an offer to plead guilty.

55 Alison Des Forges & Timothy Longman, 'Legal Responses to Genocide in Rwanda' In: Eric Stover & Harvey M. Weinstein (eds.) *My Neighbour, My Enemy. Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004) 49-68: 59; William Schabas estimated 10,000 cases by 2005: William A. Schabas, 'Genocide Trials and Gacaca Courts, *Journal of International Criminal Justice*, No. 3 (2005) 879-895; Nicholas A. Jones, *The Courts of Genocide. Politics and the Rule of Law in Rwanda and Arusha* (New York: Routledge, 2010) 88.

56 Des Forges, 'Legal Responses to Genocide in Rwanda', 60-61. The death penalty was abolished in 2007: *Organic Law No 31/2007 of 25 July 2007 relating to the abolition of the death penalty*, Official Gazette of the Republic of Rwanda, Year 46, No, special (25 July 2007).

57 'Organic Law N° 40/2000 Of 26/01/2001 Setting up "Gacaca Jurisdictions" and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity Committed Between October 1, 1990 and December 31, 1994', *Official Gazette of the Republic of Rwanda,* n°6 (15 March 2001). The law was thoroughly amended the process: 15 July 2001; 19 June 2004; 12 July 2006; 1 March 2007; and 1 June 2008.

58 Republic of Rwanda, National Service of Gacaca Courts (NSGC), *Summary of the Report Presented at the Closing of Gacaca Courts Activities* (Kigali, June 2012) 34.

59 9,013 cell-level courts; 1,545 sector-level courts (plus 1,803 additional benches to complement these courts; 1,545 appeals courts (plus 412 additional benches). See: NSGC, *Summary Report*, 33.

the whole country had tried 1,003,227 people in 1,958,634 cases.[60] Although the *gacaca* process has met with both praise and criticism from inside and outside Rwanda,[61] its process has microscopically documented its genocide to an unprecedented extent.[62]

Besides Rwandan and supranational schemes, other models of inquiry and justice have dealt with the aftermath of the Rwandan genocide. Parliaments in Belgium, Switzerland, and France installed special commissions of inquiry,[63] while the UN and the Organisation of African Unity (now African Union: AU) investigated the 1994 bloodbath on their behalf. [64] In addition to these fact-finding exercises, a range of countries opted for criminal prosecutions. Judiciaries in Belgium, the Netherlands, Canada, Switzerland, France, Finland, Germany, the United Kingdom, the United States of America, Denmark, Sweden, Norway, and Spain have investigated, indicted, or tried dozens of Rwandans suspected of crimes committed in 1994 under the principle of universal jurisdiction.[65] Some of these countries

60 For a complete overview of cases, convictions, guilty pleas, as well as a timeline, see: NSGC, *Summary Report*, 34-39.

61 For instance: Human Rights Watch (HRW), *Rwanda. Justice Compromised. The Legacy of Rwanda's Community-Based Gacaca Courts* (New York 2011).

62 The Gacaca archive currently consists of some 20,000 boxes, which are kept in 1,000 square meters of a large building at the National Police Headquarters in Kigali.

63 Joseph Voyame, Richard Friedli, Jean-Pierre Gern & Anton Keller, *La Cooperation Suisse au Rwanda. Rapport du Groupe d'Etude institue par le DFAE* (Departement Federal des Affaires Etrangeres; Bern 1996); Senat de Belgique, Commission d'Enquete parlementaire concernant les evenements au Rwanda, *Rapport fait au nom de la commission d'enquete par MM Mahoux et Verhofstadt*, Senat de Belgique, session de 1997-1998 (6 December 1997); and France: Assemblee Nationale, *Rapport D'Information Par la Mission D'Information de la Commission de le Defense Nationale et des Forces Armees et de la Commission des Affaires Etrangers, sur les opérations militaires menées par la France, d'autres pays et l'ONU au Rwanda entre 1990 et 1994* (December 1998).

64 UNSC: United Nations Security Council, *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda* (UN.doc.: S1999/1257, 15 December 1999) & Organisation of African Unity: International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events, *Rwanda. The preventable genocide* (Organisation of African Unity 2000).

65 Most cases concerned genocide crimes, while few dealt with alleged crimes committed by the Rwandan Patriotic Front (RPF). Judge Jean Louis Bruguiere indicted nine RPF staff members, including the present Minister of Defense James Kabarebe, for having been involved in the assassination of President Habyarimana in the airplane attack on 6 April 1994. See: Tribunal de Grande Instance de Paris, *Delivrance de Mandats D'Arrets Internationaux* (Parquet 972952303/0, Cabinet 41; Paris 17 November 2006). Spanish Investigative Judge Andreu Merelles indicted 40 high-ranking Rwandan officials: *Juzgado Central de instruccion No. 4, Audiencia Nacional, Sumario 3/2.008 – D. Auto* (7 February 2008). See also: International Federation for Human Rights

have sent criminal files to Arusha or vice versa, including transfers to a specialized chamber in Rwanda.[66]

Hybrid Transition: Sierra Leone

While the genocide that killed up to one million Rwandans received unprecedented judicial attention, responses to the large-scale killings, amputations, and annihilation in Sierra Leone took place in the shadow of Rwanda. Between 1991 and 2002, Sierra Leone went through a violent period of insurgency and civil war. Human rights were violated by the Revolutionary United Front (RUF), the Armed Forces Revolutionary Council (AFRC), the Civil Defence Forces (CDF), the Sierra Leonean Army (SLA), ECOMOG peacekeepers, and (foreign) mercenary groups.[67] In 1999, there was a pause in the violence after the signing of a peace agreement in Lomé [the so-called Lomé Agreement], which, inter alia, provided for disarmament, amnesty,[68] and a truth and reconciliation commission (TRC).[69] Hostilities resumed in May 2000 and a month later, President Tejan Kabbah invited the UN to set up a tribunal "to try and bring to credible justice those members

(FIDH) & Redress Trust (REDRESS), *Universal Jurisdiction Trial Strategies. Focus on victims and witnesses. A report on the Conference held in Brussels, 9-11 November 2009* (November 2010).

66 Cour de Cassation (ch. des vac.), *Proc. gén., demandeur en desaisissement, en cause B T* (n° P.96.0869 F*;* 9 July 1996); The Court of The Hague, *Interlocutory decision.* LJN: BB8462 (Rechtbank 's-Gravenhage, 09/750009-06 + 09/750007-07 English translation; 24 July 2007); United Nations International Criminal Tribunal for Rwanda (UN/ICTR), 'Tribunal Transfers Two Accused to France for Trial, *Press Release* (ICTR/INFO-9-2-538.EN; 20 November 2007); and United Nations International Criminal Tribunal for Rwanda (UN/ICTR), 'Munyarugarama Case Transferred to Rwanda', *Press Release* (ICTR/INFO-9-2-724.EN; 28 June 2012).

67 Truth and Reconciliation Commission for Sierra Leone (TRCSL), *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission,* Vol. II, 'Executive Summary' (Accra 2004) 3-22.

68 During the signing ceremony, the United Nations representative, Moses Okelo, added a last-minute handwritten disclaimer for international crimes to the broad amnesty provisions. It reads: "The United Nations holds the understanding that the amnesty provisions of the Agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law." William A. Schabas, 'Amnesty, the Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone', *Davis Journal of International Law & Policy*, 11 (2004) 145-169; 148 & 149; Priscilla Hayner, *Negotiating peace in Sierra Leone: Confronting the Justice Challenge* (Geneva: ICTJ, 2007) 17-18.

69 *Peace Agreement between the government of Sierra Leone and the Revolutionary United Front of Sierra Leone*, 7 July 1999 (UN-doc. S/1999/777; 12 July 1999).

of the Revolutionary United Front (RUF) and their accomplices [...]".[70] He declared that the war was over during a symbolic 'Arms Burning Ceremony' on 18 January 2002.

Amnesty, prosecutions, truth-finding, reconciliation, reparations, and re-integration were used in Sierra Leone to move towards peace.[71] The government and the UN jointly established the Special Court for Sierra Leone (SCSL).[72] Based in Freetown and Leidschendam, this hybrid court investigated and prosecuted those who bear the 'greatest responsibility' for violations of international humanitarian law and Sierra Leonean law committed in Sierra Leone since 30 November 1996.[73] Nine Sierra Leoneans (three RUF, two CDF, three AFRC) and the former Liberian president Charles Taylor have been tried and convicted, while other prime suspects died in detention, were murdered, or are still at large. [74] In lieu of the blanket amnesty, national courts in Sierra Leone refrained from prosecuting pre-Lomé atrocities. However, in 2005 and 2006, the High Court in Freetown held two trials against a total of 88 individuals for war-related crimes perpetrated in 2000. It convicted ten members of the RUF/P and seven members of the West Side Boys (WSB).[75]

70 UNSC, *Annex to the letter dated 9 August 2000 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council* (UN-doc. S/2000/786; 10 August 2000).

71 Martien Schotsmans, 'Blow your mind and cool your heart': Can tradition-based justice fill the transitional justice gap in Sierra Leone?', in: Nicola Palmer, Phil Clark and Danielle Granville (eds.), *Critical Perspectives in Transitional Justice* (Intersentia 2012) 263-287.

72 *Agreement between the United Nations and the government of Sierra Leone on the establishment of a Special Court for Sierra Leone & Statute of the Special Court for Sierra Leone* (Freetown 16 January 2002), annexed to: UNSC, *Report of the Planning Mission on the establishment of the Special Court for Sierra Leone* (UN-doc. S/2002/246; 8 March 2002).

73 *Statute of the Special Court for Sierra Leone*.

