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# The Dehumanisation Dynamic: A Criminology of Genocide

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Under the Supervision of Professor William A. Schabas  
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## **Abstract**

Why do individuals perpetrate the crime of genocide? This thesis utilises an interdisciplinary, criminological approach in order to explore this question. Interviews with perpetrators and victims of genocide in Rwanda, Burundi, Bosnia, Bangladesh, and Cambodia demonstrate the nature of genocide as a non-deviant crime of conformity. Propaganda from the criminogenic state drives this legitimisation of the crime of genocide. Perpetrators rationalise their actions, through the techniques of neutralisation, which are derived from state propaganda, peer influences, and the tendency of individuals to minimise their own culpability. Thus, perpetrator decision-making is rational but is constrained within the context of the genocidal state. Genocide may be prevented by increasing the costs of participation. Perpetrator self-objectification (the removal of agency) occurs in parallel with the objectification (dehumanisation) of victims in order to override the prohibition on killing and facilitate the commission of genocide.

## **Dedication**

**It has been said that evil is the absence of empathy.**

**If evil is the absence of empathy then hell is the absence of hope.**

**I dedicate this work to empathy and to hope.**

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## Chapter 1 – Introduction

### 1.1 Into the Abyss

And when you look long into the abyss,  
the abyss also looks back at you  
- Friedrich Nietzsche, *Beyond Good and Evil*

#### *Prologue: Inside Nyamata Church*

On a hot July day in 2007 I found myself standing inside Nyamata Church in the rusty red dust of the Rwandan countryside south of Kigali. Thirteen years earlier, Nyamata Church was the site of a terrible massacre. Thousands of devout Rwandans from the surrounding commune sought refuge in a house of God but they were to receive no mercy. Instead, they were slaughtered with guns, grenades, and, with the face-to-face intimacy of machetes and clubs. One young woman was raped repeatedly and then impaled on a wooden stake. Although it may be true that animals kill each other with cool indifference, only the human species is capable of killing with such unique, sadistic cruelty.

Today Nyamata Church is a peaceful oasis of whispering, green, leafy trees. At first it is impossible to conceive that it was once a landscape wrought with absolute terror and horror. Yet, with guidance, you begin to recognise the signs, calmed by the passage of time. The altar cloth is soaked in dried blood; bullet holes mark nearly every surface; the twenty foot corrugated tin ceiling soiled black with brain matter; the wall stained crimson with splattered blood from infants smashed against it. I descended beneath the church into Cimmerian underground chambers where ravaged bones were stacked to the roof – skulls bearing witness to the human suffering through their cracked shells and jagged, gaping holes. These were not mere artefacts but cruelly extinguished human lives. It was entirely beyond my comprehension!

What made such extraordinary brutality possible? Where did this malevolent force go? It seems to have disappeared into the ether yet I know in my heart that can't really be possible. I came to Rwanda seeking some insight, some understanding; to stand inside hell's mouth in

order to peer inside in some attempt at comprehension, yet to avoid being swallowed myself. Yet still I do not entirely understand.

Rwandans seem much the same as people everywhere else. Is this Elysian land of rolling green hills and towering volcanoes just a wolf in sheep's clothing? Will genocide happen in Rwanda again? I want to say no, but I cannot. The truth is Rwanda is neither heaven nor hell - it's just a place in between. And, *that* might be the most frightening thought of all.

### *Imagining the Unimaginable*

Genocide is a crime of “such unprecedented brutality and of such inconceivable savagery that the mind rebels against its own thought image and the imagination staggers in the contemplation of a human degradation beyond the power of language to adequately portray...one cannot grasp the full cumulative terror of murder one million times repeated. It is only when this grotesque total is broken down into units capable of mental assimilation that one can understand the monstrosity...one must visualize not one million people but only ten persons – men, women, and children, perhaps all of one family – falling before the executioners guns. If one million is divided by ten, this scene must happen one hundred thousand times.” – Einsatzgruppen Judgement<sup>1</sup>

Genocide is often portrayed as the darkest manifestation of human nature. It has become a shorthand sobriquet of human evil and, arguably, it possesses a normative weight surpassing any other crime. Yet it is this very power of the notion of genocide that confounds our understanding. The discourse is that evil such as this is not meant to be comprehended, it is only meant to be feared. The protagonist in Bernhard Schlink's *The Reader* puts it well when he states:

I wanted simultaneously to understand Hannah's crime and to condemn it. But it was too terrible for that. When I tried to understand it, I had the feeling I was failing to condemn it as it must be condemned. When I condemned it as it must be condemned, there was no room for understanding.

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<sup>1</sup> *United States of America v. Ohlendorf et al.* “Einsatzgruppen Trial,” Judgement, 3 L.R.T.W.C. 470 (United States Military Tribunal), April 8, 1948.

Genocide is often depicted as a sort of mass hysteria emerging out of the shadowy recesses of the human mind, or as a force of nature - a great, dark storm sweeping ordinary humans into a cruel vortex. Religious scholars may verbalize genocide using the language of sin, or of divine malevolence. Yet all of this mystification of evil has the effect of making genocide seem a sort of inexplicable, and, subsequently, inexorable force. It also externalises the causation of genocide rather than placing it firmly where it belongs: in the realm of human social phenomena and moral choice.

With the mystification of genocide also comes the mystification of the perpetrators. They are demonised as being abhorrent monsters that emerged from purest, blackest evil rather than human society. This demonization of the perpetrators contains an aspect of righteous condemnation. Such condemnation is morally justifiable, yet when manifested as this sort of demonization it is also misleading. Paradoxically, it does not represent a psychological mechanism of responsibility but rather of avoidance and denial. ‘The *génocidaires* are nothing like you or I; how could they be?’ To acknowledge our mutual humanity with the perpetrators is to question our very essence as moral beings. However, there is a great deal of research reinforcing this very point – the perpetrators are, for the most part, like you and me. They were not born malevolent but their lives were shaped by similar social forces and circumstances as ours. The key point then is how are they different? Or more accurately, what brought them to become different; to become killers?

To seek this understanding is not to rationalise the actions of the perpetrators in a way that excuses them from the power of volition and moral responsibility. Such a discourse would re-victimise the victims by rendering the perpetrators as mere objects of social processes rather than authors of individual evils. To abstract the victims and to place the perpetrators within a framework of inexorable social forces would be misleading. Moreover, reducing the process of perpetration to cold rationalisation stripped of moral choice represents exactly the kind of moral death necessary for genocide itself to occur. Therefore, this study will seek to comprehend perpetration only as a means to stopping future victimisation, rather than as a way to exclude or excuse moral or legal responsibility.

If we are ever to have any hope of ending genocide, and similar atrocities, we must first understand them. This understanding can then form the basis for preventative actions, actions that represent a fundamental affirmation of the worth and dignity of each and every human life. This work will utilise scientific methods with the objective of gaining some degree of insight into the causes of genocide. Yet, genocide *is* more than a mere intellectual abstraction – it is a crime with real consequences and real victims. Abstraction and objectivity may be intellectual ideals but they are not ideally humane and genocide is ultimately about the destruction of humanity. Thus, this inquiry will try to avoid presenting an overly abstract image of genocide and will attempt to ground its analysis in language that is not stripped of all expression and human consequence. In order to understand we must open the doors of perception, if only a little bit. We must imagine the unimaginable.

## **1.2 The Dehumanisation Dynamic: A New Theory of Genocide**

### ***Overview: Criminology and the Crime of Genocide***

This thesis posits an integrative, new theory of the individual perpetration of the crime of genocide. This theory will introduce new ideas but also synthesise elements of the existing literature. The insights of disciplines such as psychology, political science, sociology, anthropology, economics, and law will all be drawn upon but criminology will form the theoretical “spine” of this thesis. Criminology is the study of the “nature, extent, cause, and control of law-breaking behaviour.”<sup>2</sup> Genocide, of course, is law-breaking behaviour and has been recognised as a distinct crime since at least December 11, 1946, when the United Nations General Assembly passed a resolution calling genocide “a crime under international law.”<sup>3</sup> In fact genocide is arguably *the* most serious crime. The gravity of genocide comes from the sheer number of victims (hundreds of thousands or even millions of individuals), the perceived

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<sup>2</sup> Mark Lanier and Stuart Henry, *Essential Criminology*, (Boulder, USA: Westview Press, 2004), p. 3.

<sup>3</sup> Resolution 96 (I), “The Crime of Genocide,” United Nations General Assembly, 1<sup>st</sup> Session, Part two, 55<sup>th</sup> Plenary Meeting, December 11, 1946.

wrongfulness of the criminal acts (killing, rape, torture), the sanctions associated with the crime (life imprisonment or, in the past, the death penalty), and the objective of the crime to completely destroy a constituent element of humankind. Genocide is a *mala in se* act – it is universally recognised as deviant.

In spite of this gravity, criminology has essentially completely ignored genocide and most other international crimes until very recently. This means that much of the wealth of criminological theory has not been applied to genocide and also that the commission of the crime of genocide has not informed criminological theory. In the well-established field of criminology there are many volumes written on subjects of concern to genocide scholars, such as social factors that contribute to crime, perpetrator decision-making, perpetrator characteristics, victimology, and effective punishment.

In this thesis, genocide will be examined in order to determine the causation of individual perpetration of the crime of genocide. Once a model of perpetration has been set out, the implications of the model for genocide prevention will also be examined. The nature, cause, and control of the crime of genocide will all be considered. The focus of this research is on the act of killing, although genocide also encompasses other criminal acts, such as the forcible transfer of children. The reason for this selective focus is that killing is criminologically distinctive from these other acts in both its nature and its causation.

Several assumptions (normative and otherwise) will underlie the argumentation of the thesis. Firstly, that genocide is inherently damaging to human society and must be eradicated. Secondly, that genocide can be understood, and eliminated through certain measures. Thirdly, that genocide is *universal* in the sense that every human being has the potential to be a perpetrator, but *contextual* in that certain conditions are required in order for an individual to become a perpetrator. In other words, human beings are somewhat autonomous individuals with a degree of authorship over their lives, but they are heavily influenced by their social environment.

This thesis, in utilising criminology, also conceives of genocide as a crime. Yet genocide is not an ordinary crime - it differs from regular crimes in five important ways. Firstly, genocide is a *mass crime* with large numbers of perpetrators, victims, and bystanders.

Such a crime requires a level of systematic design. Secondly, genocide is a *political crime*, committed as the fulfilment of some sort of ideological or political goals. Thirdly, genocide is a *state crime*. Genocide is committed by the state; the state acts as a criminogenic system. Of course it is not beyond the realm of possibility that non-state actors, especially well-organised state-like ones, such as rebel groups with effective control over territory, are capable of committing genocide. Fourthly, genocide is often an *inter-generational crime* – it is often inspired by perceived transgressions against past generations of the perpetrator group. For example, one Rwandan perpetrator recounted “In my family I heard that there was once a monarchy where Tutsis made the Hutus slaves.”<sup>4</sup> The goals of genocide are also intergenerational in the sense that the perpetrators seek to preclude future generations of the victim group. Fifthly, and, most importantly genocide is a *non-deviant crime* – it conforms to the mainstream “genocidal culture” occurring in the genocidal state.

To many criminologists this conformist aspect of genocide may seem to be a contradiction – criminologists usually conceive of crimes and criminals as being somehow deviant - separate from mainstream society and culture. Moreover, the acts that criminals commit are seen to undermine societal values. Genocide, as a concerted, state-directed effort to destroy a marginalised group, is not like this. Genocide is supported by the state, even as it remains externally (universally) deviant. Other, ordinary crimes may be supported by deviant subcultures but such subcultures do not have the widespread legitimacy or permanency of the state. The special character of genocide must not be lost as we apply criminological theory to genocide.

Genocide also differs from other mass crimes such as crimes against humanity and war crimes. The central distinguishing feature of genocide is that it is a systematic, sustained effort to eradicate a group. Such an effort requires ideology (to identify suitable victims), propaganda (to authorise and mobilise action), and civilian mobilisation. It is this ideological element of genocide that most clearly distinguishes it. The annihilation of a group requires

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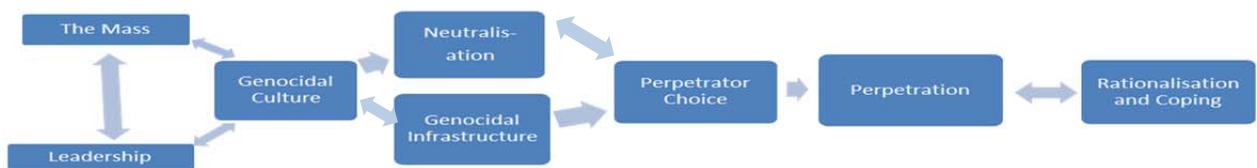
<sup>4</sup> Rwandan perpetrator interview R34, mason, Rwaza TIG Camp, August 30, 2009.

some form of ideological rationalisation, particularly when civilians become involved in the violence as perpetrators or bystanders. In contrast, individual acts of atrocity within military units only require discipline.

Genocide may also be conceptualised as a *mass hate crime* – a systematic or widespread crime targeting individual members of a group for reason of their membership in that group. Other mass hate crimes are the crime against humanity of persecution and the crime against humanity of apartheid. Yet genocide also differs from ordinary hate crimes because, as a state crime, the commission of genocide is directed and legitimated by the sovereign. As Nazi official Adolph Eichmann stated, “one was living in a time where crime was legalised by the state.”<sup>5</sup>

Criminal law is limited as an instrument for attributing responsibility for genocide as criminal law cannot possibly encompass the full range of societal perpetration (and acquiescence) required for a mass crime such as genocide. It is necessarily myopic in scope, often only focussing on the responsibility of selected individuals.

**Figure 1.1 Model of Perpetration**



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<sup>5</sup> Sivan, Eyal (director), “The Specialist: Portrait of a Modern Criminal,” Documentary film, (Kino Films. DVD release date: October 22, 2002), quote at 1:39:30.

