

4-1-2012

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Recommended Citation

Stanley A. Goldman, *Prologue: The Man Who Made Genocide a Crime: The Legacy of Raphael Lemkin*, 34 Loy. L.A. Int'l & Comp. L. Rev. 295 (2012).

Available at: <http://digitalcommons.lmu.edu/ilr/vol34/iss3/1>

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Prologue: The Man Who Made Genocide a Crime: The Legacy of Raphael Lemkin

STANLEY A. GOLDMAN*

“History Is a Nightmare from Which I Am
Trying to Awake.”¹

Though the subject of crimes against humanity dominated Raphael Lemkin’s personal and professional life, his legacy transcends the tragedy that surrounded him. Lemkin proved to be one of the great persuaders of the twentieth century. He was an attorney, who, in spite of the improbable odds against him, would not stop until he had won his case. Like any good lawyer, Raphael Lemkin was searching for just the right word—a word that he hoped would make a difference.² Without resources, position, fanfare, or even general public acknowledgement,

* Professor of Law, Founder and Director of the Center for the Study of Law and Genocide, Loyola Law School, Los Angeles. These remarks were delivered as the introduction to the Raphael Lemkin Award, September 15, 2012, as it was being bestowed upon the Honorable Gabriel Bach, former Justice of the Israeli Supreme Court and Senior Prosecutor in the Trial of Adolf Eichmann.

1. Mark my words, Mr [sic] Dedalus, he said. England is in the hands of the jews [sic]. In all the highest places: her finance, her press. And they are the signs of a nation’s decay. Wherever they gather they eat up the nation’s vital strength. I have seen it coming these years. As sure as we are standing here the jew [sic] merchants are already at their work of destruction.

.....
Is this old wisdom? He waits to hear from me. *History, Stephen said, is a nightmare from which I am trying to awake.*

JAMES JOYCE, ULYSSES 33–34 (First Vintage Int’l 1990) (1934) (emphasis added). To the Nazis, [t]he Jews were identified with the fragmentation of urban civilization They stood behind the ‘rootless cosmopolitanism’ of international capital and the threat of world revolution. . . . [T]hey were . . . the ‘world enemy’ against which National Socialism defined its own grandiose racial utopia of a Thousand-year Reich.

ROBERT S. WISTRICH, HITLER AND THE HOLOCAUST xii (2001) (internal quotations omitted); see also Stanley A. Goldman, *The Jew Who Met Himmler and Other Stories*, 32 LOY. L.A. INT’L & COMP. L. REV. 1, 1 (2010).

2. See Goldman, *supra* note 1, at 3 n.11.

he guided the world towards a system of international justice.³ Once you've heard his story you can decide for yourself how Lemkin should be remembered.

Though a Jew, Lemkin had risen high as a prosecutor in late 1920s Poland until his "race" (as well as his outspoken advocacy of human rights) cost him his official position.⁴ As a young man Lemkin had been shocked by the Turkish massacres of the Armenians.⁵ He learned that throughout history, those of superior might have sometimes attempted to rid themselves of the "other."⁶ These "others" may have been a different tribe, a different creed, or the entire population of a conquered city-state.⁷ Thus, grandiosely yet prophetically, Lemkin turned to the study of law, believing that it was the profession which would best qualify him for the task of making the destruction of groups of human beings punishable.⁸ "Sovereignty," he said, "cannot be conceived as the right to kill millions of innocent people."⁹

As fate would have it, the night terrors of the past were but shadows of the horrors to come, and when they, came they came for Lemkin. In the chaos of the 1939 German invasion, he escaped Poland and eventually made his way to the United States where, for a few years, he taught criminal law (first at Yale and then at Duke).¹⁰ Though Lemkin had *physically* escaped the Holocaust, he could not emotionally

3. *Id.* at 2.

4. *Id.*; see also JOHN COOPER, *RAPHAEL LEMKIN AND THE STRUGGLE FOR THE GENOCIDE CONVENTION* 17, 24–25, 38, 56–60 (2008); see DAN ESHEET, *TOTALLY UNOFFICIAL: RAPHAEL LEMKIN AND THE GENOCIDE CONVENTION* 3–4, 9–12 (Adam Strom et al. eds., 2007).

5. Goldman, *supra* note 1, at 2–3; see also ESHEET, *supra* note 4, at 3–4. Lemkin had prophetically asked: "Why was killing a million people a less serious crime than killing a single individual?" ESHEET, *supra* note 4 at 4.

[I]n 1933 . . . Lemkin drafted a paper that drew attention both to Hitler's ascent and to the Ottoman slaughter of the Armenians. . . . The attempt to wipe out national, ethnic, or religious groups like the Armenians would become an international crime that could be punished anywhere. . . . The threat of punishment, Lemkin argued, would yield a change in practice.

SAMANTHA POWER, "A PROBLEM FROM HELL": AMERICA AND THE AGE OF GENOCIDE 19–20 (2002).