74 RUF: Special Court for Sierra Leone (SCSL), Appeals Chamber, *The Prosecutor against Issa Hassan Sesay, Morris Kallon & Augustine Gbao: Judgement* (Case. No. SCSL-04-15-A; Freetown 26 October 2009); CDF: Special Court for Sierra Leone (SCSL) Appeals Chamber, *The Prosecutor against Moinina Fofana & Allieu Kondewa: Judgement* (Case No. SCSL-04-14-A; Freetown 28 May 2008); AFRC: Special Court for Sierra Leone (SCSL) Appeals Chamber, The Prosecutor against Alex Tamba Brima, Brima Bazzy Kamara, Santigie Barbor Kanu: Judgement (Case. No. SCSL-2004-16-A; Freetown 28 February 2008); and Special Court for Sierra Leone (SCSL), *Prosecutor versus Charles Ghankey Taylor: Judgement* (Case No. SCSL-03-01-T; The Hague 18 May 2012). The case is currently before the Appeals Chamber, with a verict due in the first quarter of 2013. Prime suspects Foday Saybana Sankoh (RUF) & Samuel Hinga Norman (CDF) died in prison. Samuel Bockarie (RUF) was killed. Johnny Paul Koroma (AFRC) remains at large.

75 Sigall Horovitz, *Sierra Leone: Interaction between International and National Responses to the Mass Atrocities* (DOMAC, 2009) 26-30.

Next to international prosecutions, a truth and reconciliation commission carried out its work between 2002 until 2004.[76] The TRC was given the mandate to establish an impartial historical record of the conflict and human rights abuses, to address impunity, to respond to the needs of victims, to promote healing and reconciliation, and to prevent recurrence.[77] Throughout its process, the TRC collected some 8,000 statements from Sierra Leone and the diaspora and held hearings [public, closed, thematic, event-specific] in Freetown and district capitals. The commission also carried out research, organized reconciliation workshops, and initiated a National Vision for Sierra Leone project. The TRC's findings and recommendations were published in a four-volume report (Witness to Truth), a child-friendly and secondary school version, and a short film.[78]

The formal processes of the SCSL and the TRC were driven by concepts of justice, truth, and reconciliation, which were alien to local communities.[79] Although customary justice systems existed among communities in Sierra Leone, they appeared to be insufficient to reckon with the scale of the atrocities.[80] In this vacuum, non-governmental initiatives sought to build a bridge between high-level and low-level transitional justice. An exemplary mechanism is Fambul Tok, which facilitates unofficial community-based reconciliation

76 On the difficulties caused by this coexistence, see William A. Schabas, The Relationship between Truth Commissions and International Courts: The Case of Sierra Leone, *Human Rights Quarterly,* 2003, 1035-1066.

77 'The Truth and Reconciliation Commission Act 2000', *Supplement to the Sierra Leone Gazette Vol. CXXXI* (Freetown, 10 February 2000).

78 Truth and Reconciliation Commission for Sierra Leone (TRCSL), *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Accra 2004); Truth and Reconciliation Commission for Sierra Leone (TRCSL), *Truth and Reconciliation Commission Report for the Children of Sierra Leone. Child Friendly version* (Freetown 2004); Truth and Reconciliation Commission for Sierra Leone (TRCSL), *TRC Report: A Senior Secondary School Version* (Freetown 2005); Truth and Reconciliation Commission for Sierra Leone (TRCSL), *Witness to Truth: A Video Report and Recommendations from the TRC of Sierra Leone* (2004). All material, alongside testimonies, can be consulted at: http://www.sierraleonetrc.org.

79 Tim Kelsall, *Culture under Cross-Examination. International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press, 2009); Edward Sawyer & Tim Kelsall, 'Truth versus Justice? Popular views on the Truth and Reconciliation Commission and the Special Court for Sierra Leone', *Online Journal of Peace and Conflict Resolution*, no. 7.1 (2007) 36-68; & Martien Schotsmans, 'Blow your mind and cool your heart': Can tradition-based justice fill the transitional justice gap in Sierra Leone?', in: Nicola Palmer, Phil Clark and Danielle Granville (eds.), *Critical Perspectives in Transitional Justice* (Mortsel: Intersentia, 2012) 263-287.

80 Schotsmans, 'Blow your mind and cool your heart', 263-287; Joe A.D. Alie, 'Reconciliation and traditional justice: tradition-based practices of the Kpaa Mende in Sierra Leone' in: Luc Huyse and Mark Salter, eds., *Traditional Justice after Violent Conflict. Learning from African experiences* (Stockholm: IDEA, 2008) 123-146.

gatherings.[81] By drawing on age-old traditions of confession, apology, and forgiveness, communities throughout the country have been organizing ceremonies that include truth-telling bonfires and cleansing ceremonies.[82]

Liberia's conflicts [1989-2003] were closely intertwined with the Sierra Leonean war. The former Liberian president played a central role in West-African politics and transitional justice in the region.[83] He stepped down after the Special Court warranted his arrest, leading to a Liberian peace agreement that called for a truth and reconciliation commission.[84] Established in 2005, the TRC was to investigate Liberia's 'turbulent history' between 1979 and 2003 and recommend steps towards peace, justice, and reconciliation.[85] The first hearing began on 8 January 2008, one day after the first prosecution witness appeared in the trial against Taylor in The Hague.[86] The commission released its final report in June 2009.[87] The report docu-

81 Developed by the Sierra Leonean *Forum of Conscience* and *Catalyst for Peace* (USA), Fambul Tok was incorporated as an international non-governmental organization, *Fambul Tok International* (FTI), in late 2009. Fambul Talk International, 'About us' (www-text: http://www.fambultok.org/about-us, last visit: 4 February 2013).

82 Elizabeth Hoffman, 'Reconciliation in Sierra Leone: Local Processes Yield Global Lessons, *The Fletcher Forum of World Affairs*, 32 (2) (Summer 2008) 129-141: 132; Schotsmans, 'Blow your mind and cool your heart', 263-287; Kateřina Werkman, *Seeking community reconciliation through traditional practice. The Sierra Leonean experience* (PhD Thesis; Prague 2012); and *Fambul Tok* (www-text: http://www.fambultok.org, last visit 25 September 2012).

83 Adekeye Adebajo, *Building Peace in West Africa. Liberia, Sierra Leone, and Guinea-Bissau* (London 2002); Adekeye Adebajo, *Liberia's civil war. Nigeria, ECOMOG, and Regional Security in West Africa* (Boulder & London 2002; Amnesty International (AI), *Liberia: Truth, Justice, Reparation for Liberia's victims* (AI Index: AFR 34/001/2007; 15 February 2007).

84 Abdul Tejan-Cole, 'A Big Man in a Small Cell: Charles Taylor and the Special Court for Sierra Leone', in: Ellen L. Lutz & Caitlin Reiger (eds), *Prosecuting Heads of State* (Cambridge 2009) 205-233; Special Court for Sierra Leone (SCSL), *The Prosecutor against Charles Ghankay Taylor also known as Charles Ghankay Macarthur Dapkpana Tayor: indictment* (Case No. SCSL-03-I; Freetown 3 March 2003); *Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties* (Accra, 18 August 2003); and Priscilla Hayner, "Negotiating Peace in Liberia: Preserving the possibility for Justice" (Humanitarian Dialogue Center: 2007).

85 Ministry of Foreign Affairs [Liberia], *An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia. Approved June 10, 2005* (Monrovia, 22 June 2005) article IV.

86 Gibson W. Jerue, 'Liberians exhume the catalogue of horrors', *International Justice Tribune*, 81 (21 January 2008) 3-4.

87 Republic of Liberia Truth and Reconciliation Commission (TRCL), *Volume I: Preliminary Findings and Determinations Consolidated Final Report* (Monrovia 2009) & Republic of Liberia Truth and Reconciliation Commission (TRCL), *Volume II: Consolidated Final Report* (Monrovia 30 June 2009). A unique feature of the Liberian TRC was that it gathered statements from Liberians living in the United States of America (USA), the United Kingdom (UK) and Ghana, held public hearings in St. Paul, Minnesota (USA) and published a separate Diaspora report.

ments gross human rights violations and recommends the establishment of an Extraordinary Criminal Court.[88] In line with the historical and diaspora connections, the US judiciary tried and convicted Charles Taylor's son, Roy Belfast Jr., for torture committed by Taylor's Anti-Terrorist Unit (ATU).[89]

A Machiavellian Plan

> [...] justice demands that the accused be prosecuted, defended and judged, and that all the other questions of seemingly greater importance – of 'How could it happen?' and 'Why did it happen?' [...] be left in abeyance.[90]

Despite the discussion on whether they ought to write history, tribunals often cannot avoid dealing with the past. Criminal intentions/behavior or elements of mass crime can be inferred from past political, social, or economic events or conditions. It is no surprise that historians have been called to testify about the Balkans, Rwanda, Sierra Leone, or Congo. They illuminate context, details, and explanations. At the ICTR, the prosecutor's office was in fact driven by socio-historical explanations of the genocide. Behind the scenes in Arusha, Alison Des Forges – a historian, human rights activist and Rwanda expert – worked as a key prosecution witness. In effect, all principal ICTR indictments and judgements bear her stamp.[91] But Des Forges, flanked by expert witness colleagues Filip Reyntjens and Andre

Republic of Liberia Truth and Reconciliation Commission (TRCL), *Volume III, Appendix VII: A House with Two Rooms Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project: Executive Summary and Priority Recommendations* (Monrovia 2009) & The Advocates for Human Rights, *A House with Two Rooms: Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project* (St. Paul 2009). For a broader analysis: Laura A. Young & Rosalyn Park, 'Engaging Diasporas in Truth Commissions: Lessons from the Liberia Truth and Reconciliation Commission Diaspora Project', *International Journal for Transitional Justice,* Vol. 3 (2009) 341-361.