The model above is a graphical representation of the process of genocide. It encompasses all levels of genocide and all the main elements required for genocide to actually occur. The arrows indicate the direction of influence of each element. Some elements are interactive, acting as both a cause and an effect (indicated by bi-directional arrows). This model will help to provide a central framework unifying the various elements of this thesis, although some aspects of the model, such as the genocidal culture, will largely remain outside of the scope of this thesis.

Beginning with “the mass,” genocide as a mass crime requires a degree of mass participation – direct participation, as well as complicity and acquiescence (passive bystanders). These mass movements are the instruments of destruction but also the constituencies of genocidal leaders. Of course genocide is not necessarily a populist enterprise; genocide is always driven by elites and the organizational structures under the effective control of these elites. Elites lead the mass movement but are also themselves often members of the mass movement (or they were shaped by the milieu of the mass).

It is leaders, with the support of mass movements, who create the socio-historical, criminogenic conditions for genocide. These conditions may be labelled the “genocidal culture.” The genocidal culture includes such elements as extreme polarisation and incitement to genocide. The structures (genocidal infrastructure) and messages (techniques of neutralisation) required for individual perpetrators to commit genocide arise out of the genocidal culture. Genocidal infrastructure is derived from state policies while the techniques of neutralisation are driven by propaganda. The genocidal infrastructure includes aspects such as hierarchical organisation and technology (weapons and other materiel required to commit genocide).

The techniques of neutralisation are drawn from the neutralisation-drift theory of criminology. Neutralisation-drift theory was originally developed by Gresham Sykes and David Matza to explain the behaviour of juvenile delinquents who often seemed to drift between regular society and “normal” values, and deviant values. Sykes and Matza argued that delinquents utilise “techniques of neutralisation” in order to neutralise “ordinary” values and commit deviant acts. These techniques are rationalisations that occur before the fact, thus

they act as “vocabularies of motive.”<sup>6</sup> In other words, external rationalisations for genocide (disseminated in the form of propaganda) are adopted by perpetrators and used as internal rationalisations. Rationalisations are also generated by horizontal propaganda (peer influence) and the tendency of individuals to avoid and minimise their responsibility for “wrongs.” Subsequent criminologists have elaborated on the work of Sykes and Matza and added additional techniques. This study will seek to deepen neutralisation-drift theory by considering techniques of neutralisation of particular relevance for genocide. This includes such elements as dehumanisation and the “claim of inevitability” (the claim that the victims were going to die as a result of forces beyond the control of the perpetrator so the perpetrator’s action is inconsequential).

Perpetrator decision-making is also central to this model. This includes two types of internalised decision-priming by perpetrators: *cost-benefit analysis* (an assessment of the material costs and benefits of the action) and *values analysis* (the consideration of whether the potential action conforms to the perpetrator’s values and therefore avoids cognitive dissonance). Additional influences on perpetrator’s options will be included in the model, such as the background of the perpetrator, their social environment, and the immediate context of perpetration. Perpetrators are social beings located within a particular social environment but they still retain some ability to exercise free will.

Finally, post-perpetration there are various rationalisations and coping mechanisms that come into play in order to enable re-perpetration. Genocide is often a serial crime with each perpetrator committing the *actus reus* multiple times. This is made possible not only by the techniques of neutralisation (now *post-facto* rationalisations), but also positive reinforcement, and coping mechanisms such as substance abuse.

### ***The Perpetration of Genocide***

In order to perpetrate their crimes génocidaires need opportunity, authorisation,

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<sup>6</sup> Stuart and Henry 169.

inspiration, and will. Opportunity to commit genocide comes from the state, which may provide positive inducements to engage in genocidal behaviour. Moreover, the lack of negative sanctions for acts such as killing, when undertaken in the course of genocide, also forms part of the opportunity space for the crime. Other international crimes (i.e. the war crime of rape) may sometimes occur in an opportunistic manner in conditions of disorder but genocide is a crime perpetrated under the auspices of the state and, in that sense, it represents order.

Both authorisation and inspiration to commit genocide come largely from the state and, to a lesser extent, radicalised peer groups. Such messages of authorisation and inspiration are essential to genocide because killing is normally considered to be a deviant act. Purpose and absolution must be provided for the killing act.

Finally, perpetrators of genocide require the will to commit genocide. Without such will the messages of the state would be meaningless. This will encompasses more than just the will to commit the crime, or even the will to destroy the targeted group, it also includes *the will to escape from will* – the subjugation of individual will in deference to the collective. Ordinary crimes differ from genocide as they only require opportunity and will (although authorisation/inspiration may also be provided by deviant subcultures).

The model of genocide perpetration is a kind of machine, involving progressive steps but it still requires an “engine” in order to give life to this progression. That engine is genocidal ideology and state power. Genocidal ideology is a certain type of extremist ideology that combines extreme polarisation (the utter dehumanisation of the victim group coupled with an extreme ethnocentrism) with a survival discourse (the notion that the very survival of the group and all its members are threatened by the enemy group). Genocidal ideology embraces the goal of the total annihilation of the victim group and this intent to destroy is what separates genocide from other forms of mass violence and criminality.

Mass crimes are not possible without shared belief systems, programs of action, and vision. Genocide is the realisation of criminal conspiracy driven by terrible ambition, not a mere spontaneous and chaotic explosion. Genocidal ideology is a part of the genocidal culture, the broader enabling social environment for genocide. This mass enabling

environment (with material support from the state) is required to mobilise genocide as a state crime. The mobilisation of action is driven by genocidal propaganda and organizational structures. The techniques of neutralisation are derived from the messages of genocidal propaganda while genocidal infrastructure is the material manifestation of hateful ideas. Genocidal propaganda provides external validation for the perpetrators, which is then internalised to provide validation and moral neutralisation that enables the perpetrator's decision to commit genocide. The authorisation function of propaganda may be more important than the inspiration aspect: perpetrators willingly transform themselves into objects of external authority as a means to avoid moral responsibility and social ostracism. Thus, perpetration for self-objectified perpetrators (against a dehumanised group) becomes a non-decision.

### ***The Prevention of Genocide***

The prevention of genocide must flow from an understanding of the causes of genocide. The preventive framework must include such elements as the response of states to genocide (both as it is occurring and when it appears to be likely), as well as the criminal prosecution of leaders for inchoate and preparatory offences. Special emphasis will be placed here on the prevention of individual acts of genocide through targeted prevention measures including prosecution. The hypothesis underlying this preventive research is that genocide is socially similar to other types of human rights violations and therefore that upstream prevention measures for genocide will also prevent other types of violence and human rights abuses.

### ***Thesis Statement***

The theory advanced in this thesis, outlined in further detail below, seeks to utilise criminology to determine why individuals commit the crime of genocide. In order to answer this question interviews will be conducted with perpetrators of genocide. The records of international tribunals will also be analysed, as well as the work of other scholars who have interviewed perpetrators or done general social research on the causes of genocide. Mono-

causal explanations will be avoided, instead a multi-level, multi-causal explanatory model will be utilised. This model argues that genocide is rooted in the parallel depersonalisation of victims and perpetrators. Victims are dehumanised by the perpetrators and made it valueless (or negatively-valued) objects while perpetrators also undergo a sort of self-objectification that externalises their will and their decision to commit genocide. The rationalisations of perpetrators act as powerful mechanisms to neutralise the cognitive guilt of perpetrators.

Although genocide is a shared evil, in the sense that many individuals are responsible, it is not a unitary act; shared purpose is combined with variable individual motives. High-level perpetrators (leaders) are usually motivated by ideology or self-interest. In contrast, low-level perpetrators are mainly driven by conformity and obedience to authority. Once genocidal killing is legitimised by the state individuals with few opportunities may commit the crime of genocide as a means to gain stature and personal enrichment. Genocidal propaganda outlines expected or permissible behaviour; it does not need to completely cognitively restructure its recipients, only to convince them that killing is acceptable or expected. The genocidal culture serves as an enabling environment that increases the saliency of genocidal ideology as a tool for catastrophic mobilisation. Genocide is a conformist crime. Génocidaires are not necessarily “willing executioners” – rather they act in ways that others expect them to.

Genocide occurs within a particular social environment and is triggered by the fundamental force of a genocidal ideology and propaganda that provides tools of rationalisation for perpetrators to exclude ordinary moral norms and commit the extraordinary act of genocide. The crime of genocide is at once revolutionary and conservative: it is revolutionary because it involves the mass murder of human beings in contravention of the most fundamental moral norms, yet it is also conservative in that individuals who participate in genocide are often doing so out of conformity to state and social expectations. The genocidal state is an order-based solution to perceived disorder. Perpetrators of genocide have myriad motives, yet the exceptional confluence of genocidal ideology and state power combines with our social imperative to conform to propel disparate individuals to commit genocide.

### **1.3 The Problem of Genocide**

"Man, when perfected, is the best of animals, but when separated from law and justice, he is worst of all." - Aristotle

#### ***Genocide and Human History***

Before proceeding to set out the methodological framework of this thesis and examining other theories of genocide, let us further discuss the nature of the crime of genocide. The gravity of genocide stems from its persecutory nature as an attack on individuals because of *who they are*. It is an attack on human identity as such. Moreover, genocide seeks the destruction of an entire component of humanity – “just as homicide is the denial of an individual’s right to exist, genocide is the denial of a group’s right to exist.”<sup>7</sup> Such a denial can only be based on dehumanisation – the denigration of individuals as being less than human in order that they can be excluded from the circle of ordinary human moral obligations. Therefore, genocide is an attack on humanity itself.

Yet, even as genocide is profoundly inhumane it is also a typically human social phenomenon. Throughout history the scourge of genocide has been ever present. There are some scholars who argue that genocide is a uniquely modern phenomenon only made possible through the technology, bureaucracy, and ideology of the modern state.<sup>8</sup> This claim is false – rather, genocide is a recurrent socio-historical phenomenon. To say that there is a historical continuity to genocidal episodes does not mean that genocide has always taken the same form or been shaped by the same motives – just that genocide, the deliberate physical destruction of ethnic, religious, national, and racial groups, has recurred throughout history. Yet, the legal

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<sup>7</sup> Resolution 96 (I), “The Crime of Genocide,” United Nations General Assembly, 1<sup>st</sup> Session, Part two, 55<sup>th</sup> Plenary Meeting, December 11, 1946.

<sup>8</sup> Manus Midlarsky, The Killing Trap: Genocide in the Twentieth Century, (Cambridge, UK: Cambridge University Press, 2005).

prohibition on genocide is certainly an aspect of modernity - in particular the globalisation of morality and the development of international institutions to enforce common standards.

Pre-modern genocides were often instrumental – designed to strategically eliminate rivals and potential rivals.<sup>9</sup> In the Middle Ages genocide often centred on religious identity, as religion was a more important source of division during this period than ethnicity.<sup>10</sup> With modernity came the rise of the nation-state and genocidal ideologies that sought to bring the fiction of the nation-state into reality by physically destroying or ethnically-cleansing minorities. Genocide, although relatively rare, has occurred in a variety of historical periods and an array of political systems and cultural contexts. All these varieties of genocide share the characteristic of seeking the elimination of an identifiable group through mass killing.

The relative universality of genocide may be at least partly imputed to fundamental attributes of human social existence. In particular, humans organise themselves into groups through self-identification and ascription. These group affiliations afford us a degree of security (pooled resources and shared goals) and identity.<sup>11</sup> Moreover, stereotyping and other forms of social categorization allow us to manage our knowledge and more quickly assess and process information. However, this collective identity only exists in opposition to other collective identities. Therefore there is a certain inherent exclusionary element and tension between group identities, tension that can be transformed into conflict or even violence when it becomes politicised. In its most extreme form, the human tendency to elevate the in-group (“us”) and denigrate the out-group (“them”) is manifested as genocide. Thus, in certain ways, the historical recurrence of genocide can be understood as a social phenomenon intimately related to human patterns of identity formulation.

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<sup>9</sup> Andrew Bell-Fialkoff, Ethnic Cleansing, (New York: St. Marten’s Griffin, 1999), p. 8. See also Frank Chalk and Kurt Jonassohn, The History and Sociology of Genocide, (London: Yale University Press, 1990), p.33; and Ben Kiernan, Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur, (London: Yale University Press, 2007).

<sup>10</sup> Fialkoff 14.

<sup>11</sup> Kristin Renwick Munroe, The Hand of Compassion: Portraits of Moral Choice During the Holocaust, Princeton: Princeton University Press, 2004, p. 214.

*Genocide in the World Today*

In contemporary times genocide has come to be widely recognized as an ongoing and grave threat to the international order. Genocide did not end with the Holocaust but has spawned anew many times since then. Some states, such as Rwanda and Burundi, have suffered serial genocides, where genocide has recurred over and over again in a cycle of ethnic mass killing and retaliation. The Bosnian genocide of the 1990's shocked the conscience of humankind by raising the spectre of the Holocaust as images of emaciated Bosnians peering out from behind the barbed wire of a concentration camp splashed across the front pages of the world's media. Such images inspire moral outrage and seem to compel action but it is a superficial brand of righteous indignation, vacuous, and lacking in any true purpose.

The latest potential genocide to gain the world's attention is widespread killing of "Africans" by "Arab" militias in the Darfur region of Sudan. The Darfur atrocities have garnered much attention and, somewhat surprisingly, even been condemned as genocide by powerful international actors such as the United States. Yet, in responding to this ostensible genocide, the international community has continued its tradition of empty rhetoric. In the face of continuing genocide, the most insurmountable obstacle to prevention appears to be the sustained lack of political will amongst the powerful to respond to the suffering of the powerless.