6. POWER, *supra* note 5, at 17; see BEN KIERNAN, *BLOOD AND SOIL: A WORLD HISTORY OF GENOCIDE AND EXTERMINATION FROM SPARTA TO DARFUR* 49 (2007).

7. Goldman, *supra* note 1, at 4; see also KIERNAN, *supra* note 6, at 49–58.

8. See Dominik J. Schaller & Jurgen Zimmer, *From the Guest Editors: Raphael Lemkin: The "Founder of the United Nation's Genocide Convention" as a Historian of Mass Violence*, 7 J. GENOCIDE RES. 447, 448 (2005) (citing Raphael Lemkin, *The Raphael Lemkin Papers*, Box 2: Bio- and Autobiographical Sketches of Lemkin (unpublished manuscript) (on file with the New York Public Library, Manuscript and Archives Division)).

9. POWER, *supra* note 5, at 19.

10. COOPER, *supra* note 4, at 32, 34–35, 38; see also Goldman, *supra* note 1, at 2.

abandon those that were left behind.¹¹ Lemkin was among the few members of his family to survive, almost fifty of whom were to perish in the conflagration.¹² Throwing himself into his work, Lemkin became one of many writing in vain to alert the world to the ongoing destruction of European Jewry.¹³

In his writings, Lemkin sought to connect history's worst crimes to the horrors presently being inflicted by the Nazis.¹⁴ He searched the languages of the world for a single term capable of encompassing such all-but-unfathomable attempts at man-made extinction.¹⁵ Finding none, he simply constructed one himself.¹⁶ Borrowing a little from Latin and a little from Greek (combining the Latin word *cide*, for killing, and the Greek word *genos*, for family or tribe), the term he fashioned was "genocide."¹⁷ Raphael Lemkin had finally found the right word to describe the horror.

His now classic 1944 work, *Axis Rule in Occupied Europe*, mostly remembered for its introduction of the word genocide,¹⁸ is even more impressive for Lemkin's lawyerly demonstration (for the first time) of Nazi brutality being inflicted under the guise of legal authorization.¹⁹ He documented hundreds of pages of edicts and statutes enacted by the Nazis justifying their persecutions.²⁰ The appearance of legality perversely gave the Germans what they perceived as cover to argue that their behavior, no matter how abhorrent, was sanctioned by their orderly system of twisted "justice."²¹ This alone is a lesson for the ages. In spite of the fact that he and his family were primary victims of this legalized

11. Goldman, *supra* note 1, at 2.

12. Kurt Mundorff, *Other Peoples' Children: A Textual and Contextual Interpretation of the Genocide Convention, Article 2(e)*, 50 HARV. INT'L L.J. 61, 73 n.63 (2009) (only Lemkin's brother, his brother's wife, and their two children survived; at least forty-nine others were killed); Goldman, *supra* note 1, at 2.

13. COOPER, *supra* note 4, at 56–60; Goldman, *supra* note 1, at 2.

14. Goldman, *supra* note 1, at 2–3.

15. *Id.* at 3.

16. RAPHAEL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS FOR REDRESS* 79 (1944); Goldman, *supra* note 1, at 2.

17. LEMKIN, *supra* note 16 at 79; Goldman, *supra* note 1, at 3.

18. See WILLIAM SCHABAS, *GENOCIDE IN INTERNATIONAL LAW: THE CRIMES OF CRIMES* 14 (2000).

19. See LEMKIN, *supra* note 16, at ix; see also Arthur K. Kuhn, *Review of "Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress"* 39 AM. J. INT'L L. 360, 362 (1945) (noting in his review of Lemkin's book that it is "[n]ot a pleasant record, this book, of how a tyranny under the guise of law engulfed substantially an entire continent.").

20. See generally LEMKIN, *supra* note 16, at 267–635 (providing the statutes, degrees, and other documents pertaining to the laws of occupation throughout Europe).

21. *Id.* at 30–31.

persecution, Lemkin did not concentrate on the Nazis' attitude toward the Jews.²² Seeking a wider audience with a more universal appeal, he instead examined how the law itself was being used to oppress the subjugated populations of the occupied nations.²³

In the fall of 1946, Raphael Lemkin, unemployed and without a portfolio, began to haunt the corridors of the United Nations building.²⁴ With frayed collar and cuffs, perennially penniless and probably hungry,²⁵ he foraged for delegates (whose support he needed) and for news reporters who he hoped would publicize his decades-long goal to make the destruction of human groups punishable under the law.²⁶ Once having cornered a journalist, his sales pitch would normally start with an emphatic offer: "I have a genocide story for you."²⁷ Thus, purely through force of personal will, Lemkin drew the attention of the world to the word he created and the human atrocities it described.²⁸ In 1948 the UN General Assembly approved the first step required to add genocide to the list of international crimes.²⁹

Lemkin spent the next three years traveling from country to country lobbying for ratification of the UN Genocide Convention.³⁰ The law first took effect in 1951, when the twentieth nation signed on to the treaty, thus obligating all signatories to intervene anywhere genocide was being committed, and creating the right to criminally prosecute perpetrators of genocidal acts.³¹ So complete was his authorship that to

22. Daniele Conversi, *Cultural Homogenization, Ethnic Cleansing, and Genocide*, in 2 INTERNATIONAL STUDIES ENCYCLOPEDIA 719, 720 (Robert A. Denmark ed., 2010).