88 See: 'Annex 2. Draft Statute: Extraordinary Criminal Court', in: Republic of Liberia Truth and Reconciliation Commission (TRCL), *Volume II: Consolidated Final Report* (Monrovia 30 June 2009) 426-459.

89 Department of Justice, 'Roy Belfast Jr., A/K/A Chuckie Taylor, Sentenced on Torture Charges', *Press Release* (09-021; 9 January 2009) & United States Court of Appeals for the Eleventh Circuit, *United States of America versus ROY M. BELFAST, JR., a.k.a. Chuckie Taylor, a.k.a. Charles McArthur Emmanuel, a.k.a. Charles Taylor, Jr. a.k.a. Charles Taylor, II: Appeal from the United States District Court for the Southern District of Florida* (Case No. 09-10461; 15 July 2010).

90 Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York 1963) 3.

91 Scott Strauss & Lars Waldorf, 'Preface', in: Scott Strauss & Lars Waldorf (eds.) *Remaking Rwanda. State Building and Human Rights after Mass Violence* (Madison: University of Wisconsin Press, 2011) XV.

Guichaoua, had hoped that the ICTR's investigative means would be used to lay bare the full scope of the genocide.

Reyntjens suspended his work for the prosecutor, as evidence on a number of massacres committed by the RPF in 1994 did not lead to criminal charges.[92] Des Forges lamented the fact that OTP investigators had made no serious endeavor to gather documentary or forensic evidence.[93] Consequently, the court's first conviction – of Taba's bourgomastre Jean Paul Akayesu – was solely based on the witness testimony.[94] In the other early cases – versus Jean Kambanda [ex prime minister], Omar Serushago [Interahamwe leader], and Georges Ruggiu [RTLM journalist] – the evidence consisted of their guilty pleas to the facts they were accused of.[95] Altogether, the three confessors recognized and confirmed that there had been a genocide and that it had been organized and planned at the highest political and military levels – although as insider witnesses in other trials, their testimonies were riddled with lies, contradictions, and inconsistencies.[96] Throughout the lifespan (1994-2012) of the tribunal, the evidentiary basis

92 Like Alison Des Forges, Reyntjens is one of the leading experts on Rwandan law, politics, and history and has testified in Rwanda trials and before commissions of inquiry around the world. He has testified for the prosecution in the ICTR trials against Georges Rutaganda (1997) and Bagosora (2004) and later for the defense in the case against Joseph Kanyabashi (2007). In addition, he testified before parliamentary commissions in Switzerland, Belgium, and France as well as Rwanda trials in Canada, the USA, Switzerland, Belgium, Finland, Denmark, and the UK. Thijs Bouwknegt, 'Telephone Interview' *Filip Reyntjens*, 31 August 2012

93 Alison Des Forges & Timothy Longman, 'Legal Responses to Genocide in Rwanda' In: Eric Stover & Harvey M. Weinstein (eds.) *My Neighbour, My Enemy. Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press 2004) 49-68: 53.

94 Twenty-two eyewitnesses, five experts [including Des Forges] and one prosecution investigator. United Nations International Criminal Tribunal for Rwanda (UN/ICTR), *Prosecutor versus Jean Paul Akayesu: Judgement* (Case No. ICTR-96-4-T; Arusha, 2 September 1998) paras. 9-28.

95 UN/ICTR, *Prosecutor v. Jean Kambanda: Joint Motion for Consideration of Plea Agreement Between Jean Kambanda and the Office of the Prosecutor, Annexure A Plea Agreement Between Jean Kambanda and the Office of the Prosecutor* (Case No. ICTR-97-23-1; Arusha, 29 April 1998); UN/ICTR, *Prosecutor versus Jean Kambanda: Judgement & Sentence* (Case No. ICTR-97-23-S; Arusha, 4 September 1998) & UN/ICTR, Appeals Chamber, *Jean Kambanda versus The Prosecutor: Judgement* (Case No. ICTR-97-23-A; Arusha, 19 October 2000). The former Prime Minister – during the genocide – was the first to plead guilty at the ICTR. His appeal was later dismissed. UN/ICTR, *Prosecutor v. Omar Serushago. Plea Agreement between Omar Serushago and the Office of the Prosecutor* (Case No. ICTR-98-37; Arusha, 4 December 1998); UN/ICTR, *Prosecutor v. George Ruggiu. Plea Agreement between Georges Ruggiu and the Office of the Prosecutor* (Case No. ICTR-97-32-DP; Arusha, 11 April 2000). See for details: Nancy Amoury Combs, *Guilty pleas in International Criminal Law. Constructing a Restorative Justice Approach* (Stanford 2007) 91- 113.

96 Kambanda immediately stopped his cooperation when he found out that the OTP called for a life sentence and that Serushago's and Ruggiu's testimonies in the *Media trial* were riddled with lies, inconsistencies, and contradictions. UN/ICTR, *Prosecutor v. Ferdinand Nahimana,*

for prosecutions consisted of witness testimony from victims, survivors, perpetrators, observers, investigators, and a group of experts. The latter provided the blueprint for the trial narrative.

Des Forges was the OTP's 'personal guide to understanding the genocide and making sense of how to proceed against its authors'.[97] The prosecution's version of what happened in Rwanda was based on Des Forges's writings and testimony in eleven trials rather than on forensics. Judges in multiple decisions and judgements incorporated it. Moreover, except for the chapter on RPF crimes, her book – *Leave None to Tell the Story* – became the official version of Rwandan history at the tribunal.[98] It is the narrative of a "tropical Nazism"[99]: conspiracy, ethnic division, preparation, organization, propaganda, and extermination.[100] Most of these elements were reviewed in every genocide trial up to 2006, when the tribunal finally accepted as a 'judicial notice' that (1) Hutu, Tutsi, and Twa are protected groups under the Genocide Convention; (2) between 6 April and 17 July 1994 there were widespread and systematic attacks against civilians based on ethnic identification; and (3) between 6 April and 17 July 1994 genocide was committed against the Tutsi ethnic group.[101] After twelve years, the ICTR had thus established that the Rwandan genocide was a fact beyond legal dispute. The foundation of the prosecution's thesis on how it was planned, however, was seriously undermined in two major trials dealing with Rwanda's history.

In 2007, in the historic 'Media Trial',[102] the appeals chamber found that the prosecutor failed to demonstrate the existence in 1994 of a conspiracy to commit genocide between Radio Television Libre de Mille Collines (RTLM),

Jean-Bosco Barayawiza, Hassan Ngeze: Judgement and Sentence (Case No. ICTR-99-52-T; Arusha, 3 December 2003) paras. 817-824 & 548-549.

97 Kenneth Roth, 'Alison Des Forges. Remembering a Human Rights Hero', in: Scott Strauss & Lars Waldorf (eds.) *Remaking Rwanda. State Building and Human Rights after Mass Violence* (Madison: Wisconsin University Press, 2011) xxiii-xxv: xxiv.

98 Wilson, *Writing history*, 172.

99 Borrowed from: Jean Pierre Chretien, 'Un "nazisme tropical" au Rwanda? Image ou Logique d'un genocide', *Vingtième Siècle. Revue d'histoire*, 48 (October-December 1995) 131-142.

100 Alison Des Forges, *Leave none to tell the story. Genocide in Rwanda* (Human Rights Watch & International Federation of Human Rights; New York & Paris 1999).

101 UN/ICTR, *Prosecutor v. Eduard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera: Decision on the Interlocutory Appeal of Decision on Judicial Notice* (Case No. ICTR-98-44-AR73(C); Arusha, 16 June 2006).

102 RTLM and Kangura ventilated their messages in strong historical discourse. Besides, Ferdinand Nahimana himself was a historian alongside three prosecution witnesses: Alison Des Forges, Jean Pierre Chretien, and Marcel Kabanda. The latter two had authored a book on Rwandan media: J.P. Chretien, J.F. Dupaquier & M. Kabanda *Rwanda: les médias du genocide*

newspaper Kangura, and the Coalition pour la Defence de la Republique (CDR) party. They furthermore ruled out an analogous genocidal plot between their respective representatives Ferdinand Nahimana [historian], Hassan Ngeze [editor], and Jean-Bosco Barayagwiza [lawyer, politician], a finding made by the trial chamber four years earlier.[103] The trial judges had in 2003 accepted hate-filled radio broadcasts and publications from before 1994 – but outside its jurisdiction – as evidence for continuing crimes, which ultimately culminated in the achievement of the crimes' intended purpose: genocide. Since the massacre happened in 1994, the ICTR judges found they had jurisdiction to try these crimes. The appeals judges, however, strictly applying the tribunal's temporal jurisdiction, ruled that culpability could only be based on events in 1994. Moreover, they ruled that only RTLM broadcasts after 6 April 1994 contributed significantly to the perpetration of acts of genocide.[104]

The appeals judgement in the Media Trial came six months after the closing arguments in the ICTR's most significant trial. The so-called "Military I" trial against Théoneste Bagosora and three others[105] also relied heavily on the theory of a longstanding conspiracy. Even though prosecutor Carla Del Ponte opened the trial with the proviso that "the tribunal can never write the whole history of the Rwandan tragedy of 1994, in particular the Rwandan genocide, its genesis and it realisation," the charges were formulated in strong historical terms.[106] While the initial indictment was quickly written up after Bagosora's arrest in 1996,[107] Louise Arbour, Del

(Paris 1995). For a more general study, see: Allan Thompson (ed.), *The Media and the Rwanda Genocide* (London 2007).

103 The trial chamber found them guilty of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and persecution and extermination as crimes against humanity. UN/ICTR, *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayawiza, Hassan Ngeze: Judgement and Sentence* (Case No. ICTR-99-52-T; Arusha, 3 December 2003).