In spite of this slow political progress to interdict genocide, there has been a progressive legal evolution through the codification of genocide as a crime and the emergence of individual criminal accountability for the commission of genocide. The end of the Cold War had the effect of loosening up the geo-strategic, ideological 'logjam' in the international system and providing breathing room for international initiatives transcending bipolar power politics. The establishment of international criminal tribunals, to try those the most responsible for war crimes, crimes against humanity, and genocide in the former Yugoslavia

(1993) and Rwanda (1994), was a landmark development.<sup>12</sup> For the first time since the immediate aftermath of the Second World War individual perpetrators of international crimes were being tried in international courts.

Even more significant was the advent of the International Criminal Court (ICC) and its entry into force (through the Rome Statute) on July 1, 2001. The ICC is a permanent, treaty-based criminal court that already has personal and territorial jurisdiction over more than one hundred states. A significant body of genocide jurisprudence is accumulating as international tribunals have addressed contentious aspects of the 1948 Genocide Convention such as the identification of protected groups, the definition of killing in part, and the distinction between protected free speech and incitement to genocide. The seminal importance of these new international legal institutions is that, for the first time, potential perpetrators of genocide may fear being held criminally responsible for their actions.

### *The Definitional Quagmire*

Genocide is both a social phenomenon and a legal phenomenon. It is a social phenomenon because it is an aspect of human social order. As a crime with a specific legal definition genocide is also a legal phenomenon. These dual characteristics of genocide are sometimes conflicting. Genocide as socially-defined is necessarily broad, attempting to incorporate all aspects of genocide and genocidal behaviour for analytical purposes, while the legalistic conceptualisation of genocide is far more restrictive.

There are many competing, social science definitions of genocide. What most of these definitions have in common is that they include more than just the strictly defined legal notion of genocide and incorporate various other forms of mass killing and extermination. Some of these definitions emphasize the asymmetrical nature of the violence, while others emphasize

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<sup>12</sup> These courts are, of course, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda. The ICTY has jurisdiction over crimes against humanity, genocide, and war crimes occurring within the territory of the former Yugoslavia from January 1991. The ICTR has jurisdiction over the same crimes occurring within the territory of Rwanda from January 1, 1994 to December 31, 1994.

the number of victims. Frank Chalk and Kurt Jonassohn, for instance, define genocide as “a form of one-sided killing in which a state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator.”<sup>13</sup> There is also much debate over which groups (if any) should be a part of the definition. In particular the exclusion of political and social groups from the legal definition is often criticised by social scientists.

Other writers such as Irving Louis Horowitz and R.J. Rummel have emphasised the role of the state in perpetration as being integral to the definition.<sup>14</sup> Rummel bypasses the definitional limitations of genocide by coining the term “*democide*” to include all mass killing by the state. Israel Charny’s definition of genocide is “the mass killing of substantial numbers of human beings, when not in the course of military action against the military forces of an avowed enemy, under conditions of the essential defenselessness and helplessness of the victims.”<sup>15</sup> This definition is intended to cover all possible cases of genocide. Within these parameters Charny argues that there should be degrees of genocide (1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup>) based on premeditation and purpose.<sup>16</sup> There are also some social scientists who include the intentional destruction of a culture (*ethnocide* or cultural genocide) as a form of genocide, although it was largely omitted from the Genocide Convention and not considered in the drafting of the Rome Statute.<sup>17</sup> Critical criminology does not confine itself to legal definitions of criminality.<sup>18</sup>

While all of these definitions are thought-provoking, they lack the precision and rigour to be tenable in criminal law. By necessity the legal definition of genocide is much more

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<sup>13</sup> Chalk and Jonassohn 23.

<sup>14</sup> Alexander Alvarez, Governments, Citizens, and Genocide: A Comparative and Interdisciplinary Approach, (Bloomington, USA: Indiana University Press, 2001), p. 44.

<sup>15</sup> Alvarez, Governments..., p. 43.

<sup>16</sup> Israel Charny, “Editor’s Introduction,” in Israel Charny (ed.), Encyclopedia of Genocide, (Santa Barbara, United States: ABC-CLIO, 1999), p. 6.

<sup>17</sup> William Schabas, Genocide in International Law (Cambridge, U.K.: Cambridge University Press, 2000), pps. 188-189. Schabas also argues that expansions to the definition of genocide were not considered in 1998 because the expanded definition of crimes against humanity covered many of the supposed gaps in the Genocide Convention.

<sup>18</sup> Gregg Barak, “Crime, Criminology and Human Rights: Towards an Understanding of State Criminality,” in David O. Friedrichs (ed.), State Crime (Volume I), (Aldershot, United Kingdom: Dartmouth Publishing Company, 1998), p. 33.

precise and refers only to certain acts (killing, preventing births, etc.), perpetrated against an ethnic, racial, religious, or national group, with the intent to physically destroy that group, in whole or in part, as such. The liberty and reputation of an individual hangs in the balance in criminal trials, thus, criminal definitions must be precise in order to be just.

This disparity between the various social definitions of genocide and the legal definition of genocide also engenders raging debates over which cases constitute genocide and which cases do not. For example, cases such as Cambodia, where social and political groups were the primary targets, are almost universally accepted by social scientists as being genocide, while, according to legal definitions, they are not considered genocide (because the targeted groups were not protected groups under the convention). The special intent required for genocide, the intent to destroy a group as such, is also a frequent point of contention between social scientists and jurists. Social scientists are more likely to maintain that cases involving the asymmetrical mass killing of members of one ethnic group (such as the Srebrenica massacre in Bosnia) are genocide, regardless of whether the specific intent of the perpetrators to destroy the group as such can be proved.

This thesis will use a socio-legal approach, attempting to reconcile the accurate analysis of social phenomenon with legal rigour and precision. It will adopt the legal definition of genocide and will utilise the social sciences and law to examine genocide within its legally-defined boundaries. Nonetheless, cases of mass killing that may not meet the legal definition of genocide will also be considered under the hypothesis that they are socially similar phenomena to genocide. This is particularly true at the micro level of the individual perpetrator. This thesis aspires to establish a criminology of genocide and criminology is essentially socio-legal in nature: it examines social aspects of legal phenomena (crimes). In considering the causes and prevention of the crime of genocide there is a need to assess not only the aetiology of genocide but also the potential utility of the law as an instrument for resolving social problems.

## **1.4 The Enigma of Causation**

### ***Introduction***

Genocide is a complex social phenomenon, thus it is nearly impossible to prove that any social factor or process was the direct and singular cause of genocide. Mass crimes such as genocide and crimes against humanity are always fuelled by a combination of factors - to place all of the causal blame on singular social factors such as obedience to authority, economic collapse, or dehumanisation would be inaccurate and would appear to absolve the perpetrator of moral and criminal responsibility for their actions.

It is necessary to adopt an intuitive approach emphasising *adequate causality* – that it was reasonably likely that the outcome would be that particular consequence, rather than *condition sine qua non* – that the act in question would not have happened otherwise. This is the approach taken in this thesis in the assertion of criminogenic factors for the perpetration of genocide.

Genocide *has* been somewhat neglected and marginal to the social sciences. It has not often been a main subject of inquiry and is rarely treated extensively in general texts. This reluctance might be due to the perceived complexity of genocide, the perception that genocide is an “external problem” (i.e. it is something that happens in “other” societies rather than the societies of the researchers), and difficulties in measuring and testing hypotheses.<sup>19</sup>

To this list might be added an existential dilemma: that genocide, because of its outrageous and exceptional nature, is particularly difficult for people (including researchers) to comprehend; therefore there is a sort of aversion to the study of genocide. This existential aversion to genocide may be manifested in the arguments of some scholars and commentators (such as Elie Wiesel) who argue that such events can only be understood “metaphysically, spiritually, or not at all.”<sup>20</sup> As a work of social science and law this thesis already contains the

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<sup>19</sup> Alvarez, Governments..., p. 4.

<sup>20</sup> Alvarez, Governments..., p. 14.

normative assumption that genocide is a social phenomenon rather than a spiritual or cosmological one. Like other social phenomena genocide can then be understood.

However, some researchers argue that even if genocide may be understood, it cannot, or should not, be compared. In a sense, this is a denial of the validity of genocide as a scientific concept – if genocides cannot be compared then does genocide even exist as a phenomenon which may be studied? This incomparability of genocide argument is most often made with regards to the Holocaust. The Holocaust, it is argued, was a singular event in human history. Never before has a total extermination of a people been attempted; other atrocities, while undoubtedly terrible, are simply not the same thing. This historical particularism sees genocide as arising completely from socio-historical conditions unique to each society, therefore generalisation and comparison are not possible. This argument is untenable as, in particularising the Holocaust, it essentially places it outside of human social endeavour and back in the realm of mystical opacity. Even though it is true that genocide and other social phenomena (i.e. violent conflict) have a certain context-specificity, it does not make sense to view their recurrence in an ahistorical manner and to refrain from critically identifying the presence of common processes.

There is a particular paucity of criminological literature on genocide. In spite of its obvious applicability to the crime of genocide there has been very little research done on this area. Although there have been studies of mass or collective violence in the United States mass criminality on the international level has received virtually no attention.<sup>21</sup> Furthermore, genocide has been almost completely neglected by criminologists in terms of scholarly conferences and publications (both monographs and journals). The remarkable criminological neglect of the crime of genocide is demonstrated by the fact that between 1990 and 1998 only .001% of presentations at the annual meetings of the American Society of Criminology (ASC)

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<sup>21</sup> George S. Yacoubian Jr., "Genocide, Terrorism, and the Conceptualisation of Catastrophic Criminology," War Crimes, Genocide, and Crimes Against Humanity, Vol 2 (2006), p. 68.

and Academy of Criminal Justice Sciences (ACJS) were dedicated to the topic of genocide.<sup>22</sup> Moreover, a survey of eleven major international criminology journals during the same years shows that only one article (out of 3,138) related to genocide.<sup>23</sup>

As these statistics illustrate, the examination of genocide from a criminological perspective has been virtually non-existent. Much of the attention of criminology is focused on murder and violent crime but this theorizing cannot be easily employed in the study of genocidal killing. Genocidal killing is collective and a focus on individualistic killing such as murder presents a misleading picture of killers as pathological or psychologically abnormal; this cannot be true in the case of genocide with its many levels of perpetration and mass involvement.<sup>24</sup>

However, the attention to genocide within the social sciences seems to be growing steadily, particularly in the aftermath of (apparent) contemporary genocides such as Bosnia, Rwanda, and Darfur. The advent of international courts with jurisdiction over international crimes has also meant that the legal literature on these crimes has increased exponentially. In spite of the difficulty in proving the causation of genocide, there is still a fairly sizable body of literature which seeks to do just that. As befitting the complexity of genocide, this research spans the social sciences and humanities, including sociology, criminology, anthropology, political science, psychology, and history. Rather than summarising the work of each author (a monumental task made more difficult by the complexity and multi-causal nature of the overlapping theories), the following is a concise summary of the general themes found in genocide literature thus far. General criminological theories are also incorporated into this review.

Theories of genocide causation can be roughly divided into four categories (moving from the macro to the micro level): first, *situational* theories of genocide, which argue that the

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<sup>22</sup> George S. Yacoubian Jr., "The Insignificance of Genocidal Behavior to the Discipline of Criminology," *Criminal Law and Social Change*, No. 34 (2000), pp. 10, 11.

<sup>23</sup> Yacoubian, "The Insignificance...", p. 12.

<sup>24</sup> Alvarez, *Governments...*, p. 7.

perpetration of genocide is a result of macro-level societal conditions; second, *process* theories of genocide, which argue that genocide perpetration is rooted in certain social-psychological processes; third, *pathological* theories of genocide, contending that some individuals are “born killers” who just require opportunity; fourth, *rational choice* theories conceive of *génocidaires* as being autonomous rational actors who commit genocide in furtherance of personal goals. Many concepts introduced in this theoretical overview will be discussed in greater detail elsewhere in this work.

### *Situational Theories of Genocide*

Situational theories attempt to explain the relative rarity of genocide by focussing on the necessity for certain social conditions in order for genocide to occur. Perpetrators may maintain a degree of autonomy but their perpetration is only possible within an enabling context. This interpretation of genocide is favoured by many historians and political scientists who see genocide as a product of historical and political conditions. Situational theories of genocide bear some similarity to social ecology theories of crime, where the breakdown of social structures (social disorganisation) contribute to criminality.

Genocide is a catastrophic event and as such it requires a massive transformation of society. Some scholars argue that such a transformation can only occur as a result of exceptional social conditions. These conditions entail fundamental socio-economic and political upheaval and collapse. Such conditions create a need for meaning that can be filled by hate ideology and national projects. Ervin Staub argues that difficult life conditions lead to needs and goals that demand satisfaction. The absence of satisfaction of these goals creates a sense of vulnerability that can be exploited. It also creates a situation where people’s self-concepts are threatened and they cannot care for their families.<sup>25</sup> Scapegoating may be utilised in order to blame other groups as being the source of these problems. Although he focuses on the idea of “difficult life conditions,” Staub’s difficult life conditions hypothesis is

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<sup>25</sup> Ervin Staub, *The Roots of Evil*, (New York: Cambridge University Press, 2005) p. 15.

very similar to frustration-aggression theory which argues that frustration leads to aggression, and it also has some commonalities with economic deprivation theory in criminology, which argues poverty is criminogenic.<sup>26</sup>

Similarly, strain theory in sociology (originated by Durkheim and further developed by Robert Agnew) argues that society creates aspirations and cultural goals without adequate structures or means to realise them. This can result in a state of *anomie* or 'normlessness' where society has lost its moral authority. Crime is one adaptation to anomie.<sup>27</sup> Agnew argued that the three primary sources of strain are: first, when an individual or collectivity is blocked from achieving a goal; second, when something valued is threatened or lost; and third, when something negative or undesired is imposed.<sup>28</sup> The loss of group power or status may produce a sort of collective strain (as occurred during the contraction of the Ottoman Empire, the power-sharing forced on the Hutus under the Arusha Peace Accord, and the conditions imposed on the Germans under the Treaty of Versailles).

