


2018

Book Review, Anton Weiss-Wendt, The Soviet Union and the Gutting of the UN Genocide Convention (2017)

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Recommended Citation

Mark A. Drumbl, Book Review, 32 *Holocaust & Genocide Stud.* 297 (2018) (reviewing Anton Weiss-Wendt, *The Soviet Union and the Gutting of the UN Genocide Convention* (2017)).

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The Einsatzgruppen trial perhaps deserved more sustained treatment since the murder of 1,250,000 Jews, obliterating the Jewish population of a vast region in Eastern Europe, comes as close to genocide as possible. Had the defendants been charged with genocide, the end result likely would have been identical. Because of the Cold War and the need for a “pro-Western” Germany as a bulwark against Soviet expansionism, most of the sentences eventually were commuted: four defendants were executed, but the rest were released by 1958—having served a mere ten years. The moral: politics trumps law whether the law is crimes against humanity or genocide. Lemkin’s success at Nuremberg proved pyrrhic, as the legal subtleties gave way before “higher” interests.

Irvin-Erickson also suggests that Lemkin influenced the prosecutors at Nuremberg to utilize the concept of conspiracy (pp. 145–47). This is, however, questionable. The inclusion of conspiracy in the charge originated in the U.S. War Department in late 1944, largely through the persistence of then Lieutenant Colonel Murray Bernays.² Further, it is most unlikely that Justice Robert H. Jackson, a former U.S. Attorney General, needed enlightenment on the scope of conspiracy law. Lemkin’s vision was an expanded use of the genocide concept in future; Bernays’ was the idea that if organizations such as the Gestapo and SS were named and convicted as criminal organizations, proof of membership would suffice for future convictions. But no one was prosecuted and convicted after the Nuremberg trials purely on the basis of membership.

Irvin-Erickson notes that in the end, Lemkin considered his efforts to prevent genocide a failure. Lemkin wrote, “The fact is that the rain of my work fell on a fallow plain, only this rain was a mixture of the blood and tears of eight million people throughout the world. Included also were the tears of my parents and my friends” (p. 229). Although Lemkin was repeatedly nominated for the Nobel Peace Prize, he never was so honored (nor is the prize awarded posthumously). One can only speculate that his early death precluded deserved recognition.

Notes

1. The Genocide Act enacted in the United States in 1988 was not a law Lemkin would enthusiastically have endorsed. Lemkin urged that any law against genocide be grounded on the concept of universal jurisdiction, making the law applicable to genocide committed anywhere.

2. Bradley F. Smith, *The American Road to Nuremberg: The Documentary Record, 1944–1945* (Stanford, CA: Hoover Institution Press, 1982), 52–56.

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doi:10.1093/hgs/dcy040

The Soviet Union and the Gutting of the UN Genocide Convention, Anton Weiss-Wendt (Madison: University of Wisconsin Press, 2017), 385 pp., hardcover \$74.95.

When Raphael Lemkin coined the word “genocide,” he initially identified it with the intention to “annihilate a group of population by destroying the essential foundations of life for that group,” and further posited that “genocide might be political, social, cultural, economic, biological, physical, religious, and moral” (p. 19). Lemkin’s concern lay as much in the extirpation of identity as of life, and hence he conceptualized genocide broadly to encompass, in Anton Weiss-Wendt’s words, the destruction of “social and political institutions, culture, language, national feelings, religion,

economic means, personal security, liberty, health, dignity, and finally life itself” (p. 19). For Lemkin, the path forward lay in law, specifically an international treaty.¹ And Lemkin had his wish: the Genocide Convention was adopted by the United Nations General Assembly on December 9, 1948, and entered into force on January 12, 1951.

Weiss-Wendt’s book unpacks what happened to “genocide” as it journeyed along this path of codification. To be clear, codification was conditioned by compromise among states; and states were often motivated by Cold War selfishness, spite, manipulation, and machination. The Convention narrowed—and even mangled—the set of protected groups to national, ethnic, racial, and religious. The Convention, moreover, limited the recognized forms that genocide could take. The title of Weiss-Wendt’s book reflects its argument that the expansiveness of genocide as an idea was “gutted” in the process of codifying it in an international treaty.