104 UN/ICTR, Appeals Chamber, *Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze* (*Appellants*) *v. The Prosecutor* (*Respondent*): *Judgement* (Case No. ICTR-99-52-A; Arusha, 28 November 2007).

105 The case also concerned General Gratien Kabiligi (head operations bureau of army general staff), Major Aloys Ntabakuze (Para Commando Battalion commander) and Colonel Anatole Nsengiyumva. UN/ICTR, *Prosecutor versus Théoneste Bagosora et al.: Amended Indictment* (Case No. ICTR-96-7-I; Arusha, 31 July 1998).

106 UN/ICTR, *Prosecutor versus Théoneste Bagosora et al.: Opening Statement* (Case No. ICTR-96-7-T; Arusha, 2 April 2002).

107 Bagosora was arrested in Cameroon following a Belgian arrest warrant in which he was charged with direct responsibility for the massacres that followed the attack against the plane of President Juvénal Habyarimana on 6 April 1994, and for the murder on 7 April 1994 of 10 UNAMIR soldiers from the Belgian contingent stationed in Kigali, Rwanda. See: Tribunal de Première

Ponte's predecessor, drafted a 'global charge sheet' against Bagosora in conjunction with 28 others, attempting to generate a historical record of the Rwandan genocide.[108] Indeed, the indictment's first twenty-nine pages deal exclusively with the history of Rwanda, starting with the 'revolution of 1959'.[109] The tribunal disallowed a Nuremberg-style trial,[110] but a revised version of the charges – now alongside three others – includes the same historical discourse. Its first ten pages set out the 'historical context', after which it formulates the individual accusation: from late 1990 to July 1994, the former colonel conspired with other extremist Hutus to execute a "Machiavellian Plan" to exterminate all Tutsis and their Hutu 'accomplices'.[111] In harmony with post-genocide historiography, Bagosora – who was cabinet director in the Ministry of Defence at the time – was the alleged centerpiece in a carefully planned and organized Hutu plan to murder all Tutsis.

A historical indictment demanded a meticulous exhumation of the past, and it was no surprise that Des Forges, as the first witness in the trial, was cross-examined for nearly two months while her entire book was tendered as evidence.[112] Two years later, towards the end of the prosecution case, Reyntjens was also questioned on Rwandan history.[113] Despite their testimonies, six years of trial proceedings did not answer beyond a reasonable doubt the question as to how the plan to exterminate all Tutsis and their 'accomplices' had unfolded. In 2008, Bagosora was found guilty of genocide,

Instance de l'arrondisement de Bruxelles, *Pro Justitia. Mandat d'Arret par Defaut*, dossier 57/95, notices no. 30983332/95 (Brussels, 29 May 1995). The first ICTR Prosecutor Richard Goldstone signed an indictment – very similar to the Belgian one – listing four counts of genocide, crimes against humanity, and war crimes. UN/ICTR, *The Prosecutor of the Tribunal Against Théoneste Bagosora: Indictment* (Case No. ICTR-96-7-I; Arusha, 5 August 1996).

108 Don Webster, 'The Uneasy Relationship between the ICTR and Gacaca', in: Scott Strauss & Lars Waldorf (eds.) *Remaking Rwanda. State Building and Human Rights after Mass Violence* (Madison: Wisconsin University Press, 2011), 185-186.

109 UN/ICTR, *Prosecutor versus Théoneste Bagosora & 28 others: Indictment & Supporting Material* (Case No. ICTR-98-37; Arusha, 6 March 1998) pp. 2.

110 UN/ICTR, Appeals Chamber, Prosecutor versus Théoneste Bagosora and 28 others: Decision on the admissibility of the prosecutor's appeal from the decision of a confirming judge dismissing an indictment against Théoneste Bagosora and 28 others (Case No. ICTR-98-73-A; Arusha, 8 June 1998).

111 UN/ICTR, *Prosecutor versus Théoneste Bagosora et al.: Amended Indictment* (Case No. ICTR-96-7-I; Arusha, 31 July 1998) 2-11.

112 Des Forges, *Leave None To Tell The Story*. The book has been described as "the most important historical record there is of the genocide and a virtual guidebook for prosecutors". Kenneth Roth, 'Alison Des Forges. Remembering a Human Rights Hero', in: Scott Straus & Lars Waldorf (eds.) *Remaking Rwanda. State Building and Human Rights after Mass Violence* (Wisconsin 2011) XXIV.

113 To counter these prosecution witnesses, the defence also called in witnesses to testify on the country's history: Helmut Strizek (11-13 May 2005) and Bernard Lugan (13-16 November 2006).

crimes against humanity, and war crimes for ordering and authorizing various killings and rapes between 6 and 9 April 1994. But, according to the judges, several elements commonly considered to be crucial in the planning of the 1994 massacres were "not supported by sufficiently reliable evidence" or did "not necessarily demonstrate criminal intent".[114] "Confronted with circumstantial evidence," the judges wrote, "the tribunal may only convict where conspiracy is the only reasonable inference from the evidence."[115]

Applying that test, the chamber concluded that the prosecution did not prove beyond a reasonable doubt that the only reasonable inference to be drawn from the evidence is that the four accused conspired amongst themselves – or with others – to commit genocide before it unfolded from 7 April 1994. All elements of the conspiracy alleged by the prosecution were dismissed or found unconvincing. The creation and work of a military commission to define "the enemy" chaired by Bagosora in 1991 were not considered as criminal. Bagosora and others had played a role in the creation, arming, and training of civil militias and maintaining lists of "RPF accomplices", but the judges could not conclude that "these efforts were directed at killing Tutsi civilians with the intention to commit genocide". Bagosora's reported warning in 1992 that he was going to "prepare the apocalypse" proved to come from two dubious witnesses who contradicted themselves. His alleged role in clandestine organizations such as the AMASASU, the Zero Network, or death squads was supported by considerable evidence, yet it was indirect, second-hand, and did not mean they were preparing genocide. Testimony about a meeting in Butare in February 1994, where Bagosora allegedly drew up a list of Tutsis to be killed, was not considered credible. Moreover, there were concerns over the reliability of the information provided by Jean-Pierre – who had famously informed UNAMIR peacekeepers in January 1994 about secret militia training plans intended to exterminate Tutsis and their accomplices – and an anonymous letter outlining a "Machiavellian Plan". "In reaching its finding on conspiracy, the Chamber has considered the totality of the evidence, but a firm foundation cannot be constructed from fractured bricks," concluded the judges.[116]

The judgement was received as iconoclastic. The alleged masterminding role of Bagosora in the genocide was reduced to that of a temporary project

114 UN/ICTR, *Prosecutor versus Théoneste Bagosora et al.: Judgement & Sentence* (Case No. ICTR-98-41-T; Arusha, 18 December 2008) para. 12.

115 UN/ICTR, *Prosecutor versus Bagosora: Judgement & Sentence* (Case No. ICTR-98-41-T; Arusha, 18 December 2008) para. 9.

116 UN/ICTR, *Prosecutor versus Bagosora: Judgement & Sentence* (Case No. ICTR-98-41-T; Arusha, 18 December 2008) para. 1221.

manager for 65 hours (between 6 and 9 April 1994).[117] On appeal, Bagosora's factual responsibility was trimmed down even more and his life sentence was reduced to 35 years.[118] The appeals chamber concluded that 'there is no finding or sufficient evidence that Bagosora ordered or authorised any of the killings for which he was found to bear superior responsibility', but that he 'failed to take the necessary and reasonable measures to prevent these crimes' while he was in a position to do so.[119] Thus, while the historical lead-up to events in 1994 were crucial to the ICTR's understanding of the genocide, it appears that on the basis of testimony from 242 witnesses, nearly 1,600 exhibits and around 4,500 pages of submissions from the prosecution and defence, the ICTR judges were not able to corroborate – beyond any reasonable doubt – historiography on the architecture of the Rwandan genocide. On the surface, the trial appears to be the sobering illustration of justice's powerlessness to punish history.[120]

In fact, however, the trial judges had already outlined that 'the process of a criminal trial cannot depict the entire picture of what happened in Rwanda', emphasizing that their task is narrowed by exacting standards of proof and procedure as well as its focus on the accused and the specific evidence placed before it.[121] It did accept that the evidence may indicate a plan to commit genocide – in particular when viewed in the light of the subsequent targeted and speedy killings immediately after the shooting

117 Tribunal expert witness, Andre Guichaoua, quoted in: Thierry Cruvellier, 'ICTR: Rwandan genocide – No Masterplan', *Radio Netherlands Worldwide International Justice*, 19 December 2011 (www-text: http://www.rnw.nl/international-justice/article/brainless-genocide, last visit, 27 August 2012).

118 Bagosora's convictions for genocide, crimes against humanity, and war crimes were upheld. However, it reversed Bagosora's convictions for the killings of Augustin Maharangari, Alphonse Kabiligi, and the peacekeepers murdered before his visit to Camp Kigali, as well as for the killings in Gisenyi town, at Mudende University, and at Nyundo Parish. The appeals chamber also set aside the finding that Bagosora was responsible for ordering crimes committed at Kigali area roadblocks, but found him liable as a superior instead. In addition, the appeals chamber reversed a number of Bagosora's convictions for murder as a crime against humanity and for other inhumane acts as a crime against humanity for the defilement of Rwandan Prime Minister Uwilingiyimana's corpse. UN/ICTR, 'Appeals Chamber Delivers Judgement in the Bagosora and Nsengiyumva Case,' *Press Release* (ICTR/INFO-9-2-695.EN; 14 December 2011).