Another theoretician that places the blame for genocide on difficult life conditions and national decline is Manus Midlarsky. He argues that genocide generally occurs in the aftermath of state/imperial decline or territorial contraction. In these conditions the state and its inhabitants have a heightened sense of vulnerability. Such loss may have five consequences: an influx of refugees (producing an emotional reaction within wider society); a desire for revenge; increased competition over resources; an overvaluing of losses relative to gains; and a degraded perception of state security.<sup>29</sup> As evidence for this hypothesis he cites Nazi Germany (which was recovering from defeat in the First World War), and Rwanda (where the Hutu-dominated government had lost territory in the north to the Rwanda Patriotic Front and had been forced to accept a power-sharing agreement). Michael Mann argues that

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<sup>26</sup> Travis C. Pratt, and Francis T. Cullen, "Assessing Macro Level Predictors and Theories of Crime: A Meta Analysis," *Crime and Justice*, Vol. 32 (2005), p. 393.

<sup>27</sup> Lanier and Henry 235.

<sup>28</sup> Robert Agnew, *Pressured into Crime: An Overview of General Strain Theory*, (Los Angeles: Roxbury Publishing, 2006).

<sup>29</sup> Midlarsky 88.

the states most likely to commit genocide and related crimes are democratising states because these states are vulnerable and seeking to consolidate their power.<sup>30</sup>

Ben Kiernan, the author of Blood and Soil, similarly contends that genocide occurs during periods of great change. Genocide is often grounded in an ideology of conservatism in reaction to technological progress and new social or political relations.<sup>31</sup> Kiernan argues genocide is a violent attempt to restore a romanticised past.

There is certainly some validity to these arguments: socio-economic decline can create conditions that may be exploited by ethnic entrepreneurs. As Zygmunt Bauman argues:

...at no other time does society seem so formless – ‘unfinished,’ indefinite and pliable – literally waiting for a vision and a skillful and resourceful designer to give it a form. At no other time does society seem so devoid of forces and tendencies of its own, and hence incapable of resisting the hand of the gardener, and ready to be squeezed into any form he chooses. The combination of malleability and helplessness constitutes an attraction which few self-confident adventurous visionaries could resist. It also constitutes a situation in which they cannot be resisted.<sup>32</sup>

Scholars such as Ervin Staub and anthropologist Alexander Laban Hinton also argue that genocide requires a certain cultural context in order to occur. Genocidal regimes propagate genocidal ideology by utilising existing cultural knowledge in order to create acceptable discourses of motivation.<sup>33</sup> Cultural (ethnic or religious) conflict between groups is also sometimes posited as a genocidal instigator. It is argued that genocide can be the ultimate outcome in societies that are experiencing intense polarisation and ethnic conflict.<sup>34</sup>

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<sup>30</sup> Michael Mann, The Dark Side of Democracy, (New York: Cambridge Books, 2005), 4.

<sup>31</sup> Kiernan 24-25. Kiernan argues that this ideology also often includes four elements: expansionism, agrarianism, racism, and a notion of idealized antiquity.

<sup>32</sup> Zygmunt Bauman, Modernity and the Holocaust, (Ithaca, New York: Cornell University Press, 2000), p.

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<sup>33</sup> Alexander Laban Hinton, Why Did They Kill?, (London: University of California Press, 2005).

<sup>34</sup> René Lemarchand, Burundi: Ethnic Conflict and Genocide, (Cambridge, UK: Woodrow Wilson Centre Press and Cambridge University Press, 1996), p. 77.

The problem with some situational theories of genocide is that they are overly deterministic – individuals existing within the same social context do not always behave in similar ways. Moreover, social ecology theories of criminality (such as the Chicago School and Durkheim) do not fully address conformity-based crimes such as genocide where the strength of social institutions might actually be criminogenic.

### *Process Theories of Genocide*

Even if taken as a given that genocide results from state policy and socio-historical conditions, many scholars focus on the role of institutional processes in the actualisation of genocidal policy. They argue that the individual interacts with society in a dynamic way. Foremost among these meso-level theorists is sociologist Zygmunt Bauman, who argues that “the Nazi mass murder of European Jewry was not only the technological achievement of an industrial society, but also the organizational achievement of a bureaucratic society.”<sup>35</sup> Bauman argues that bureaucracies possess an inherent imperialism where they are constantly seeking new projects in order to expand their power and justify their existence.<sup>36</sup> There is also something inherently dehumanising about modern bureaucracies where there is a “deligitimation of all but inner-organizational rules as the source and guarantee of propriety, and thus denial of the authority of private conscience, become the highest moral virtue.”<sup>37</sup> Bureaucracies also engage in the use of value-neutral language. This bureaucratic abstraction and distancing from outside moral norms can be utilised to dehumanise victims and serve destructive ends. In one sense then genocide is a product of modernity itself (not an exceptional rejection of modernity):

Modern culture is a garden culture. It defines itself as the design for an ideal life and a perfect arrangement of human conditions... Apart from the overall plan, the artificial order of the garden needs tools and raw materials. It also

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<sup>35</sup> Bauman 13.

<sup>36</sup> Bauman 17.

<sup>37</sup> Bauman 22.

needs defence – against the unrelenting danger of what is, obviously, a disorder. The order, first conceived of as a design, determines what is a tool, what is a raw material, what is useless, what is irrelevant, what is harmful, what is a weed or a pest. It classifies all elements of the universe by their relation to itself... From the point of view of the design all actions are instrumental, while all the objects of action are either facilities or hindrances...when the modernist dream is embraced by an absolute power able to monopolize modern vehicles of rationalisation, and when that power attains freedom from effective social control, genocide follows.<sup>38</sup>

There are many theories that focus on one particular aspect of the modern state – its power to coerce compliant individuals into performing certain actions. There is a norm of obedience in modern societies and this can be easily harnessed to commit monstrous crimes.<sup>39</sup> This was most famously demonstrated in the experiments of psychologist Stanley Milgram (see page 126). This habitual obedience, coupled with the massive power of the state, is said to have the potential to mobilise societies to commit genocide and other gross human rights violations.

Closely related to the hypothesis that obedience to authority drives atrocity are those theories that argue that conformity and the pressures of the group enable and encourage violence by individual perpetrators. Social psychologists argue that human beings generally make great efforts to conform to norms of behaviour and others' expectations.<sup>40</sup> This conformity serves our need for connectedness. According to thinkers such as Le Bon and Freud people behave differently in groups – they are more aggressive and competitive than as individuals.<sup>41</sup> The group can also exert conformity pressures on individuals that make them do things that they would not normally do.<sup>42</sup>

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<sup>38</sup> Bauman 92, 94.

<sup>39</sup> Elliot R. Smith and Diane M. Mackie, Social Psychology (3d edition), (New York: Psychology Press, 2007), p. 374. See also Mann 28.

<sup>40</sup> Smith and Mackie 311.

<sup>41</sup> David Berreby, Us and Them: Understanding Your Tribal Mind, (New York: Little Brown & Co, 2005), p. 159.

<sup>42</sup> Smith and Mackie 488.

Ideology is also often identified as being a central factor in the process of transforming “ordinary men” into “willing executioners.” Ideology can exploit our existing tendency to elevate the in-group and denigrate the out-group.<sup>43</sup> In the extreme circumstances of genocide the out-group is dehumanised and separated from the community of reciprocal moral obligation. The power of ideology to incite racial hatred and genocide is the central argument of Daniel Goldhagen in his controversial book Hitler’s Willing Executioners. Goldhagen argues that because of the context of embedded “eliminationist anti-Semitism,” Germans did not want to say “no” and were in fact willing executioners.<sup>44</sup> Staub asserts that such ideology can satisfy fundamental needs by providing recipients with a worldview, identity, and the ‘solution’ to ‘problems.’<sup>45</sup>

There are other ways in which perpetrators can “learn” to be violent. Psychologists argue that personality disorders (including those making aggression more likely) are rooted in abnormal socialisation and developmental processes.<sup>46</sup> Social learning theories of criminology assert that we seek out role models and model our behaviour after them – this latent behaviour may then be triggered by certain events.<sup>47</sup> Edwin Sutherland’s elaboration of social ecology theories of criminology posited that, while social disorganisation is criminogenic, crime is still behaviour learned from role models.<sup>48</sup>

Most psychologists argue that the triggers for aggression are frustration or threats.<sup>49</sup> Staub elaborates on this theory by arguing that aggression may be triggered/motivated by: retaliation for harm-doing; self defence; the need to protect the psychological self; injustice (i.e. perceived relative deprivation; personal efficacy and personal power; chaos or sudden changes; the need for hope; the need for connectedness; the need for positive social identity;

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<sup>43</sup> Berreby 17.

<sup>44</sup> Daniel Goldhagen, Hitler’s Willing Executioners, (New York: First Vintage Books, 2001), p. 14.

<sup>45</sup> Ervin Staub, The Psychology of Good and Evil, (New York: Cambridge University Press, 2002), p. 299.

<sup>46</sup> Lanier and Henry 129-130.

<sup>47</sup> Lanier and Henry 144.

<sup>48</sup> See, for example: Edward Sutherland, Principles of Criminology, (Philadelphia: J.B. Lippincott, 1947).

<sup>49</sup> Staub, The Roots..., p. 35.

instrumentality; or obedience.<sup>50</sup> Furthermore, another social process that enables aggression is external and internal rationalisation. The neutralisation-drift theory of criminology argues that criminals are released from the norms of ordinary society by certain “techniques of neutralisation” (rationalisations).<sup>51</sup>

Finally, once killing has begun, habituation makes it easier for perpetrators to continue to commit genocidal atrocities. Midlarsky argues that many *génocidaires* have committed violence in the past without facing any serious consequences.<sup>52</sup> This is consistent with the idea that behaviour is learned both through role modelling and ‘learning by doing’/positive reinforcement. The social psychological theories of genocide are often criticised as taking the particularity out of genocide perpetration – that is that they deny the socio-historical context-specificity of genocide and also the unique characteristics of the perpetrators that result in them deciding to kill. They may not explain why some perpetrators use “excessive force” and why individuals differ in their propensity for obedience and killing.<sup>53</sup>

### ***Pathological/Rational Choice Theories of Genocide***

The final types of theories summarised in this literature review are what could be termed pathological and rational choice theories of genocide. These theories focus on the micro-level of individual perpetrators. Pathological theories posit that genocide is committed by exceptional individuals who have certain medical or psychological dysfunctions. Beginning with medical explanations, there are certain medical conditions such as brain tumours, brain injuries, and cerebrospinal disorders that are linked to severe personality changes and emotional problems.<sup>54</sup> Other biological theories posit that people may be predisposed to crime and other violent behaviour through genetic traits, hormone imbalances,

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<sup>50</sup> Staub, *The Roots...* pps. 35-43.

<sup>51</sup> Lanier and Henry 172.

<sup>52</sup> Midlarsky 43.

<sup>53</sup> Alexander Laban Hinton, *Why Did They Kill?: Cambodia in the Shadow of Genocide*, (London: University of California Press, 2005), p. 279.

<sup>54</sup> Stuart and Henry 102.

hyperactivity, or brain chemical disorders.<sup>55</sup> Much of this is emerging science that has yet to be conclusively proven. Earlier criminological theories positing a correspondence between violence and facial or cranial structure have long since been discarded. The problem with many of these explanations is not only a lack of conclusive evidence but also the fact that, given the mass scale of genocide, many genocide perpetrators must not possess these relatively rare disorders. Therefore, biological theories have only very limited applicability for genocide (i.e. they may help explain the actions of only a very limited number of perpetrators).

Other theories of genocide draw on abnormal and forensic psychology to hypothesize that genocide perpetrators have psychological injuries and disorders. For example, Theodor Adorno proposed that a major contributing factor to the Holocaust was that many of the perpetrators had what he called an “authoritarian personality.” This personality was said to be overly fearful and respectful of authorities and hostile and domineering towards “inferiors.”<sup>56</sup> Authoritarian personalities were also said to draw sharp distinctions between right and wrong and to disdain non-conformists. People with authoritarian personalities were parented harshly and subsequently desired harsh leaders.<sup>57</sup> Psychological theories point out that perpetrators of violence often have low self-esteem or that they are anti-social (sociopathic) or narcissistic personalities.<sup>58</sup> Steiner argues that there is a self-selection process for brutality and that the pathological personality characteristics of “sleepers” are activated under certain conditions.<sup>59</sup> Nonetheless, the same criticisms applied to biological theories also apply to theories involving personality disorders – the mass scale of genocide belies an explanation rooted in uncommon

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<sup>55</sup> Stuart and Henry 113.

<sup>56</sup> Berreby 160.

<sup>57</sup> Berreby 160. See also Alice Miller, For Your Own Good: Hidden Cruelty in Child Rearing and the Roots of Violence, (Darby, U.S.A.: Diane Publishing Company, 1983).

<sup>58</sup> Jonathan Glover, Humanity: A Moral History of the Twentieth Century, (London: Yale University Press, 2001), p. 35. See also: Smith and Mackie 480.

<sup>59</sup> Christopher Browning, Ordinary Men, (New York: Harper, 1998), p. 166.

disorders. Evidence shows that anti-social personality disorder and sadistic behaviour are relatively rare.<sup>60</sup>

In contrast, there are other theorists that emphasize the rationality and volition of genocidaires and other criminals. Classical theories of criminology do not take account of individual differences or context but rather uphold the equality of volition of all individuals.<sup>61</sup> Although these theories are accurate in that they place the responsibility for perpetrators' actions with the perpetrators themselves, they do not really explain how a mass crime like genocide can occur – genocide is too systematic and purposeful to be reduced to the aggregate of numerous bad individual decisions (although there is some ultimate truth to this as well). Nonetheless, rational choice theories may have some relevance for explaining perpetrator decision-making, especially the decision-making of leaders. Rational choice theories of genocide tend to be 'top-down' (focussed on leadership) in contrast to the 'bottom-up' approach typical of situational theories.