The process of codification, while certainly generative, was thus also limiting. Weiss-Wendt fingers the Soviet Union as the primary culprit. The Soviets gutted the Convention, principally through a relentless and successful push to exclude political groups from protection. They were concerned with the exercise of external penal jurisdiction over political arrests, executions, and forced population movements conducted under Josef Stalin (for example, the Great Terror, the Gulag, and deportations of entire nations, pp. 72–75).

Weiss-Wendt concludes that the U.S. delegation to the UN “had played the key role in bringing the Genocide Convention to life” (p. 142).² When readers consider the details that Weiss-Wendt presents, however, it becomes apparent that the U.S. also was complicit in gutting the treaty. U.S. officials were preoccupied with race, and specifically the Convention’s implications for segregation in the American South. The Soviets leveraged the U.S. government’s fears over genocidal liability throughout the negotiation process, insisting on the connections between genocide and racism. The State Department ensured that the lynching of African-Americans—“sporadic outbreaks against the Negro population” (p. 80)—would fall outside the scope of genocide.³ The Senate Foreign Relations Subcommittee on Genocide went so far as to recommend ratification of the Convention only with “reservations”—including the explicit exclusion of “lynching, race riots, and so forth” (p. 228). Even so, it still took decades before the U.S. finally ratified the Convention.

Despite discussion of American politics and reference to the U.K.’s reluctance to support the prohibition of cultural genocide (owing to British fears of linkages to colonialism), only the USSR—not the U.S. or U.K.—gets singled out in the book’s title. In addition, the roles of many other states that objected to the inclusion of political groups, including Brazil, Iran, and South Africa, get short shrift; Canada also was anxious about cultural genocide (p. 91). Indeed, the Soviets ratified the Convention on May 3, 1954—more than three decades before the Americans did.

However, without the treaty, contemporary institutions such as the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Court likely would not be able to prosecute genocide under their own enabling instruments, and, in the case of the first two, convict defendants. So, yes, while the “two superpowers worked in dialectical unison to the detriment of international criminal law” (p. 280), the Convention surpassed the life span of one of the superpowers and ultimately helped support the creation of international courts to prosecute and punish genocide. Weiss-Wendt may simply be too harsh, or too hasty, when he evokes Lemkin’s “metaphor of the Genocide Convention as his own child” only to add that “the child was stillborn” (p. 280). Once genocide became a legal term, thanks to Lemkin, its interpretation became one for courts to make on a continuing basis.

The edgiest part of the book is the author's treatment of Raphael Lemkin. Rather than the "saintly figure" of popular accounts, Weiss-Wendt instead presents Lemkin as "a rather odious character—jealous, monomaniacal, self-important, but most of all unscrupulous" (p. 280), complicit in the gutting of his own creation. As early as 1947, Lemkin himself favored the exclusion of political groups in order to secure adoption of the treaty, and enlisted the World Jewish Congress in this effort (p. 100). As Weiss-Wendt shows, when it came to excluding political groups, "even Lemkin's closest associates expressed astonishment that he was 'willing to throw anything and everything overboard in order to save a ship'" (p. 101). Weiss-Wendt is unstinting in his analysis, stressing Lemkin's acceptance of the U.S. position regarding African-Americans and the Ku Klux Klan. As late as the mid-1950s Lemkin continued to fret that genocide might be tied to discrimination (p. 267). Lemkin spouted an ardent anticommunism in order to secure U.S. ratification, but he did not live long enough to witness this moment. Weiss-Wendt ably demonstrates how Lemkin's insistence may have become so annoying that it actually may have hindered U.S. ratification (p. 149).

The author's meticulous research brings to light Lemkin's degradation of other international instruments (the Universal Declaration of Human Rights, the draft Covenant on Social and Political Rights, the Convention Concerning the Abolition of Forced Labor, and the draft code of Offenses against the Peace and Security of Mankind) because he regarded them as contradicting the Genocide Convention: the single-minded focus on a curtailed Genocide Convention thus gutted instruments that might have facilitated international responses to episodes of genocide.

But whether Lemkin was saintly, or odious, or both, or just a man with a mission,⁴ Weiss-Wendt makes an enormous contribution to the literature by demonstrating how Lemkin's thinking on genocide was far from static. Activists today who invoke Lemkin's 1944 *Axis Rule in Occupied Europe* as grounds to expand the definition of genocide rely on only one—albeit the most attractive—of "many Lemkins" (p. 281).