119 UN/ICTR, Appeals Chamber, *Théoneste Bagosora & Anatole Nsengiyumva v. The Prosecutor* (Case No. ICTR-98-41-A; Arusha, 14 December 2011) paras. 670-671.

120 Thierry Cruvellier, 'Brainless Genocide', in: Gargot, Christophe, Sylvie Lineperg & Thierry Cruvellier (eds), *Arusha to Arusha* (DVD/Book: Paris 2011) 58-74: 73.

121 UN/ICTR, *Prosecutor versus Théoneste Bagosora et al.: Judgement & Sentence* (Case No. ICTR-98-41-T; Arusha, 18 December 2008) para. 5.

down of Juvenal Habyarimana's aircraft,[122] but that was also consistent with preparations for a political or military power struggle in the context of an on-going war with the RPF. They concluded that other or newly discovered information, subsequent trials, or history may very well demonstrate a conspiracy involving the accused – prior to 6 April 1994 – to commit genocide.[123]

Indeed, historians are not similarly constrained. Analyzing the same evidence, they might well conclude that there had been a high-level conspiracy to commit genocide in Rwanda before it unfolded. It is not justice's powerlessness to judge history. It is rather the illustration of the problem that arises when relying on a trial judgement as an objective account of history: the standard of proof of 'beyond a reasonable doubt' that criminal judges must apply. The test applied by historians appears to be closer to the standard of proof of balance of probabilities or convergence of the evidence, which is that adopted by many truth commissions.[124]

"Godfather" of Terror in Sierra Leone[125]

> Your Honours, it's important, I believe, to make a review of the history, not all of the history but the relevant portions, of the execution of this plan, and it really begins, as we indicated, before 1991, before 1996, in 1988 or 1989, with the military training in North Africa of Charles Taylor and Foday Sankoh and other people who later became leaders of the RUF and NPFL.
> *Stephen J. Rapp*[126]

122 An event that has not been investigated at all at the ICTR, as it was not included in any of the charges against ICTR suspects.

123 UN/ICTR, *Prosecutor versus Théoneste Bagosora et al.: Judgement & Sentence* (Case No. ICTR-98-41-T; Arusha, 18 December 2008) para. 1221.

124 Fergal Gaynor, 'Uneasy Partners: Evidence, Truth and History in International Trials,*Journal of International Criminal Justice*, 10 (5) 1257-1275: 1273.

125 Portions of this text appeared in: Thijs Bouwknegt, 'International Justice and History: an imperfect balance', *Newsletter Criminology and International Crimes*, 7 (1) (July 2012) 5-7; and Thijs Bouwknegt, 'An ill-fitting Taylor-made trial', *International Justice Tribune,* No. 150 (25 April 2012) 1-2.

126 Special Court for Sierra Leone (SCSL), 'Opening Statement', *Transcript* (Case No. SCSL-2003-01-T; The Hague; 4 June 2007) 282. Stephen Rapp – currently Ambassador-at-Large, heading the Office of Global Criminal Justice in the US Department of State – also led the ICTR's 'Media' case discussed above. Rapp, who is married to a historian, left the ICTR, where he worked as Chief of Prosecutions, in 2006 to become the SCSL Chief Prosecutor. See: Stephen J. Rapp, 'Achieving Justice for Victims of Genocide, War Crimes and Crimes Against Humanity', *Joan*

When Bagosora was on trial in Arusha in the summer of 2002, prosecutors in Freetown commenced investigations into atrocities committed during Sierra Leone's civil war.[127] Seven months later, the 'Special' court prosecutor presented eight indictments, and by June 2003, another four charge sheets were completed. Three Sierra Leonean parties were represented in the charge sheets. The SCSL's prime suspect, however, was a foreigner. Dubbed 'case SCSL-03-01', the first case file concerned Charles Taylor, then President of Liberia.[128] The eleven-count indictment on war crimes and crimes against humanity was unveiled in June 2003, while he was in Accra for Liberian peace talks. The Ghanaian government flew Taylor back to Monrovia in a presidential plane. But it was only after three years of refuge in a luxurious villa at the invitation of former Nigerian president Olusegun Obasanjo that he arrived at the fortified SCSL compound in Freetown.[129]

"Most definitely, Your Honour, I did not and could not have committed these acts against the sister Republic of Sierra Leone," Tayor told the judges during his first appearance in April 2006, "[...] so most definitely I am not guilty."[130] Taylor was the first former African head of state to be judged, convicted, and sentenced before an international criminal tribunal. He has been described as the jewel in the crown of the SCSL, but his criminal case is in no way crystal clear. [131] It is rather characteristic of the precarious balance between history and the law. In the end, the file left a legacy of unaddressed bloodshed, as most of Taylor's alleged crimes fell outside the

B. Kroc Institute For Peace & Justice: Distuingished Lecture Series (Joan B. Kroc School of Peace Studies, University of San Diego California, 17 February 2011).

127 SCSL, *First Annual Report of the President of the Special Court for Sierra Leone* (Freetown 2003) 14-15.

128 For a detailed study on Taylor, see: Colin M. Waugh, *Charles Taylor and Liberia. Ambition and Atrocity in Africa's Lone Star State* (New York, 2011).

129 For a detailed analysis and trial reports of the Taylor trial, see: Abdul Tejan-Cole, 'A Big Man in a Small Cell: Charles Taylor and the Special Court for Sierra Leone', in: Ellen L. Lutz & Caitlin Reiger (eds), *Prosecuting Heads of State* (Cambridge 2009) 205-233; Open Society Justice Initiative, *The Trial of Charles Taylor* (website: http://www.charlestaylortrial.org/); International Center for Transitional Justice, *The Special Court for Sierra Leone: the first eighteen months* (March 2004) 4-5.

130 SCSL, *The Prosecutor of the Special Court v. Charles Ghankay Taylor: Transcript* (Case No. SCSL-2003-01-PT; Freetown, 3 April 2006) 15.

131 Thierry Cruvellier, *From the Taylor Trial to a Lasting Legacy: Putting the Special Court Model to the Test* (International Center for Transitional Justice and Sierra Leone Court Monitoring Programme 2009) 5.

straitjacket of his prosecution. Still, the trial narrative[132] against Taylor reads like a classic script on the rise and fall of a dictator.[133] Taylor rose from being a dishwasher and mathematics and science teacher to elected president of Liberia. In between, he studied economics, purportedly escaped from a US prison, and became a notorious warlord. His career ended in the dock in the Netherlands, far from his home in West Africa. He may spend the remainder of his life in a prison in the UK.[134]

The trial chamber sentenced Taylor to 50 years' imprisonment on 30 May 2012.[135] A month earlier, he was found guilty of planning, aiding, and abetting a long list of crimes committed by merciless RUF and AFRC fighters. These included acts of terrorism, murder, rape, sexual slavery, enslavement, pillage, and the conscription and enlistment of child soldiers.[136] In their verdict, numbering almost 2500 pages, the three judges detailed how Taylor took part in planning attacks on Kono, Makeni, and Freetown between December 1998 and February 1999, and instructed rebels to 'make the operation [s] fearful'. They further outlined how Taylor had aided and abetted the fighters in committing atrocities by providing arms and ammunition, military personnel, and operational and moral support.[137]

'If the roots of a mango tree are cut, the tree will die', prosecutor Brenda Hollis said, quoting a Sierra Leonean chief. 'Mr. Taylor was the root which fed and maintained the RUF and kept the AFRC/RUF alliance alive; without him the rebel movement, with its attendant crimes, would have suffered

132 For a comprehensive study on prosecution and defence disourses, see: Marlies Glasius & Tim Meijers, 'Constructions of Legitimacy', *International Journal of Transitional Justice*, 6 (2) (July 2012) 229-252.

133 The Taylor trial opened on 4 June 2007. It was adjourned immediately after the prosecution's opening statement when Taylor dismissed his lawyer Karim Kahn and requested new representation. Witness testimony commenced on 7 January 2008 and ended on 12 November 2010. Closing arguments took place in February and March 2011. The court heard live testimony from 94 prosecution witnesses and received written statements from four additional witnesses. The defence presented 21 witnesses, with Taylor testifying in his defence.

134 *Agreement between the Special Court for Sierra Leone and the Government of the United Kingdom of Great Britain and Northern Ireland on the Enforcement of Sentences of the Special Court for Sierra Leone* (London, 10 July 2007).

135 SCSL, *The Prosecutor of the Special Court v. Charles Ghankay Taylor: Sentencing Judgement* (Case No. SCSL-2003-01-T; The Hague; 30 May 2012).

136 SCSL, *Prosecutor versus Charles Ghankay Taylor: Judgement* (Case No. SCSL-03-01-T; The Hague 18 May 2012).

137 SCSL, *Prosecutor versus Charles Ghankay Taylor: Judgement* (Case No. SCSL-03-01-T; The Hague 18 May 2012).

an earlier death,' she continued.[138] However, Taylor's judgement suggests he played a more limited role in Sierra Leone than the prosecution had claimed. The judges did not find that he had superior responsibility over members of the rebel groups, or that he had led a joint criminal enterprise (JCE). Count one of the charge sheet listed Taylor's ultimate crime: acts of terror.[139] It burdened the prosecution with a complex challenge in trying the former Liberian leader. The golden thread in the case: Taylor forged an illicit conspiracy with RUF leader Foday Sankoh in Libya – under the auspices of Muanmar Gaddafi[140] – in the late 1980s to conquer West Africa. Their motive: enriching themselves with rough diamonds from Sierra Leone. Their modus operandi: a menacing campaign of terror. The prosecution advocated it proved 'beyond a reasonable doubt' that Taylor was personally responsible for this surreal theater of atrocity. 'The evidence in this case shows that the RUF was a terrorist army created and supported and directed by Charles Taylor who, in truth, is the person most responsible for the crimes charged,' concluded Brenda Hollis in her final brief.[141]

But, armed with a limited mandate – they could only prosecute crimes committed from November 1996[142] – prosecutors had an exceptionally demanding job to criminally tie Taylor to the bloodshed. Like the ICTR, the Special Court was confronted with a complex oral society and an absence of a clear paper trail or forensics. The tribunal therefore heavily relied on testimonial evidence.[143] The prosecution called on some 94 witnesses includ-

138 SCSL, *The Prosecutor of the Special Court v. Charles Ghankay Taylor: Sentencing Judgement* (Case No. SCSL-2003-01-T; The Hague; 16 May 2012) 49691.