Some writers contend that genocide is merely another means to exercise and maintain power (both for individual leaders and states).<sup>62</sup> This interpretation of genocide argues that genocide may have an apparent "rationality" as it is undertaken in an instrumental fashion to achieve political and/or economic goals. For example, Chalk and Jonassohn argue that eliminating real or potential threats and acquiring economic wealth are two potential types of genocide.<sup>63</sup> Political scientist R.J. Rummel argues that genocide is rooted in the use, and abuse, of power by states. Authoritarian states commit genocide as an extreme means of exercising their power – "power kills, absolute power kills absolutely."<sup>64</sup>

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<sup>60</sup> Dave Grossman, *On Killing*, (New York: Back Bay Books, 1996), pps. 180-181. The percentage of soldiers with psychopathic/anti-social personalities was found to be 2% in studies of American servicemen in World War II.

<sup>61</sup> Stuart and Henry 79.

<sup>62</sup> Chalk and Jonassohn 35.

<sup>63</sup> Chalk and Jonassohn 29.

<sup>64</sup> Israel Charny and Jennifer Balint, "Definitions of Genocide," in Israel Charny (ed.), *Encyclopedia of Genocide*, (Santa Barbara, United States: ABC-CLIO, 1999), p. 23. See also: R.J. Rummel, *Death by Government*, (Piscataway, U.S.A: Transaction Publishers, 1997).

Michael Mann is one proponent of this political instrumental view of genocide. In his book The Dark Side of Democracy Mann argues that democracies carried out past ethnic cleansing in order to achieve their present mono-ethnic states.<sup>65</sup> Perceived threat can be a powerful motivator for states and individuals – those most likely to be perpetrators are those with the greatest perception of threat (i.e. ethnic Germans from border regions, who were overrepresented among the perpetrators of the Holocaust).<sup>66</sup> Perceived past victimisation often provides fodder for these ‘siege societies’.<sup>67</sup>

Genocide is not generally an initial political goal but rather a “last resort” in order to forcefully consolidate state power in the face of perceived external or internal threats. In Holocaust studies this view is represented by the functionalist school, which maintains that the Holocaust emerged from socio-political developments during the war, rather than the intentionalist argument that the commission of the Holocaust was the result of years of careful and determined planning. Mann embodies this functionalist view when he characterises the Armenian Genocide as a draconian response that, in an atmosphere of insecurity and fear, escalated into genocide.<sup>68</sup> Many writers argue that genocide is incremental and always preceded by preparatory stages including hate speech, the establishment of institutions of discrimination, and the concentration of the victims (in order to increase their vulnerability).<sup>69</sup>

### ***General Critique of Existing Theories***

Although this body of literature contains many insights and plausible explanations for the causes of genocide, they are still somewhat fragmentary. Firstly, genocide as a massive, “social” crime is complex by its very nature. Therefore, any monocausal theories of genocide

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<sup>65</sup> Mann p. 4.

<sup>66</sup> Mann 225.

<sup>67</sup> Branimir Anzulovic, Heavenly Serbia: From Myth to Genocide, (London: C. Hurst & Co, 1999), pps. 122-123.

<sup>68</sup> Mann 148.

<sup>69</sup> Gregory H. Stanton, “The Eight Stages of Genocide,” [www.genocidewatch.org/8stages.htm](http://www.genocidewatch.org/8stages.htm), accessed June 2, 2008. See also Chalk and Jonassohn 261, and Jean Hatzfeld, Machete Season, (New York: Picador Books, 2005), p. 66.

must be immediately discarded as being overly reductionist. Given the number of perpetrators and the number of acts of perpetration, it is untenable to argue that the conditions precipitating the act and the motivations of the perpetrators are exactly the same in each case.

The second important critique of many of these theories is that they are not adequate to establish causality for genocide except in a *post-facto* sense. Thus, they are highly tautological and often employ circular reasoning (i.e. genocide is committed by bad people who commit genocide because they are bad). This is the central problem with genocide literature: the proposed causality produces far too many false positives and is therefore of very limited utility as a predictive tool. Throughout history there have been numerous cases meeting the criteria of the situational and, to a lesser degree, process theories that have not resulted in genocide or even violence. Furthermore, as argued above, there are many perpetrators who do not have “pathological” qualities and many people that have such qualities but never commit genocide or any other acts of extreme violence.

Finally, most theories relating to the causes of genocide have relatively little to say about specific means to prevent genocide. Naturally, the prevention of genocide does flow from the causes of genocide but identifying causes is not enough to effectively prevent genocide – specific tools are required. Prevention is often an afterthought, at best, in genocide literature. Much of the discourse on prevention is especially subject to simplistic normative assumptions such as that the mere existence of international criminal law will deter future perpetrators.

As with the causative theories, the literature on genocide prevention tends to be somewhat fragmentary and myopic. If the causation of genocide is complex and multi-layered then prevention must also exhibit the same characteristics. There are theories focussing on humanitarian intervention, theories on international criminal law, theories on education and post-conflict transformation, but few theories integrate these approaches.

The prevention discourse is also lacking in true predictive capacity. For example, Israel Charny has proposed to utilise the following early warning indicators for genocide prevention: 1) lack of valuing of human life; 2) lack of concern with the quality of human experience; 3) valuing of power (i.e. power is used to dominate and exploit); 4) lack of

mechanisms for managing escalations of threat; 5) orientation towards force (it should be oriented towards self-defence and conflict resolution); 6) overt violence and destructiveness (exposure to violence and the glorification of violence in the media contributes to genocide); 7) dehumanisation of the potential victim target group; 8) perception of the victim group as dangerous; 9) availability of the victim group (vulnerability); and 10) legitimization of victimization by leaders and institutions.<sup>70</sup> Obviously these indicators are overly amorphous and vague. Utilising these indicators may be useful in an analytical sense but they are not true indicators and would likely produce far too many false positives. In sum, there is clearly a need for new theoretical directions that incorporate the best aspects of existing theories, while attempting to correct some of their inadequacies and account for the full complexity of genocide.

### **1.5 Objectives of Thesis Research**

This thesis will utilise a multidisciplinary approach in order to establish a criminology of genocide - an analysis of the causes and prevention of the crime of genocide. More specifically, the focus will be on the causes of individual perpetration. However, this work will also be multi-level: it will seek to address the connection between institutions such as the state and individual acts of perpetration. Genocide is committed by individuals but it is a mass crime and the genesis of such a mass atrocity is only possible with systematic direction and infrastructure. However, examining either just individual perpetrators or massive institutions is quite myopic in scope and cannot really account for the causation of genocide. What is most crucial then is the meso-level – the interaction between the actions of individual perpetrators and macro-level institutions. This will be the central focus of this research.

In addition to these elements it is hoped that the thesis will make contributions to the field in three main ways. Firstly, it will seek to merge criminology with genocide studies.

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<sup>70</sup> Alvarez, Governments..., pp. 134-135.

Secondly, it will introduce new theories on genocide. Thirdly, new primary data will be gathered which can then be utilised by other scholars. In sum it is hoped that the original contribution of this thesis will be through the integration of existing theories, the innovation of new theories, and the collection of new information.

## **1.6 Methodology**

### ***Problem Questions***

This thesis attempts to answer the following central questions: Why do individuals perpetrate genocide? How can genocide be prevented? These questions are undoubtedly broad and there are many possible answers but this thesis will present and substantiate a theory that is one plausible explanation. It is hoped that the answer to these broad questions will arise through the examination of several more specific questions.

### **Figure 1.2: Problem Questions**

**General Problem Questions:**

1. Why do individuals perpetrate genocide?
2. How can genocide be prevented?

**Specific Problem Questions:**

1. What is the nature of genocide? How does it differ from other crimes?
2. What motivates individuals to participate in genocide?
3. What types of people perpetrate genocide?
4. How does the social environment/state influence individual perpetrators of genocide?
5. How do individuals decide to perpetrate genocide?

### ***Towards a Criminology of Genocide***

In answering these research questions a criminology of genocide will be constructed. This means two things: 1) the use of criminological theory to examine genocide, 2) the development of a fairly comprehensive criminology of genocide incorporating the causes (*criminogenic* conditions) and control of the crime of genocide. Such an enterprise poses several methodological challenges and opportunities.

Foremost among these methodological challenges is the difficulty in developing and measuring the appropriate variables in order to answer the problem questions. Such variables are almost entirely subjective, so the research must heavily utilise qualitative analysis. In order to avoid false positives, the variables must be isolated to some degree. This is very difficult when studying mass-scale complex social phenomena. There are many different potential dependent variables and true experiments are not possible given the nature of the problem questions (i.e. genocide experiments would be unethical and unfeasible). Certain social-psychological processes are testable in experimental environments and the data produced by this body of work will be utilised. There are advantages and disadvantages of such experimentation: although it may be “pure” in a methodological sense, it is also ahistorical and does not really take account of the context in which mass crimes occur. Another related challenge is measuring a large number of variables in order to test multiple hypotheses.

Genocide research is also difficult due to the contentious nature of the subject itself: genocide has a great normative weight and few countries, leaders, or ethnic groups want to be associated with such an atrocity. Moreover, states that commit genocide may be subject to legal proceedings (for example under the law of state responsibility or civil proceedings within their countries) and demands for compensation. Also, for the first time ever, there are international courts and tribunals with the authority and responsibility to hold individuals criminally liable for their participation in genocide. Therefore genocide research is politically sensitive and this poses risks for the researcher and subjects. Moreover, due to elevated risks, doing genocide research during a genocide is essentially impossible. This necessitates that research be done after the fact when less information may be available and memory is time-altered.

The use of interviews, although a rich source of information and insight, is also methodologically problematic. The subject may distort facts and omit details.<sup>71</sup> Moreover, it is important to recognise that their retelling of their story may fulfill some inner psychological need (i.e. coherence).<sup>72</sup> Some have argued that in “non-Western” culture the emphasis is more external consistency (conformity) rather than avoiding cognitive dissonance.<sup>73</sup> This also means that interviewees may feel under a great deal of pressure to tell the interviewer what they think the interviewer wants to hear or what wider society would wish them to say. Many distortions are not intentional deceptions - our experience is mediated by our understanding of the world.<sup>74</sup> In general, interviews must be analysed critically in light of other data (anchoring this analysis in corroboration rather than pure subjectivity is also a means to avoid bias).

Adopting an integrative theoretical framework poses other methodological challenges. First of all, the researcher is, by necessity, somewhat of a generalist. This means that theories are taken out of their disciplinary context and analysis is somewhat limited in depth. It is also difficult to maintain coherence of argumentation in bringing together theories from different disciplines. Furthermore, theories must be made pliable in ways that they were not originally intended for in order to bring new perspectives to bear on problems (i.e. the use of criminology to analyse mass, rather than individual, crimes).

Finally, there are some considerations that must be taken into account when doing field research. Such research is often logistically difficult, involving expense, time, and adaptation to unfamiliar and difficult environments. In a relatively short period of time a researcher must adapt to a local, and sometimes quite alien, cultural context. This may involve a need for local contacts and interpreters. Moreover, the researcher must learn a great deal about a country in a short amount of time. There is also the issue of how comparable particular situations are

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<sup>71</sup> Kristen Renwick Munroe, [The Hand of Compassion: Portraits of Moral Choice During the Holocaust](#), (Princeton, U.S.A.: Princeton University Press, 2003), p. 283.

<sup>72</sup> Munroe 284.

<sup>73</sup> Munroe 311.

<sup>74</sup> Munroe 203.

between countries (i.e. comparing the Holocaust with the Rwandan genocide). There is a danger of universalizing the particular.

However, there are also many potential advantages of this type of research. These prospects have already been discussed above but, just to reiterate, they are: developing a criminological model of genocide causation and prevention that takes account of the full complexity of the problem, gathering new comparative and case data, and the cross-fertilisation of knowledge. A general point that must be born in mind when discussing methodology is that methodology is merely a means to conduct research (to answer questions) and not an end in itself. Social science sometimes suffers from methodological fetishism, where, as Alex Alvarez posits: “the process has become more important than the underlying reason for the process.”<sup>75</sup>

### ***Methodological Approach***

This research will employ a methodology that is complex and multi-level in order to suit the complex and multi-level nature of the problematic. The methodological guiding principles of this thesis are as follows:

- **Integrative:** as befitting the interdisciplinary nature of criminology itself the research will integrate numerous theoretical perspectives from disciplines such as: criminology, psychology, law, sociology, and history. Additionally the literature on subjects such as obedience to authority and the causes of violent crime, although not specific to the problem of genocide, has the potential to offer much insight. There is a need to bridge the divide between law and the social sciences in order to socially-ground the law, thus, improving its effectiveness. Furthermore, by integrating these perspectives, there is the prospect for innovation and the cross-fertilisation of knowledge. Vast areas of criminological theory have never been applied to genocide.

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<sup>75</sup> Alvarez, Governments..., p. 4.

- **Qualitative:** the research will focus on the nature of the social phenomenon of genocide rather than its extent.
- **Grounded:** the research methodology and theory will be informed by the situation on the ground.

The primary research means include:

1. Semi-open narrative interviews with perpetrators of genocide and related atrocities in Rwanda, Burundi, Uganda, Bosnia, Cambodia, and Bangladesh.
2. Interviews with victims/survivors in the aforementioned countries.
3. In-depth theoretical and contextual analysis from a wide range of secondary sources.
4. Legal research into relevant treaties and case law.

The grounded principle has shaped the methodology and theoretical approach of this thesis. For example, initially far more emphasis was going to be placed on the quantitative analysis of mass numbers of perpetrator interviews (or even perpetrator questionnaires) but, after completing a number of interviews, it was found that the production of true “statistics” from such interviews would be hopelessly flawed. The primary reason for this is the tendency of perpetrators (and all individuals) to minimise their responsibility for morally wrongful acts. For example, one of the interview questions asks perpetrators how many people they have killed. If 70-80% of perpetrators interviewed do not answer this question fully honestly by reducing the actual number of people that they killed, then all data produced from these interviews would be inaccurate.