23. *Id.*

24. COOPER, *supra* note 4, at 94; Goldman, *supra* note 1, at 6.

25. COOPER, *supra* note 4, at 94; POWER, *supra* note 5, at 52 ("[J]ournalists frequently spotted him in the UN cafeteria cornering delegates, but they never saw him eat."); Goldman, *supra* note 1, at 6.

26. *See* COOPER, *supra* note 4, at 80; Goldman, *supra* note 1, at 6.

27. COOPER, *supra* note 4, at 78, 81; Goldman, *supra* note 1, at 6.

28. Sonali B. Shah, *The Oversight of the Last Great International Institution of the Twentieth Century: The International Criminal Court's Definition of Genocide*, 16 EMORY INT'L L. REV. 351, 353–54 (2002); *see also* Goldman, *supra* note 1, at 15.

29. Shah, *supra* note 28, at 354; *see also* Goldman, *supra* note 1, at 15.

30. *See Scream Bloody Murder* (CNN television broadcast Dec. 4, 2008); Goldman, *supra* note 1 at 15 n.93; Anton Weiss-Wendt, *Hostage of Politics: Raphael Lemkin on "Soviet Genocide,"* 7 J. GENOCIDE RES. 551, 551–52, 556 (2005); *see generally* SCHABAS, *supra* note 18, at 505–08 (describing the process of ratification through April 18, 1953 when the convention was ratified by the People's Republic of China).

31. *See* Convention on the Prevention and Punishment of the Crime of Genocide, art. VI, Dec. 9, 1948, S. TREATY DOC. NO. 81-15, 78 U.N.T.S. 277 ("Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."); *see also* Goldman, *supra* note 1, at 15, nn.90 & 93.

this day some scholars refer to it simply as “Lemkin’s Law.”³² Raphael Lemkin had chosen the right profession after all.

These efforts, however, took their toll. He was left with few relatives or friends,³³ and found himself physically as well as financially exhausted.³⁴ When he passed away in 1959,³⁵ a year before the Israeli capture of Adolf Eichmann,³⁶ the man who had expended so much of his life attempting to save the lives of others had only seven people at his funeral.³⁷

Lemkin’s life can be viewed as either a tragic reminder of a world gone mad or as an inspirational demonstration of a man who was destroyed yet never defeated. His view of the law was complex. Lemkin possessed a supreme appreciation for the power of the law to effect change for the better, but also a motivating hatred for law when it was used to harm the innocent. It cannot be doubted that Lemkin was one of those twentieth-century lawyers who ennobled the profession by his very membership.

One thing Lemkin was not, however, was a naïve idealist.³⁸ He did not expect that, as a result of his convention, all “genocidaires” would lay down their arms and cease their crimes.³⁹ “He simply believed that if the law was in place it would have [some] effect—sooner or later.”⁴⁰ Has it? Will it?

Whether the specter of prosecution has or will act to deter genocide may never be proven or disproven with certainty. What Lemkin posited was simply the significance of knowing there would be consequences.⁴¹ There is, after all, a consistency to human nature that

32. *Scream Bloody Murder*, *supra* note 30; *see, e.g.*, POWER, *supra* note 5, at 59–60 (describing the day of passage and its effect on Lemkin). Goldman, *supra* note 1, at 15 n.93.

33. POWER, *supra* note 5, at 78; Goldman, *supra* note 1, at 15 n.93.

34. POWER, *supra* note 5, at 77.

35. Weiss-Wendt, *supra* note 30, at 552.

36. MOSHE PEARLMAN, THE CAPTURE AND TRIAL OF ADOLF EICHMANN 58 (1963).

37. POWER, *supra* note 5, at 78.

38. *Id.* at 479–80.

39. *Id.* at 480.

40. A. M. Rosenthal, Op-Ed., *A Man Called Lemkin*, N.Y. TIMES, Oct. 18, 1988, at A31; POWER, *supra* note 5, at 479–80.

41. *See generally* LEMKIN, *supra* note 17, at xiii–xiv (noting the “alarming increase of barbarity with the advent of Hitler,” the “German techniques of exploitation of the subjugated nations [being] so numerous, thoughtful, and elaborate” and calling upon nations to create “such political and spiritual conditions that the Germans will be impelled to replace their theory of master race by a theory of master morality, international law, and true peace,” as well as the “necessary procedural machinery for the extradition of such criminals. . . .”); *see also* Michael A. McDonnell & A. Dirk Moses, *Raphael Lemkin as Historian of Genocide in the Americas*, 7 J. GENOCIDE RES. 501, 514–15 (2005).

makes the desire for self-preservation stronger than indifference to one's own fate.⁴²

Tonight we honor a man who, along with many other lifetime accomplishments, has personally demonstrated to the world the presence of such consequences.

42. Goldman, *supra* note 1, at 18.