139 SCSL, *The Prosecutor of the Special Court v. Charles Ghankay Taylor: Prosecution's Second Amended Indictment* (Case No. SCSL-2003-01-PT; Freetown, 29 July 2007) para. 4.

140 In fact, Gaddafi was named as an indirect co-perpetrator in the initial indictment, but he was never charged by the SCSL. SCSL, *The Prosecutor against Charles Ghankay Taylor also known as Charles Ghankay Macarthur Dapkpana Tayor: indictment* (Case No. SCSL-03-I; Freetown 3 March 2003) para. 17. According to the court's first prosecutor, David Crane, Britain put pressure not to indict Gaddafi for war crimes, despite the evidence. Soraya Kishtwari, 'Prosecutor reveals how Britain let Gaddafi off', *The Times,* 25 February 2011.

141 SCSL, *The Prosecutor of the Special Court v. Charles Ghankay Taylor: Prosecution Final Brief* (Case No. SCSL-2003-01-T; The Hague; 8 April 2011) 531.

142 *Agreement between the United Nations and the government of Sierra Leone on the establishment of a Special Court for Sierra Leone & Statute of the Special Court for Sierra Leone* (Freetown 16 January 2002), annexed to: United Nations Security Council (UNSC), *Report of the Planning Mission on the establishment of the Special Court for Sierra Leone* (UN-doc. S/2002/246; 8 March 2002).

143 Chief Prosecutor Brenda Hollis reiterated this fact in her address to the United Nations Security Council: "Without witnesses, no trials would be possible. Our main challenges were to communicate and meet with some 800 potential witnesses in a safe environment, and, in

ing experts, crime victims, and perpetrators. Since 2008, testimony on the forgotten cruelties of the Sierra Leonean civil war echoed in the courtrooms in The Hague and later in Leidschendam, where the trial subsequently took place.[144] The judges heard how RUF rebels sowed death and destruction, hacking off limbs, raping women, and pillaging diamond mines. 'All this suffering, all these atrocities to feed the greed and lust for power of Charles Taylor,' proclaimed Brenda Hollis.[145] Taylor does not deny these offences took place but refutes the charge that he was at the very center of the web of these crimes.

'Throw it in the bin. That is what we submit the court should do with this body of evidence: Get rid of it.'[146] That was the message from Taylor's lawyers during closing arguments in March 2011. The only direct evidence that connected a campaign of murder, mutilation, and rape in Sierra Leone to Charles Taylor came from his own former aides and enemies. But the use of this insider witness testimony had to stand the test of credibility on the grounds of their ethnic/regional/national loyalties, or because of their own implication in crimes. Some of them had strong reasons to testify against their political rival. Others were self-confessed criminals, like Joseph Marzah. Nicknamed 'zigzag', the former secret service agent confessed to mass murder, killing babies, cutting open pregnant women, and eating 'Nigerians and white people as pork,' during a chaotic and sketchy three-day testimony.[147] The defence did not need too much energy in discrediting these kinds of witnesses.

With this evidence in hand, the prosecution faced additional hurdles: time and space. The SCSL could only deal with crimes committed in Sierra Leone from November 1996 onwards. But at this time, Taylor was not at this crime scene and is rather infamous for spearheading bloodshed in his own country. The SCSL's main shortcoming in this trial is that it could not deal with Taylor's full role in West Africa's atrocious history. Taylor's crimes in Liberia have been well documented by historians and the truth and

cooperation with the Registry's Witness and Victim Section, to ensure the security before, during and after the trial, of the more than 300 Prosecution witnesses who testified." SCSL, Office of The Prosecutor, *Statement by Prosecutor Brenda J. Hollis, Special Court for Sierra Leone to the United Nations Security Council* (New York, 9 October 2012) 5.

144 The trial was moved to the Netherlands because of security concerns in West Africa. It was held at the ICC in The Hague and later at the Special Court for Lebanon in Leidschendam.

145 SCSL, *The Prosecutor of the Special Court for Sierra Leone v. Charles Ghankay Taylor: Transcript* (Case No. SCSL-2003-01-T; Leidschendam, 8 February 2011) 49150.

146 SCSL, *The Prosecutor of the Special Court for Sierra Leone v. Charles Ghankay Taylor: Transcript* (Case No. SCSL-2003-01-T; Leidschendam; 9 March 2011) 49454.

147 SCSL, *The Prosecutor of the Special Court for Sierra Leone v. Charles Ghankay Taylor: Transcript* (Case No. SCSL-2003-01-T; The Hague, 13 March 2008) 5998. Marzah testified from 12 to 14 March 2008.

reconciliation commissions in Liberia and Sierra Leone.[148] The reality is that they remain outside the reach of the SCSL, and this has caused problems in establishing Taylor's alleged crimes in Sierra Leone. But it did not prevent prosecutors from delving into history.

'The indictment crimes did not happen overnight,' reads the prosecution's case summary.[149] Their case has therefore focused on highlighting a long-standing relationship between Taylor and the RUF. The prosecution claims that this bond lasted throughout the 1990s, and when Taylor became president in 1997, Taylor continued to be the 'chief', 'father', and 'godfather' of 'his proxy forces the RUF and later the RUF/AFRC."[150] Several of Taylor's former aides indeed testified to regular communications taking place between Taylor and other RUF commanders such as Sam Bockarie and the convicted Issa Sesay. Still, while the bench was sympathetic towards the prosecution in allowing evidence falling outside the scope of the indictment, no 'smoking guns' were presented. There is a lack of precision and proof at the heart of the testimony heard in court. The relationship between Sankoh and Taylor in Libya – the very basis of criminal charges – remains shrouded in mist. No documentary evidence has shown that the two met each other between 1991 and 1999. Historian and expert witness Stephen Ellis could only say that the two met 'sometime between 1987 and 1989'.[151]

Depicting him as 'a master of manipulation' and a 'liar', the prosecution claimed that Taylor controlled the RUF from behind the façade of a regional peace broker. But at best, the prosecution has shown that Taylor – because of his position – 'should have known' about the crimes and that he 'did nothing to prevent them' while he may have been in a position to do so. They claim he did everything to conceal his crimes and destroy evidence of links with the RUF rebels, accusing Taylor of killing his 'favourite' RUF general Sam Bockarie and AFRC junta leader Johnny Paul Koroma after they were charged

148 See: Truth and Reconciliation Commission for Sierra Leone (TRCSL), *Witness to Truth: Report of Sierra Leonean Truth and Reconciliation Commission* (Accra 2004) & Truth and Reconciliation Commission for Liberia (TRCL), *Consolidated Final Report* (Monrovia, 30 June 2009).

149 SCSL, *The Prosecutor of the Special Court v. Charles Ghankay Taylor: Prosecution Final Brief* (Case No. SCSL-2003-01-T; The Hague; 8 April 2011) 31.

150 SCSL, *The Prosecutor of the Special Court v. Charles Ghankay Taylor: Prosecution Final Brief* (Case No. SCSL-2003-01-T; The Hague; 8 April 2011) 34.

151 SCSL, *The Prosecutor of the Special Court for Sierra Leone v. Charles Ghankay Taylor: Transcript* (Case No. SCSL-2003-01-T; The Hague; 16 January 2008) 1426-7 & Special Court for Sierra Leone (SCSL), *The Prosecutor of the Special Court for Sierra Leone v. Charles Ghankay Taylor: Transcript* (Case No. SCSL-2003-01-T; The Hague; 18 January 2008) 1530. Also see: Stephen Ellis, *Report for the Special Court for Sierra Leone: Charles Taylor and the war in Sierra Leone* (5 December 2006) 3.

by the SCSL.[152] A court trying a president cannot escape debating politics and history. And indeed, two diametrically opposed narratives about Taylor's role in west Africa were put before the judges. Producing almost 50,000 pages of transcript and over 1,000 exhibits, the Taylor trial offers a unique insight into Liberian and Sierra Leonean history. In the prosecution's version, it is the darkest corner of the world. Moreover, no other international court has heard a former president testify in so much detail as in this trial. The Special Court judges gave Taylor an unprecedented seven months in the witness stand. And the former president took his time to take the court through his concise version of the history of 20th-century West African politics.

In his own version, Taylor is not a war criminal but a peacemaker who was left carrying the can for the international community. He does not deny that crimes were committed in Sierra Leone but argues that he would have had to be a "superman" to run his own war-torn country while also planning and ordering the commission of crimes on the other side of the border. The defence accused the prosecution – which is largely composed of US citizens – of being part of an 'American conspiracy' to get rid of Taylor and the SCSL of being an instrument of regime change in the US's former 'Lone Star' colony. At the end of the trial, Griffiths eagerly referred to two leaked US code cables from the embassies in Monrovia and The Hague suggesting that Washington wanted Taylor to disappear behind bars forever. Brandishing the prosecution as racist, he sneered that the prosecutors had 'besmirched the lofty ideals of international criminal law by turning this case into a 21st century form of neo-colonialism'.[153]

The four-year trial against Charles Taylor ended with an unprecedented and dramatic twist: a judge who had attended all hearings and deliberations posed questions as to whether the facts have actually been proven. After his three colleagues had summarized their guilty verdict against Taylor, alternate Judge El Hadji Malik Sow outlined his belief that guilt had not been proven beyond a reasonable doubt and that no deliberations on fact had taken place.[154] But after about a minute, his microphone was cut off and a metal grate was lowered over the glass that separates the courtroom

152 SCSL, *The Prosecutor of the Special Court v. Charles Ghankay Taylor: Prosecution Final Brief* (Case No. SCSL-2003-01-T; The Hague; 8 April 2011) 491-509.