Instead interviews have taken a semi-structured approach where the same general list of around sixty-five open and closed questions is posed to each perpetrator, but other questions may be asked in response to the testimony of perpetrators. Moreover, the open nature of many questions gives perpetrators a greater ownership over their interviews and offers the researcher a greater chance assess the perpetrator’s perspective and meta-data such

as the disposition of the perpetrators when answering questions, their falsehoods, evasions, silences, denials, and response to the interviewer and interpreter.<sup>76</sup>

**Figure 1.3 Interview Summary**

	Perpetrators/Ex-Combatants	Victims	Experts	TOTAL
Rwanda	68	12	0	80
Burundi	15	0	0	15
Uganda	7	3	0	10
Bosnia	9	11	0	20
Bangladesh	0	1	2	3
Cambodia	5	1	0	6
*India (Gujarat)	0	1	3	4
<b>TOTAL</b>	104	29	5	138

\* The Gujarat research was not included in the final draft of the thesis.

Narrative interviews have a particular advantage over formal, structured interviews because they allow perpetrators to give the story in their own words and the subject has primary control over deciding what to include and what not to include. Moreover, closed research questions can have a normative aspect and introduce bias into the research. The subject's selective appropriation – what they leave out may be as remarkable as what they chose to tell (or it may not). Narrative interviews are informative because narratives show how we collect and interpret facts and arrange them cognitively into a design to help us find order and meaning in our reality.<sup>77</sup> This is true for both the macro level (of national or group

<sup>76</sup> Lee Ann Fuji, "Interpreting Truth and Lies in Stories of Conflict and Violence," in Chandra Lekha Sriram, John C. King, Julie A. Mertus, Olga Martin-Ortega, and Johanna Herman (eds.), Surviving Field Research: Working in Violent and Difficult Situations, (New York: Routledge, 2009), p

<sup>77</sup> Munroe 268.

narratives) and the micro level of personal narratives. According to psychoanalytic theory the wanderings of the speaker are indicative of the blocked subconscious.<sup>78</sup>

Although quantitative analysis gives the illusion of hard science and certainty, social science will always contain a subjective element. As Juhl notes, objective reality does exist (i.e. the acts of violence committed by the perpetrator) but the meaning we give this reality is always subjective.<sup>79</sup> In quantitative methodology, in order to produce precise figures one must: remove the fact from its cultural and psychological context and reduce the phenomenon to its simplest state.<sup>80</sup> Thus, the flexibility of qualitative analysis is more appropriate and actually more informative than quantitative analysis when considering questions of individual motivation. As Lee Ann Fuji noted, stories may be “emotionally true” even if they are “factually false” and this emotional accuracy is more important in some ways when assessing perpetrator motivation and rationalisation.<sup>81</sup>

Yet the limitations of this type of interviewing also need to be born in mind. In such interviews both the interviewer and interviewee are responding to each other as well as the interpreter. Moreover, interview results may be skewed by the subject trying to please the researcher by telling them what they believe they want to hear. In some sense the interviewer can be acting as a proxy for the broader moral community and the interview subject many minimise their responsibility in order to minimise external moral opprobrium. Moreover, the interpreter can affect the interview results as a product of their proficiency in the language of the interview, cultural capacity, familiarity with qualitative research, and interpersonal skills, and relationship with the researcher.<sup>82</sup> Efforts were made to minimise these risks by training the interpreter and also gaining some proficiency in the interview language where possible (i.e. knowledge of French and Kinyarwanda). The context in which the interview takes place

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<sup>78</sup> Munroe 273.

<sup>79</sup> Kirsten Juhl, “From Reliable Sources’: Historical Source Criticism in Cross-Cultural Interviewing – with and without interpreters,” Paper prepared for DLE 110 Qualitative Methods, PhD-course, Faculty of Social Sciences, University of Stavanger, September 2007, p. 4.

<sup>80</sup> Jacques Ellul, *Propaganda : The Formation of Men’s Attitudes*, (New York: Vintage Books, 1973), p. 275.

<sup>81</sup> Fuji 152.

<sup>82</sup> Juhl 6.

is also important: i.e. does the subject feel the ability to speak freely and the current cultural context, and their changed personality. When interviewing years after the fact the subject may reinterpret or distort their memories. While the research offers plausible explanations for perpetrator motivation and behaviour it cannot said to be empirically proven as such.

The sample size is relatively small (approximately 130 interviews) but this will be supplemented by interviews from other sources such as Michael Mann (the Holocaust and Bosnia), Christopher Browning (the Holocaust), Jean Hatzfeld (Rwanda), Scott Straus (Rwanda), Alex Hinton (Cambodia), and the Documentation Centre for Cambodia. Case law can also sometimes be informative in assessing perpetrator motive. These other sources (as well as secondary sources) help to corroborate, complement and connect research findings.<sup>83</sup> The use of random sampling also helped to increase the reliability of interview data, although in some cases specific perpetrators were sought out because of their leadership role or their gender. The interviews done with perpetrators in Rwanda covered a broad cross-section of society:

**Figure 1.3 Rwanda Interview Sample – Occupation in 1994 (n=68; perpetrators only)**

Government Official	9 (13.2%)
Other Professionals (i.e. lawyers, doctors)	6 (8.8%)
Farmer	41 (60.2%)
Business	4 (5.8%)
Unemployed	2 (2.9%)
Other Manual/Low-Income Labour	8 (11.7%)

Of these interviewees fifty-nine were male and nine were female. Interviews were done all over the country in both prisons and prison camps (TIG or Travaux d’Intérêt Générale):

**Figure 1.4 Location of Rwandan Perpetrator Interviews**

Kigali Central Prison	11
Remera Prison	2

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<sup>83</sup> Juhl 2.

Gisenyi Prison	2
Ruhengeri Prison	4
Gitarama Prison	8
Tumba TIG Camp	4
Rugerero TIG Camp	5
Butare (with TIG workers on work break)	4
Rwaza TIG Camp	5
Nyarusenge TIG Camp	4
Mont Kigali TIG Camp	7
Hindiro TIG Camp	6
Nyamata TIG Camp	4

Interviews with victims made use of snowball sampling because of the ease of the approach and the objective of interviewing victims for illustrative purposes only rather than for drafting any general conclusions.

Although the criminogenic factors identified in this thesis will make genocide *more likely*, they do not make it inevitable. Crime limiting factors may also be taken into consideration. It also must be emphasized that the theories presented in this work are not theories existing in a static environment, but rather are interactive – they are often not only the cause but also the effect. For example, incitement to genocide causes genocide but incitement may also be enabled by past genocides. The limitations of theory itself need to be critically maintained when considering this research. There is something inherently reductionist about the development of general theories to describe a multiplicity of (dynamic) situations.

It is hypothesized that genocide shares many of the same characteristics of other forms of collective violence, particularly those with a persecutory motivation. Nonetheless, there must also be conditions that are uniquely required for genocide, otherwise genocide would be much more common. The presence of particular ideological constructs is likely a central prerequisite for genocide and this will be assessed in this research.

Narrative interviews give insight into questions of perpetrator motivation and rationalisation. Although genocide is seemingly not a rational form of violence, it becomes internally instrumental through its focus on social and ideological goals (or personal

instrumental goals in the case of individual perpetrators). This research cannot be exhaustive because the cost and time involved would be too great to be feasible.

Finally, this study will also involve legal research into case law and treaty law relating to the crime of genocide. This research will be both general background research into the nature of the crime of genocide and more specific research focused on the prosecution of inchoate forms of genocide such as incitement and conspiracy to commit genocide.

Risk mitigation is something that also must be incorporated into the research methodology. In order to minimize the risk to interview participants all data will be fully anonymised and kept securely. Moreover, wherever possible, convicted perpetrators will be interviewed – this minimizes the risk of legal or other repercussions from any admissions that they make. Their role in genocide is already documented and in the public realm. All interviews and other participation will also be with fully informed consent. In most cases, this informed consent was verbal in order to help ensure the security of participants and in response to cultural factors (i.e. illiteracy and the reluctance of uneducated people to sign written documents).

Special efforts must also be made to ensure that the role of gender is mainstreamed throughout the research process. Most genocide research is done by men and does not consider whether women have a differentiated role as genocide perpetrators and victims. Adam Jones observes that there are very few cases in genocide of women being separated from men and then killed (with the men left untouched), rather men are disproportionately targeted in genocidal killing.<sup>84</sup>

However, women may sometimes be targeted (both through rape and killing) because they are considered to be the bearers of culture, reproduction, and the honour of the group being targeted. Women have a unique role in child rearing and reproduction. Rapes can be a tool to destroy the viability of the group, as women are no longer able to bear children (either due to physical or psychological injuries or the proscriptions imposed by the violation of

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<sup>84</sup> Adam Jones, "Gendercide and genocide," *Journal of Genocide Research*, Vol. 2, no. 2 (2000), p. 193

cultural norms). Moreover, attacks targeting women are also attacks on the men's honour as the message is sent that they are not capable of protecting "their" women.

Although it is generally little acknowledged, women are also perpetrators of genocide. They do not usually take part in the direct killing but they often participate in other important ways such as complicity. Moreover, cultural constructs about the nature of women as passive, gentle, and empathetic render the idea of female perpetrators as being problematic and it is likely that justice systems reflect this bias. Moreover, narrow and outmoded views of perpetration do not reflect the many modes of participation. In order to examine the role of gender in genocide women were particularly sought out as interview subjects.

### *Structure of the Thesis*

The thesis will consist of six chapters structured in such a way as to present a comprehensive and cohesive argument. The original data (interviews and case material) will be woven throughout the argumentation of the thesis as will the use of numerous examples from different cases of genocides. Chapter Two will focus on genocidal propaganda and its relationship to the rationalisations of perpetrators, particularly the techniques of neutralisation. Chapter Three will discuss genocidal structures and mobilisation while Chapter Four will focus on the individual characteristics and decision-making of perpetrators. Chapter Five will address the prevention of genocide, particularly through the prosecution of crimes. Finally, the conclusion will build on the research presented in the thesis in order to propose a "unified theory of genocide" and will also bring philosophical perspectives to bear on the problem of genocide.

## Chapter 2 – Vocabularies of Motive: Ideology, Propaganda, and the Techniques of Neutralisation

### 2.1 Introduction: Can Words Kill?

Both hate propaganda and incitement to violence are outlawed in many international human rights instruments and domestic laws.<sup>85</sup> These regulations are based on the premise that such propaganda is a threat to the rights of others. But can words kill? Words, of course, do not exist in a vacuum. The recipients (and authors) of these words have a certain perspective which is grounded in their experience and social context. Genocidal societies are characterised by racial prejudice and extremist ideologies. Individuals in such societies are more receptive to appeals based on hate than individuals in other societies. Moreover, words, even if they do not kill, can persuade. The mind is the engine of action, thus altered perspectives can lead to violent actions, especially when coupled with direct appeals from authority figures. Genocidal propaganda does more than just preach to the converted; it also provides inspiration and authorisation to the reluctant.

In order to perpetrate genocide perpetrators require inspiration, authorisation, opportunity, and will. Perpetration is a complex interaction between individual choice, state authorisation (the techniques of neutralisation), and state structures impelling killing. This chapter will focus on authorisation and inspiration (the messages which génocidaires receive from the state and their peers). These messages are rooted in ideology, propaganda, and social structures. Genocidal propaganda reduces or reverses the moral costs of killing and, in doing so, provides perpetrators with both vocabularies of motive and *post-facto* absolution.

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<sup>85</sup> Incitement to genocide will be analysed in detail in Chapter 5.

## **2.2 The Humanity Gap: Genocide and the Narrowing of Awareness**

In genocidal societies, social identity, how we see ourselves and others, undergoes a fundamental transformation. Social identification is normally fluid and complex, made up of many different layers of identity and group affiliations within these layers. Each of these layers of identity is a category such as nationality, ethnicity, religion, race, region, age, class, gender, language, or political ideology. Within each layer an individual will maintain various group affiliations. Groups must be socially meaningful to their members in order to be true “social groups.”<sup>86</sup> Some of these affiliations, such as race, are ascribed and more persistent than others.

The saliency of group affiliations is also variable and dependent on context; when we interact with other people we respond to certain cues to categorise them but such cues also tell us how to relate to them on the basis of certain shared affiliations (i.e. “wealthy,” “Turkish”). Through social categorisation we identify people as members of a social group because they share certain features typical of that group; self-categorisation is the process of seeing oneself as a member of a social group. The fact of categorisation itself seems to lead to bias. Henri Tajfel conducted an experiment where in-group members voted to give themselves \$2 instead of \$3 if it meant out-group members got \$1 rather than \$4 – the research subjects sacrificed absolute gain for relative advantage, and these were members of arbitrary groups rather than groups with histories of conflict.<sup>87</sup>

In genocide there is a kind of narrowing of awareness so that: a) one layer of identity and one group affiliation within this layer eclipses all others (*hyperawareness*), and b) other groups within the same “layer” of identity are denigrated and attacked as being “lesser” (dehumanisation). This creates a sort of “humanity gap” – a distance between perpetrator and victim – the space that genocide thrives in. In this state of hyperawareness the saliency of certain cues (i.e. skin colour, languages spoken) increases greatly. Hyperawareness may also

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<sup>86</sup> Smith and Mackie 138.