Weiss-Wendt's must-read work delivers one of the most insightful and comprehensive treatments of the emergence of the Genocide Convention. *The Soviet Union and the Gutting of the UN Genocide Convention* is of particular interest to scholars of the Cold War. Its first three chapters, in addition, are a comprehensive exposition of the Soviet concept of international law, which emphasized bilateral instead of multilateral treaties and was deeply skeptical of binding custom among nations.

The book is a powerful exposition of the foibles of impatience and the supposed virtues of codifying crimes in international treaties. The rush to codify "genocide" as a crime emptied important elements of its content as a word.

What if Lemkin had pursued a different strategy? What if he had advanced "genocide" *outside* the world of law and diplomacy and, instead, within the realm of social discourse at the national level? What if the term had stewed at that level for a generation or two or three, before crystallizing into law? Might the law have been more expansive and better aligned with Lemkin's initial conceptualization?

Notes

1. For a rendition of the efforts of Lemkin (advocating for the crime of genocide) and Hersch Lauterpacht (for "crimes against humanity") in the development of international criminal law, see Philippe Sands, *East West Street: On the Origins of Genocide and Crimes Against Humanity* (London: Weidenfeld & Nicolson, 2016).
2. "The structure and form of the convention was unmistakably American; the text of the convention was grounded in Anglo-American legal tradition" (p. 142).

3. Concerns also arose regarding the status of Native Americans (p. 117).
4. This is the portrayal in Sands's book: Lemkin as an awkward (and ostracized) yet tireless character struggling amid Cold War Realpolitik.

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doi:10.1093/hgs/dcy026

***The Malmedy Massacre: The War Crimes Trial Controversy*, Steven P. Remy (Cambridge, MA: Harvard University Press, 2017), viii + 342 pp., hardcover \$29.95, electronic version available.**

On December 17, 1944, during the opening days of the Battle of the Bulge, a Kampfgruppe (battle group) from the 1st SS Panzer Division Leibstandarte SS Adolf Hitler (LSSAH) murdered a group of captured American soldiers at the Baugnez crossroads near the town of Malmedy, Belgium. An investigation of the massacre and the battle group's other atrocities led to a trial known as the Malmedy Case.

The U.S. Army prosecuted the Sixth SS Panzer Army commander, SS-Oberstgruppenführer Josef "Sepp" Dietrich; the battle group commander, SS-Obersturmbannführer Joachim Peiper; and other officers and enlisted men of the unit. The proceedings took place at Dachau. The prosecution argued that Dietrich had ordered the German spearhead to employ the most extreme measures, and that Peiper and his subordinates faithfully carried out their commander's order, making theirs one of the rare (though not unique) SS units that applied brutal Eastern Front practices in Western Europe. The defense maintained that there had been no order to depart from international law, and that any killings were the result of "heat of battle" confusion and the desperate situation facing the hard-pressed German forces. In July 1946, seventy-three of the defendants were found guilty; forty-three, including Peiper, received death sentences.

Subsequently, a new narrative argued that although the Kampfgruppe undoubtedly had killed American POWs, the trial and verdicts were tainted by gross investigative and prosecutorial misconduct. Lurid reports of savage beatings, death threats, mock trials and executions, and extorted confessions appeared in both the German and American press. Multiple investigations followed. Amnesty campaigns from diverse quarters gathered momentum. By early 1957, every Malmedy defendant, even those facing death sentences, had been released.

Steven P. Remy, author of the well-regarded *The Heidelberg Myth: The Nazification and Denazification of a German University* (2002), takes a critical look at this apparent case of "victor's justice" gone awry. He carefully analyzes the various efforts to seek amnesty for the Malmedy defendants and to influence the reviews and investigations of the trial and verdict. These began with the defense counsel, Colonel Willis Everett, who went public with accusations of prisoner abuse and prosecutorial misconduct. Remy deftly outlines the various political currents that fueled criticism of the trials, especially German resentment of denazification and the perceived shame of foreign occupation. He also highlights individuals advocating for the defendants: leading German clergy (both Catholic and Protestant) attempting to conduct a "rescue action," ex-Wehrmacht personnel seeking to restore German national honor, and various political opportunists hoping to further their own purposes.