153 SCSL, *The Prosecutor of the Special Court for Sierra Leone v. Charles Ghankay Taylor: Transcript* (Case No. SCSL-2003-01-T; Leidschendam; 9 March 2011) 49389.

154 '[…] I disagree with the findings and conclusions of the other Judges, standard of proof the guilt of the accused from the evidence provided in this trial is not proved beyond reasonable doubt by the Prosecution […].' El Hadj Malick Sow, 'Oral Statement' (Leidschendam, 26 April 2012) on file with author.

from the public gallery. Only a few days later, the plenary of judges met and recommended his suspension.[155] Meanwhile, both the defence[156] and prosecution[157] appealed the verdict. On appeal, Taylor's defence wanted to call the judge as a defence witness,[158] but their request was turned down. On appeal, after a year of closed-door deliberations, the judgement was rubber-stamped and Taylor was sent to the UK to serve his 50-year sentence." Bijbehorende voetnoot: "Only a part of one out of four grounds of appeal by the Prosecutor and one out of 45 grounds of appeal by Taylor were allowed, thus altering minor details but confirming the substantial findings of the first instance judgment.[159]

> **Distortion** The Prosecutor shall – in order to establish the truth – extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally.[160]

International criminal tribunals are ascribed – or ascribe to themselves – a historical competence they do not really possess.[161] By pursuing a historical mission – beyond their mandate – protagonists as well as agents of international criminal justice experiments distort the public image of the purpose of the trial and thereby raise false expectations. The fact that these courts judge crimes of historical significance and deliver rulings that may influence historical narratives does not automatically make them appropriate arenas for historical elucidation or fact-finding. Truth is a vehicle rather

155 SCSL, *The Prosecutor of the Special Court v. Charles Ghankay Taylor: Transcript* (Case No. SCSL-2003-01-PT; Freetown, 16 May 2012) 49681-49683.

156 SCSL, *The Prosecutor v. Charles Ghankay Taylor: Notice of Appeal of Charles Ghankay Taylor* (Case No. SCSL-03-01-A; The Hague, 19 July 2012).

157 SCSL, *The Prosecutor against Charles Ghankay Taylor: Prosecution's Notice of Appeal* (Case No. SCSL-03-01-A; The Hague, 19 July 2012).

158 SCSL, Appeals Chamber, *The Prosecutor v. Charles Ghankay Taylor: Submission in Response to the Order for Clarification of 15 August 2012* (Case No. SCSL-2003-01-A; The Hague, 17 August 2012).

159 Special Court for Sierra Leone, Appeals Chamber, The Prosecutor Against Charles Ghankay Taylor: Judgment (Case No. SCSL-03-01-A; 23 September 2013.

160 *Rome Statute*, art. 54 (1a).

161 For a discussion, see: William Schabas, 'History, International Justice and the Right to Truth', in *Unimaginable Atrocities. Justice, Politics, and Rights at the War Crimes Tribunals* (Oxford 2012) 153-172; Gaynor, 'Uneasy Partners: Evidence,Truth and History in International Trials, *Journal of International Criminal Justice*, 10 (5) 1257-1275; and Richard Ashby Wilson, *Writing History in International Criminal Trials* (Cambridge 2011).

than an objective in the trial. Prosecutors employ evidence to secure convictions, lawyers serve their clients, and judges apply the law to the evidence put in front of them. "The purpose of a trial is to render justice, and nothing else," observed Hannah Arendt forty years ago.[162] This equally applies to the contemporary tribunals, which are only and unambiguously tasked with prosecutions.[163] At the nucleus of international trials is the liability of a defendant in past crimes, not history itself. Juan Mendez claims that trials cannot settle conflicting interpretations of history, they can only limit the scope of impermissible lies about those events. Moreover, he underlines that they should not be expected to write history."[164]

The ICC prosecutor is required to establish the truth. Witnesses are to tell the truth and nothing but the truth, while deliberate lying is punishable.[165] The agent of the global antidote to impunity was not given a historical mandate, and its prosecutor has reiterated, "his mandate does not include production of comprehensive historical records for a given conflict." Instead, the prosecutor opted to select a limited number of incidents to provide a sample that is reflective of the gravest incidents and the main types of victimization.[166] In contrast to the ICTR and SCSL, the ICC prosecutor has adopted an a-historical strategy and has not made any promises that it will contribute to the writing of history. As a result, its judgements do not delve into historical details and contexts. They have rather dealt with the quality of fact-finding and the reliability of witness evidence.[167] Implicitly, ICC judges have shown that international tribunals are less capable of at least unearthing and corroborating basic facts and presenting an accurate representation of the political, social, and historical contexts of violent conflicts.

The ICC's forerunners in Arusha and Freetown, whose prosecutors embraced a larger historical ambition, created a vast archive but left a rather

162 Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (revised edn; Penguin Books 1994) 232.

163 The respective statutes of the Special Tribunal for Lebanon, the Extraordinary Chambers in the Courts of Cambodia, the International Criminal Court, the Special Court for Sierra Leone, the ICTR and the ICTY do mention establishing a historical record of what happened.

164 Juan E. Mendez, 'Backflip', Richard Ashby Wilson, *Writing History in International Criminal Trials* (Cambridge 2011).

165 *Rome Statute*, art. 69 (1) & 70 (1a).

166 ICC, *Prosecutorial Strategy 2009-2012* (The Hague, 1 February 2010) para. 20.

167 Nine out of 593 pages of the Lubanga verdict deal with the background of the conflict in Ituri, while no specific chapter has been devoted to the background in the Ngudjolo verdict. ICC, *Prosecutor vs. Lubanga: Judgment,* paras. 67-91 & ICC, *Situation en Repubublique Democratique du Congo. Affaire le Procureur c. Mathieu Ngudjolo: Jugement rendu en application de l'article 74 du Statut* (Case No. ICC-01/04-02/12; The Hague, 18 December 2012).

scattered narrative of events in the Great Lakes Region of West Africa. The ICTR only looked into genocide crimes committed by Hutu extremists, while the SCSL prosecuted former Liberian president Charles Taylor for crimes committed in Sierra Leone and not in Liberia. More importantly, after years of investigations and trials, judges ruled out evidence supporting grand narratives of the Rwandan genocide or interrelated wars in West Africa. Besides the challenging non-documentary environments and cultural settings they investigate, there are fundamental limitations in international criminal justice on writing history. First, tribunals are bound by their temporal [when], territorial [where], personal [who], and subject-matter jurisdiction [what]. Second, prosecutorial discretion determines the line of investigations [who, what, and if]. The scope is further limited in the indictment [which crime, where, and when]. Three other factors straitjacket the tribunal's exposure of historical fact: confidentially [protected witnesses and documents]; plea agreements [limited crimes and evidence]; and relevance [historical significance is not equal to legal weight].[168]

International trials concerning non-documentary conflict zones only uncover fractions of the past. The prism of law and investigative challenges restricts their narrative. Yet they do establish micro-histories. Rwanda and Sierra Leone both went through a more all-embracing transition and launched parallel ventures to unearth or configure narratives of the violent past. Rwanda's post-genocide government has exhausted the 'transitional justice toolbox' in its mission to construct a new nation, leaving the ICTR on the outside. The *gacaca* process was perhaps its most ambitious project: unveiling the local realm of genocide while pursuing its perpetrators in communal settings. In Sierra Leone, the Truth and Reconciliation Commission (TRCSL) was the first genuine endeavor to unveil, explore, and explain the architecture of the violent past. More than trials, these truth ventures equal the work of historians and are part of the historiography on mass violence.

168 Gaynor, 'Uneasy Partners', 1257-1275.

Epilogue

Philip Spencer

It is now nearly 70 years since the Genocide Convention was agreed, on 11 December 1946, at the then newly formed United Nations. In its opening passages, genocide was clearly identified both as a crime under international law and as an "odious scourge" from which humanity must be liberated, a task for which international co-operation would be urgently required. If anything, however, it can sometimes seem that the incidence of this "crime of crimes" (as an international tribunal has righty termed it)[1] has been on the increase in the decades that followed, rather than the reverse. Genocide has taken place on more or less every continent and in more or less every decade since the Convention was confirmed, and there is little sign that it is likely to cease in the immediate future. The numbers of victims – murdered overwhelmingly by the apparatuses of modern states – runs into the many millions.[2] There has been scarcely any effective effort to halt or prevent this catalogue of destruction, and the overwhelming majority of perpetrators at every level have escaped prosecution or punishment.

The challenge that genocide poses to us politically, ethically, and intellectually can therefore hardly be underestimated. Although understanding is only half the battle – since that alone will not generate the necessary normative consensus or political will to halt and prevent the crime – it is indispensable but also complex, requiring contributions from several different disciplines. This valuable collection of essays does just that, with contributions that combine insights from (amongst others) political science, history, psychology, anthropology, and criminology. The outcome is a rich set of studies that tells us a good deal about both how and why genocide occurs and also the different responses to the trauma it inflicts, trauma that is not confined to the victims since it affects also the wider society in which the crime has been committed.