<sup>87</sup> James Waller, Becoming Evil, (New York: Oxford University Press, 2002), p. 241.

include the inflation of self-image. This contributes to violence by dulling empathy for others, and making individuals vulnerable to narcissistic wounds.<sup>88</sup> Dehumanisation can also be an act of self-affirmation: the perpetrators' self expands into the space created by the negation of the victim.<sup>89</sup>

Moreover, there is a “hardening of identity” where identity becomes less fluid. The sources of identification most relevant to genocide (race, ethnicity, religion, nationality) are already less fluid, and more politicised, than many other vectors of identity. Nonetheless, during genocide there is only discursive space for *one* relevant source of identity. This is how neighbours can kill each other – it no longer matters that they share the same fields, attend the same church, and went to the same secondary school. By this point these sources of identity have all be subsumed by the extremism and survival discourse that characterises genocide. Many perpetrators are personally acquainted with their victims. One survivor of the Jalladhkana massacre during the 1971 mass killings in Bangladesh reported that he asked the people who were attacking him, his neighbours, “Why are you beating me over and over again?” They responded: “because you are Bengali. We don't know you anymore.”<sup>90</sup> This ‘interpersonal amnesia’ is part of wider social processes.

These processes are likely to have already begun long before genocide itself occurs but during genocide the narrowing of awareness will become more extreme and the humanity gap will widen. This is illustrated well by findings in Rwanda where 98.8% of respondents (both perpetrators and victims) reported having good personal relations with members of the opposite ethnic group before the genocide.<sup>91</sup> However, several respondents reported a shift during the genocide: as one perpetrator stated, “in 1994 things changed and I started to think that Tutsis were different from Hutus.”<sup>92</sup>

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<sup>88</sup> Hinton, *Why Did They Kill?*, p. 244.

<sup>89</sup> Hinton, *Why Did They Kill?*, p. 249.

<sup>90</sup> Bangladesh Interview B1 (victim), Jalladhkana Killing Site, Dhaka, September 28, 2008.

<sup>91</sup> Statistics derived from the author's eighty interviews in Rwanda.

<sup>92</sup> Rwanda Interview R58 (perpetrator), farmer, Rugerero TIG Camp, September 27, 2009.

Humans are social animals. We belong to groups because membership in such groups tells us *who we are* and *what we should do*. Every society has a concept of “us and them” and group memberships are also exercises in boundary-making. Yet “us” and “them” are not value judgments until they have been married to other moral concepts such as “good” and “bad.” However, xenophobia, the fear of outsiders, also seems to be a human tendency and this xenophobia eases the stigmatisation of out-groups. Groups that are subject to genocide often suffer what Orlando Patterson called “social death” (in reference to slavery) – they are dishonoured and “naturally alienated” (their right to kinship ties is withdrawn).<sup>93</sup> This denial of social honour extends to the treatment of the dead; one leader convicted of genocide in Rwanda reports: “People who tried to bury bodies would be killed: Their intention was to show they [the victims] weren’t like human beings.”<sup>94</sup> Social death also results in the depersonalisation of the victims. Paterson noted that there is “a universal reluctance to enslave members of one’s own community, hence the need to redefine them as outsiders.”<sup>95</sup>

Leaders cultivate hyperawareness and dehumanisation through direct appeals and also through the creation of structures of socialisation (such as the education system and political institutions). Hyperawareness (positive messages) and dehumanisation (negative messages) appeal to people because they fulfil the need for purposive action and connection to others. The narrowing of awareness is facilitated by 1) threat and uncertainty, and 2) an already devalued, thus, easily scapegoated, victim group. Groups are especially vulnerable to scapegoating and negative social valuation when there are already strong ethnic dimensions to economic, social, and political life. Intense competition and polarisation between groups also seems to increase the saliency of group membership. Burundi in recent years is a good example of this. Identity in Burundi has always been complex and multi-faceted with clan lineages and regionalisms being equally (or more) important than ethnicity. Yet, as René

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<sup>93</sup> Goldhagen, *Hitler’s Willing Executioners*, pp. 168-169.

<sup>94</sup> Rwanda Interview R17 (perpetrator), burgomaster, Gitarama Prison, July 28, 2009.

<sup>95</sup> Helen Fein, *Human Rights and Wrongs: Slavery, Terror, Genocide*, (Boulder, U.S.A.: Paradigm Publishers, 2007), p. 58.

Lemarchand writes: “in times of crisis, Hutu and Tutsi emerge as the only relevant defining characteristics of group identities, reducing all other social roles to phenomena of marginal social significance.”<sup>96</sup> In both genocide and conflict situations, intra-ethnic cleavages recede in the face of inter-ethnic violence.

This narrowing of awareness also represents a shift from *systematic processing* (thinking taking account of a wide range of signals and data to attribute and judge) to *superficial processing* (thinking based on a few cues only). Overgeneralisation in situations of danger is adaptive as this can actually help us to identify threats.<sup>97</sup> Hinton argues that such “cognitive constriction” provides existential security by making it easier to defend the self; in other words, the narrowing of awareness simplifies complexity.<sup>98</sup> Such “primal thinking” also includes *personalisation* – assuming all stimuli are directed at you; *selective abstraction* – a focus on small details, out of context, that might be indicative of a threat; and *dichotomous judgement* – the division of others into only two categories (friends and enemies).<sup>99</sup> The reductionist, binary thought patterns that characterise genocidal societies facilitate genocide by greatly reducing the capacity for empathy.

### **2.3 Dehumanisation**

Dehumanisation is essential for the perpetration of genocide. A genocidal campaign to kill every individual in a group is not possible without some form of ideological justification. This does not mean that every perpetrator is highly prejudiced. Yet, when perpetrators receive relentless messages from trusted sources dehumanising the victim group, it is highly-likely that this messaging will alter or erode their previously held views. One Rwandan convicted of genocide argued “they were using songs and propaganda to drive hate into our heads - to make

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<sup>96</sup> Lemarchand 14.

<sup>97</sup> Aaron T. Beck, Prisoners of Hate: The Cognitive Basis of Anger, Hostility, and Violence, (New York: Harper, 2000), p. 72.

<sup>98</sup> Hinton, Why Did They Kill?, p. 243.

<sup>99</sup> Beck 72.

the Hutus believe that they Tutsis were just there to take their things...we did not think it was hate – just reality.”<sup>100</sup> Many ethologists and evolutionary psychologists argue that inter-specific violence is much more common than intra-specific violence. Therefore, atrocity is enabled by dehumanisation, which places a group outside of humanity, thus lifting intra-specific limitations on killing.

Dehumanisation is generally preceded by some form of scapegoating or moral blaming. This is accomplished in four stages:

**Figure 2.1 The Four Stages of Scapegoating:**

1. A social problem is identified
2. The group is negatively stereotyped
3. The social problem is attributed to the stereotyped group
4. Action is taken against the victim group in order to solve the “problem.”

The first stage in scapegoating is when a social problem is identified, such as relative deprivation, alienation from land title, or a threat to survival of the in-group. This stage occurs concurrently with the stereotyping of the victim group.

Secondly, the group is labelled as being somehow “different” (in a negative light) and stereotyped. Such stereotyping draws heavily on xenophobia (i.e. the perceived cultural differences of the targeted group) and on the perceived position of the targeted group *vis a vis* the person stereotyping. Eric Hoffer writes: “the ideal devil is a foreigner. To qualify as a devil, a domestic enemy must be given foreign ancestry.”<sup>101</sup> Hitler called the Jews foreign, the Hutus portrayed Tutsis as foreign, the Turks emphasized the foreignness of persecuted minorities, and, in the French Revolution aristocrats were portrayed as Germans. Stereotyping is a means for its authors to exercise power over the stereotyped.

Stereotyping is closely related to what psychologists call the *fundamental attribution error* – we tend to see ourselves as having greater complexity than other people and attribute our own actions to circumstances but others’ actions to unchanging, unmalleable

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<sup>100</sup> Rwanda Interview R1 (perpetrator), former merchant and MRND official, Kigali Central Prison, July 2009.

<sup>101</sup> Eric Hoffer, *The True Believer: Thoughts on the Nature of Mass Movements*, (New York: Harper Perennial Modern Classics, 2002), p. 93.

characteristics. One can also speak of the *out-group homogeneity effect* – we tend to see members of out-group as homogenous and our own group as differentiated. Stereotyping can shape our threat perception (in situations where superficial processing comes to the fore). For example, experiments occurring after the Amadou Diallo police shooting in New York indicated that, when viewing the same image, people thought that blacks were holding guns and whites were holding tools.<sup>102</sup> Stereotypes are often persistent – people will ignore or reduce the importance of information which challenges their stereotype. They may also actively elicit information which confirms their stereotypes.<sup>103</sup>

Thirdly, the out-group is attributed as being the source of this problem. At this stage the out-group also becomes abstracted – it is no longer a collection of individuals but rather an entity (object) which is causing a problem. Finally, the out-group is denigrated and dehumanised as action is taken to resolve the problem. In this final stage action will likely be counselled against the out-group, genocide in the most extreme case. These stages of scapegoating are not necessarily linear – they may occur simultaneously. Scapegoating is psychologically useful because it offers us solutions to problems.<sup>104</sup> It is also important to consider that anger is unlikely to result from impersonal situations (structural conditions) - when we think that a person or group is at fault anger becomes much more likely.<sup>105</sup>

Dehumanisation is fundamentally about separating individuals from their inborn markers of humanity, thus driving a wedge into social relationships which transcend group membership. Language, as an ontological system, is crucial in this process. One way that dehumanisation occurs is through *technicalisation* – the use of purely technical language to describe human beings and what is being done to them. Technicalisation often occurs within bureaucratic structures and scientific discourse. For example, one German engineer who took part in the design of the ovens used in Nazi concentration camps reasoned “I saw it as my duty

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<sup>102</sup> Smith and Mackie 178.

<sup>103</sup> Smith and Mackie 182.

<sup>104</sup> Staub, *The Roots of Evil*, p. 17.

<sup>105</sup> Beck 31.

to apply my specialist knowledge in this way in order to help Germany win the war, just as an aircraft construction engineer builds airplanes, in wartime, which are also connected with the destruction of human beings.”<sup>106</sup> Genocide, after all, is a war against (criminalised) social groups. Another technician, Willy Just was charged with improving the efficiency of the carbon monoxide vans used to exterminate Jews on the eastern front in the Second World War. His report offers a profoundly disturbing example of technicalisation:

A shorter, fully loaded truck could operate much more quickly. A shortening of the rear compartment would not disadvantageously affect the weight balance, overloading the front axle, because actually a correction in the weight distribution takes place automatically through the fact that the cargo in the struggle toward the back door during the operation always is preponderantly located there. Because the connecting pipe was quickly rusted through the fluids, the gas should be introduced from above, not below. To facilitate cleaning, an eight-to-twelve inch hole should be made in the floor and provided with a cover opened from outside. The floor should be slightly inclined, and the cover equipped with a small sieve. Thus all fluids would flow to the middle, the thin fluids would exit even during the operation, and thicker fluids could be hosed out afterwards.<sup>107</sup>

Individual lives and aspirations reduced to rust on a pipe. This is the dehumanising effect of technicalisation, the triumph of function over feeling.

Another way in which to denigrate the victim group as a lesser form of life is by associating them with social unpalatability. For example, victims may be linked to disgust, death, dirtiness, perversion, or degeneracy. Interestingly, Elissa Mailander Koslov observes that sick inmates in Majdanek concentration camp were often especially cruelly treated as a result of the Nazi guards’ desire to “destroy the object of their fear” (of contamination).<sup>108</sup> Psychologist Jamie Arndt conducted an experiment where one group of test subjects simply read an essay about foreigners and the other group read the same essay after the word “death”

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<sup>106</sup> Neil J. Kressel, Mass Hate: The Global Rise of Genocide and Terror, (New York: Westview Press, 2002), p. 7.

<sup>107</sup> Bauman 197.

<sup>108</sup> Elissa Mailander Koslov, “Going East: colonial experiences and practises of violence among male and female Majdanek camp guards (1941-1944),” Journal of Genocide Research. Vol. 10, no. 4 (2008), p. 57.

had subliminally (subconsciously) flashed in front of them on a screen. After this minimal symbolic association the second group was much more hostile to foreigners.<sup>109</sup> Ethnic groups are themselves cognitions (mental images) and by associating two cognitions with each other (for example “Tutsi” and “greed”) behaviour towards individuals within the group linked to the negative trait will be modified. Memories of past behaviour and beliefs will also shape our interpretation of other people’s behaviour in the present. Such “hostile framing” could lead us to interpret all events in light of immutable, negative characteristics.<sup>110</sup> If we believe the other group has knowingly violated a rule this may also lead to anger and other negative emotions.<sup>111</sup>

In general, there are two forms of dehumanisation: 1) *objectification* (the rendering of individuals as passive objects without human characteristics or merit, and 2) *animalisation* (comparing individuals to “lesser” forms of life). On this latter point, individuals may also be treated as animals – as was the case with the gypsy hunts from the 16<sup>th</sup> to the 19<sup>th</sup> century in Europe. Moreover, the Khmer Rouge made the “New People” perform tasks normally reserved for animals such as pulling a plough. The use of euphemisms is also important here. It is well-known that Tutsis were called *inyenzi* (cockroaches) during the genocide but “*prusak*” (“Prussian”) is a synonym for cockroach in Polish just as “*Ruse*” (“Russian”) is the German equivalent.<sup>112</sup> Markers of difference may even be inscribed on the body, as was the case with prisoner tattoos in Auschwitz and Tuol Sleng.<sup>113</sup>

Dehumanisation is often a self-fulfilling prophesy as perpetrators place the victims in situations where they will manifest the desired characteristics – for example, emaciated concentration camp inmates who are reduced to scampering on the ground in their own filth. Thus, victims are transformed to conform to the perpetrators’ image of them, validating their

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<sup>109</sup> Berreby 232.

<sup>110</sup> Beck 94.

<sup>111</sup> Beck 93.

<sup>112</sup> Waller 247.

<sup>113</sup> Hinton, *Why Did they Kill?*, p. 224.

worldview.<sup>114</sup> Once the perpetrators degrade their victims to the point of near social and physical death they may once again fear their victims as they fear their own mortality. Moreover, marginal groups and classes often perform roles in society related to death or other unclean tasks.<sup>115</sup> Dehumanisation may also be imposed through language, customs and clothing (i.e. prison uniforms).