Reflection on these insights may begin perhaps with recognition of the distinctiveness of the crime. Whilst genocide is always connected to other

1 The International Criminal Tribunal for Rwanda, *Prosecutor v. Kambanda*, Judgment and sentence, ICTR – 97-23-S (4 September 1988), para. 16.

2 For one quite authoritative compilation (which includes genocides committed against political groups as well as those against the limited set identified in the Convention), see Barbara Harff, 'No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955', *American Political Science Review,* 2003, vol. 97, no. 1, p. 62.

social problems and processes, as the main architect of the Convention, Raphael Lemkin, understood from the outset, it is a crime of a particular kind, aimed at the destruction of a group or groups. It is an attempt to refashion both society and at some level humanity itself, as perpetrators arrogate to themselves the right to decide who is or is not allowed to remain a member of both. The scale of the genocidal project is one that, partly for this reason, can only be managed or encompassed by modern states, since they alone (so far) have the required capacity for such destruction and re-engineering.

That does not mean, of course, that we have to understand genocide only as a top-down process. As every contributor to this collection has demonstrated in their different ways, genocide is a complex process involving extensive participation at different levels. But it remains the case that the initiative rests primarily with those in control of (or aspiring to be in control of) modern states. Genocide is not a spontaneous or organic process but a crime that has to be thought about and prepared, even if its implementation is invariably a complex, messy process of which the outcome is not fully predictable.

A crucial part of this process is the identification and depiction of the victim group, which is the focus of several pieces here (particularly those by Diana Oncioiu, Alex de Jong, and Sandra Korstjens), which look at the Jews in Romania as well as in the paradigmatic case of Nazi Germany; at Muslims (and to a lesser extent Croatians) in Serbia; at non-Muslims in the Ottoman Empire; and at several different kinds of "enemies of the people" in Cambodia. In each case, considerable imaginative effort went into the production of a genocidal project, the idea that significant numbers of people could be thought about primarily and even exclusively as members of a targeted group, whose very existence posed a threat that could only be dealt with by its destruction in whole or in part.

There are at least three aspects of this work of the imagination that require our attention. The first is that it is not at all necessary for the individuals, families, and communities that are held to constitute the group to actually be members or to see themselves as such. As Frank Chalk and Kurt Jonassohn pointed out long ago,[3] the key issue here is that perpetrators think they are. Understanding this point helps us out of some initial difficulties with the definition of groups in the Convention. This definition appeared to assume that groups had some kind of "objective" existence and

3 Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide,* New Haven: Yale University Press, 1990.

that some groups were somehow more real than others. Once we see that the construction of the group in genocide is the work of the perpetrators' imagination, we can more readily see that the number and kind of group does not have to be restricted to the four that are specifically identified in the Convention ("national, "ethnical", "religious", or "racial"). We can at the same time avoid slipping into any kind of reification, treating groups (and thus their members) as fixed, unalterable, and having some kind of essential, invariant character (biological or cultural). This is particularly important in the case of so-called "racial" groups which need to be thought about rather as *racialized*, and racialized by perpetrators.

The second aspect has to do with the imagined threat from the targeted group. Precisely because it is the work of the imagination, we need to think about it as a projection that tells us much more (indeed only) about the perpetrator than about the target. Indeed, it is always the case that what is being said about the targeted group applies much more to the perpetrator than to the target. It is the perpetrator who poses an actual, real (and often mortal) threat – not the victim.

The third aspect has to do with the sustained nature of the work of the imagination. Genocidal constructions have to be not only thought up but worked out, disseminated, and promoted, which requires resourcing at several levels. (Again, it is hard to think of how this can be done without considerable assistance, at the very least, from the state). Images have to be constructed, stories told, pictures and sounds fabricated if sufficiently large numbers are to be persuaded to engage in the violence that is needed to destroy their fellow citizens.

This is one of the most difficult and puzzling features of the genocidal process. How is it that apparently normal people can, in a relatively short period of time, become killers, torturers, and perpetrators of extreme violence (and often sexual violence in particular) against those who were even sometimes their own neighbors? Much of the literature on this question has come to be dominated by social psychology, especially since the pioneering work of Stanley Milgram in the early 1960s, and this is reflected in some of the essays in this collection here, too. There has been an increasing emphasis in the literature on the situation in which hitherto quite "normal" people can find themselves, and the contexts of insecurity and upheaval that generate anxieties to which genocidal "solutions" might seem to make some kind of sense. There is certainly much to be gained by a close analysis of the transformation of "ordinary people" into perpetrators of "extraordinary evil", to use the terms coined by Christophe Busch in an important paper that is a further welcome and closely argued contribution

to this literature. But we may also need to think a bit more, as Franziska Karpinski and Elysia Ruvinsky indicate, about who exactly is placed into these situations and to deconstruct somewhat further the sometimes rather over-general category of the "ordinary", paying attention for example to gendered distinctions which play quite an important role in sexual violence in particular. However ordinary they might seem on the surface, perpetrators are not simply "placed" in situations; they also play an important part in constructing them, drawing on already established pictures of those against whom they are wreaking extreme violence and from whom they have already distanced themselves in varying ways.

The "situation" in which they find themselves, moreover, is not static: it is developed over time, and particular attention needs to be paid to key moments in a process when boundaries are crossed and taboos broken. It is here, perhaps, that we might need to bring back in some notion of madness or even – dare one say it – evil to capture some new dimension of experience in the genocidal moment. Murdering large numbers of innocent and vulnerable people is not, after all, a "normal" event. However often genocide has recurred, it does not happen everywhere all the time. Most people most of the time never come anywhere near it, which is one reason it is so hard to think about: it requires quite a leap of the imagination even to contemplate it. Active participation in genocide is transformative in quite fundamental ways. It requires the suspension of quite fundamental values and norms and an embrace of others – even (as Berel Lang in particular has argued[4]) their conscious inversion. Paranoia, of the kind most evident in the essays in this volume on the Filipino communist movement and on "Democratic" Kampuchea, plays a crucial part in setting up targets, enemies who have to be destroyed if the movement or the state or the community are to survive. But at the moment that extreme violence is employed to maim, mutilate, or kill, there also seems to be something additional and new involved, a kind of intoxication, a sense of omnipotence and a belief that existing normative constraints no longer apply, that perpetrators can do whatever they like, without consequences.

In some ways, one might argue that it is the question of consequences that ought to concern us more than anything else. The destruction involved in genocide is long-lasting, and dealing with it – as the last set of essays here suggest – requires several different kinds of responses. One has to do with open and public recognition, which as Laura Boerhout's valuable essay on

4 Berel Lang, 'The Knowledge of Evil and Good' in *Act and Idea in the Nazi Genocide*, New York: Syracuse University Press, 2003.

Sarajevo shows all too clearly, raises questions not just about the past but about the present and the future. The struggle over memory here is tied up with what kind of society can be rebuilt in the aftermath of genocide and how (or if) perpetrators and victims can actually live together again after destruction on this scale.

A degree of caution is perhaps advisable here. Given the scale of destruction involved in genocide, the trauma experienced by victims, and the kinds of crimes committed by perpetrators, it is bound to be extremely hard, even impossibly hard at times, for either side to come to terms with what has happened. It is asking a great deal for members of a victims' group to find space in their hearts for an acknowledgement of crimes that might have been committed against others – even others tarred in some ways with the same or a similar brush — let alone against members of the group in whose name the perpetrators have committed genocide.

At the same time, it may be quite unrealistic to expect perpetrators to acknowledge freely and without any kind of coercion the crimes they have committed. This may set quite severe limits on any re-education projects, particularly in a case such as Rwanda, which is the subject of Suzanne Hoeksema's fine-grained analysis here, where representatives of the victims' group have retaken power. She distinguishes interestingly here on largely generational grounds between those who were prepared to engage meaningfully with a re-education project and those who went along with it instrumentally and for appearance's sake. Some of this clearly has to do the subaltern dimension[5] of the genocide in this particular instance. But perhaps the more general issue is that any educational project after genocide has to be thought about in its political context and to take into account the likely fragility of any post-genocidal state as it seeks to rebuild a society that has been traumatized by genocide on all sides.

For it is important to recognize that genocide leaves no one untouched. It is not only a crime committed by perpetrators against victims. As a project designed to remould and reshape an entire society, it also affects those who stood by and watched it unfold, whose inaction made it possible, and who in many cases benefited directly or indirectly from its commission. One of the great merits of transitional justice mechanisms (although they vary considerably in the way in which they are conceived and implemented) is that they raise the broader question of what genocide means for the wider

5 On this form of genocide, see especially the set of essays in *Genocides by the Oppressed – Subaltern Genocide in Theory and Practice,* eds. Adam Jones and Nicholas Robins (Bloomington: Indiana University Press, 2009).

society. This was arguably implicit in the Convention's initial definition of genocide as a crime that affects humanity itself, not only the victim group. Uncovering what took place, uncovering the truth or rather (as Thijs Bouwknegt reminds us) the necessarily partial truths, is an extremely challenging project that can be approached in many different ways and even in different locations, some within the society where genocide took place, some outside. Perhaps the best way to think about them is as different components of a complex process, with some more suited to establishing what he calls the "architecture of the violence"; some better equipped for identifying the key architects and the overall plan; and others more effective at exploring the detail of the many micro-histories that are involved in every case of genocide.

If it is the case that we require multiple agencies to develop an always incomplete record, that would after all only reflect the challenge that the depth and gravity of genocide poses for us, as a crime both against a group and against humanity itself. Nearly seventy years since the Convention, we are only now perhaps beginning to rise collectively to the challenge of thinking seriously about how and why the crime can be committed so often and with such impunity. This set of essays, like the course from which it stems, is a valued and most welcome contribution to this critical endeavor.

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