One must distinguish here between prejudice, and discrimination - the application of prejudice. Prejudice (hatred and dehumanisation) is materialised through action into discrimination. With action comes the transformation of hatred from a cognitive construct into a physical reality. Action also personalises hatred: 'I have acted on my hate and, in order to maintain my self-image, I must believe that the object of my hate (and my violence) was deserving of maltreatment.' The dehumanisation of victims transforms them into valueless objects which may then be "acted upon" by perpetrators, often in a manner that allows the perpetrators to deny their free volition.

## **2.4 Genocidal Ideology and Propaganda**

### ***Genocidal Ideology***

Genocidal ideology is the guiding spirit which infuses the perpetration of genocide with meaning. Ideology can be defined broadly as any coherent set of socio-political ideas accepted by individuals or peoples. Genocidal ideology is related to other nationalist and racist ideologies yet it also has certain distinct features. As outlined previously, dehumanisation and hyperconsciousness are two features of genocidal ideology. These two traits may also be present in situations of conflict yet in genocide they are manifested *in extremis* as a survival discourse – a narrative which contends that the targeted group threatens the survival of the would be perpetrator group. For example, around half of perpetrator

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<sup>114</sup> Goldhagen, *Hitler's Willing Executioners*, p. 172.

<sup>115</sup> Berreby 233.

respondents in Rwanda reported being afraid of the Tutsi-dominated rebel group the RPF.

Interviewees recalled:

R1: “The MRND [governing party] was telling people to open their eyes and do something because the Tutsis are planning”

R21: “People used to say the RPF would vivisect us.”

R27: “They taught us that if the RPF took power they would destroy the country.”

R29: “We thought if the RPF took power they would kill all Hutus.”<sup>116</sup>

The presence of hyperconsciousness and dehumanisation in violent conflicts may also predispose those conflicts to genocide.

Other features which are common in genocidal ideology are claims of in-group purity and out-group impurity, grievances over contemporary and historical wrongs, righteous justice (vengeance) for wrongs committed by the targeted group, and direct incitement of genocidal killing. This last feature is also especially important in genocide. In contrast, the type of hate propaganda seen in violent conflicts generally does not include this eliminationist element. Genocidal propaganda is euphemistic as a rule - the elimination of the enemy group is generally present in coded language. Yet, genocidal ideology makes such incitement to genocide instantly comprehensible and persuasive. The ideas contained in genocidal ideology and propaganda respond to their context but also contribute to this context. By linking genocidal propaganda with existing cultural knowledge perpetrators are provided with instant vocabularies of motive.<sup>117</sup>

Genocidal ideology and propaganda exist because the perpetrators want and need such ideology. It provides them with a sense of identity, inspiration (including hope), certainty, and *post-facto* rationalisations for morally repugnant acts. Ideology tells the perpetrators what their place in history is; it ennobles them and allows the mortal self to associate with the eternal. It also provides comprehension (and scapegoats) in times of turmoil. Ideology has

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<sup>116</sup> Rwanda Interviews R1, R4, R21, R27, R29, see Appendix 1.

<sup>117</sup> Hinton, *Why Did They Kill?*, p. 30.

imperialistic tendencies: true believers in an ideology will try to implement, proselytise and impose it.<sup>118</sup> Furthermore, ideology can provide a powerful justification as individuals come to feel that they are acting in conformity with a collective belief.<sup>119</sup>

Those who have a greater stake in the system (mid and high-level perpetrators) seemingly have a greater need for ideology to structure their actions, and to provide political coherence and the promise of better future. Mid and high-level perpetrators have a greater sense of autonomy and a greater need to feel as though their actions fulfil a purpose beyond mere obedience. Without a sense of upward mobility there is little capacity for the individual to feel that they have a personal stake in the future of their country or people. Intellectuals may be the most susceptible to propaganda with their absorption of large amounts of second-hand information and their need to opine.<sup>120</sup> Having said all this, ideology cannot be taken as fully determinative of behaviour. Individual motivations are more complicated than this.

### ***Genocidal Propaganda: Polluting Hearts and Minds***

Propaganda started coming from the upper echelons of Polish society, which influenced the mob, stating that it was time to settle scores with those who crucified Jesus Christ...the seed of hatred fell on well-nourished soil, which had been prepared for many years by the clergy. The wild and bloodthirsty mob took it as a holy challenge that history had put upon it – to get rid of the Jews.<sup>121</sup> – testimony of Menachem Finkelsztajn on a Polish pogrom

Those who can make you believe absurdities can make you commit atrocities – Voltaire

Propaganda works. One needs look no farther than advertising to realise that human attitudes are malleable and subject to external influence. Genocide would not be possible without propaganda as a tool of mass mobilisation and influence. People want propaganda

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<sup>118</sup> Ellul 197.

<sup>119</sup> Ellul 200.

<sup>120</sup> Ellul 312.

<sup>121</sup> Jan T. Gross, *Neighbors: The Destruction of the Jewish Community in Jedwabne, Poland*, (London: Penguin Books, 2002), p. 38.

because it reinforces their views and provides comprehension and opinions. For example, the prologue of the infamous propaganda document The Protocols of the Elders of Zion promised that “the protocols provide the key to a host of disturbing and seemingly insoluble riddles.”<sup>122</sup> Thus, propaganda fulfils our psychological need for mastery. It also provides self-esteem (the promise of heroism and the notion of a privileged understanding) and a remedy for loneliness (collective identity in the form of belonging to a social group).<sup>123</sup> Moreover, propaganda validates prejudice and provides justification for action.

Propaganda addresses individuals rather than the mass. Individuals share feelings, motivation, and myths with the mass and propaganda seeks to transform these sentiments into action. It is important that propaganda be individualised, each person must feel personally addressed and valued as autonomous.<sup>124</sup> The development of mass media has made propaganda possible. It allows individuals to simultaneously receive the same message but still feel alone and autonomous (like in a darkened cinema).<sup>125</sup> In order to be effective propaganda also must be total: it must use all forms of media (with their differing effects) and not allow discursive space for any opposing views. It must also be continuous and immersive so as not to allow for the external penetration of ideas or moments of reflection.

Jean Stoetzel argues that individuals may have two separate opinions on the same subject: a *private opinion* only shared with people close to you and a *public opinion* exercised in the public realm and shaped by public discourse.<sup>126</sup> People may act on this public opinion even if it does not conform to their private opinion; and, it must be remembered that action leads to belief even more surely than belief leads to action. Eventually public opinions will be transformed into private opinions. Gauleiter Arthur Greiser of Warthegau amply demonstrated this public opinion/private opinion dichotomy when he argued to a Polish court

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<sup>122</sup> Norman Cohn, Warrant for Genocide, (London: Serif, 2005), p. 89.

<sup>123</sup> Jacques Ellul, Propaganda : The Formation of Men’s Attitudes, (New York: Vintage Books, 1973), pp. 148-149.

<sup>124</sup> Ellul 8.

<sup>125</sup> Ellul 8.

<sup>126</sup> Ellul 280.

that his “official soul” had carried out his crimes but his “private soul” had always been opposed.<sup>127</sup>

Effective propaganda must spur people into action (or deliberate inaction), thus, the presence of a group or other infrastructure to organise action increases the efficacy of propaganda. This is why externally generated propaganda (from outside the group) is of limited effectiveness – it is propaganda without structures of implementation.<sup>128</sup> The more vibrant the group is (with feelings of belonging, common objectives, and structure), and the more the individual is integrated into the group, the more effective propaganda will be.<sup>129</sup> A document in use by the Rwandan government during the genocide called “*Note Relative à la Propagande de’Expansion et de Recrutement*” argued that propaganda will be more effective if events are created to lend credence to propaganda.<sup>130</sup> The mobilisation of action through propaganda is preceded by what Jacques Ellul calls “pre-propaganda” – the cultivation of favourable preliminary attitudes through images and general information.<sup>131</sup>

Propaganda also uses “*glittering generality*” (words connected to emotions or virtues such as love of country), *transfer* (the positive or negative qualities of the person or object are transferred to another person or object), *oversimplification*, the ‘*bandwagon*’ (everyone else is doing it), and *name calling*.<sup>132</sup> Another technique frequently employed is to accuse your intended victims of committing atrocities – this legitimises atrocity against this group and frames such violence as responsive. For example, at one public meeting in Gikongoro during the Rwandan genocide, a local leader erroneously claimed that a Tutsi man had cut off the

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<sup>127</sup> Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*, (New York: Penguin Books, 2006), p. 127.

<sup>128</sup> Ellul 21.

<sup>129</sup> Ellul 50.

<sup>130</sup> Allison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda*, (New York: Human Rights Watch, 1999), p. 66.

<sup>131</sup> Ellul 15.

<sup>132</sup> Robert J. Sternberg and Karin Sternberg, *The Nature of Hate*, (New York: Cambridge University Press, 2008), p. 132.

fingers of a young Hutu girl and that the RPF had killed his own wife and children.<sup>133</sup> Similarly, riots were sparked in post-war Poland by reports that the Jews were using fresh blood from innocent Christian children to prepare their Passover Matzoh.<sup>134</sup>

Moreover, much genocidal (and other hate) propaganda contains the ‘backhanded compliment’ – the supposed positive trait of the out-group is associated with a negative implication. For example, in Rwanda and Burundi Tutsi women were often portrayed as being very beautiful – but this beauty was a trap designed to ensnare Hutu men who would then suffer betrayal. It is not a great reach from the compliment of cleverness to the slur of deviousness.<sup>135</sup>

According to Jacques Ellul, propaganda may utilise one of two general techniques: 1) the conditioned reflex (reacting automatically to certain stimulae), or 2) the myth, “an all encompassing activating image: a sort of vision of desirable objectives...which displaces from the conscious all that is not related to it...such an image pushes man to action precisely because it includes all that he feels is good, just, and true.”<sup>136</sup> This myth may force open the humanity gap as perpetrators come to believe in transcendent ideals and fear the consequences of the victory of the hated enemy.

Propaganda makes use of hate. According to Sternberg and Sternberg hate is comprised of: the negation of intimacy (distancing), passion (anger or fear), and commitment (cognitions of devaluation).<sup>137</sup> They contend that hate propaganda tends to follow certain “stories” such as portraying the target as an impure other, enemy of god, stranger, controller, faceless foe (undifferentiated out-group), immoral, bringers of death, greedy enemy, barbarian, criminal, torturer, murderer, seducer/rapist, animal pest, power monger, subtle

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<sup>133</sup> Omaar, Rakiya, “The Leadership of Rwandan Armed Groups Abroad with a Focus on the FDLR and RUD/URANA,” (Kigali, Rwanda: Rwanda Demobilisation and Reintegration Commission, 2008), p. 253.

<sup>134</sup> This is the so-called “blood libel”. See Gross 80.

<sup>135</sup> For further discussion of the backhanded compliment see Horowitz’s discussion of backward and advanced groups in Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985): 167.

<sup>136</sup> Ellul 31.

<sup>137</sup> Sternberg and Sternberg 60-65.

infiltrator, comic character, thwarter/destroyer of destiny, and deceiver.<sup>138</sup> These stories tend to have a beginning, an end and a plot that gives rise to hate.

This plot follows several stages, beginning with the revealing of the target as an enemy because of the performance of heinous deeds; secondly, the target plots actions contrary to the interests of the in-group; thirdly, the target reveals themselves to be a threat; fourthly, the target translates their plans into action; finally, the target achieves their goals. The action is determined by the shape of the story: enemies of God act against God, rapists rape, uncivilized beasts cause wanton destruction, etcetera.<sup>139</sup> Sternberg and Sternberg also argue that different stories invoke different components of hate: the characterisation of the target as vermin negates intimacy, while characterising them as rapists induces passion and portraying them as controllers contributes to commitment.<sup>140</sup> Genocidal propaganda emphasizes that the enemy group is a threat to the survival of the in-group. Such a *survival discourse* necessitates action against the out-group.

Genocidal propaganda, like all propaganda, socializes people incrementally. Social psychology speaks of the ‘foot in the door’ phenomenon where compliance will increase greatly if large requests are preceded by small ones. In order for this strategy to be effective: the initial request must be meaningful, requiring effort, and the performance of the request must be seen as purely voluntary.<sup>141</sup> If the request is not seen as voluntary then the individual in question will not draw self-perception inferences. In the case of genocide, these self-perception inferences are crucial in motivating perpetrators to re-perpetrate: the perpetrator must see their actions as just and meaningful – thus, if the perpetrators acted in a certain way there must have been a good reason. At this point propaganda becomes irreversible. We learn

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<sup>138</sup> Sternberg and Sternberg 84.

<sup>139</sup> Sternberg and Sternberg 96-97.

<sup>140</sup> Sternberg and Sternberg 99.

<sup>141</sup> Smith and Mackie 274-275. The foot in the door phenomenon was illustrated well in an experiment conducted by Simon Fraser in 1966. In this experiment female householders in California were first asked to sign a safe-driving petition then to place an ugly safe-driving billboard in their yard. Three times as many people complied with the latter request than when the women were directly approached about the billboard without signing the petition first.

by doing – even small acts (such as a perfunctory “*Heil Hitler*”) can increase identification with the regime.<sup>142</sup>

When actions are confirmed through positive reinforcement, social conditioning is greatly magnified. In one experiment Alfred Bandura showed that children who observed others being rewarded for aggressive behaviour (hitting a doll) were much more likely to emulate the aggressive behaviour than children who did not witness this positive reinforcement.<sup>143</sup> The development of conditioned response is not possible without a reinforcer.

We must remember that a positive view of the group is essential to individual self-esteem.<sup>144</sup> Propaganda exploits this tendency (through xenophobia and the in-group bias), as well as the need for coherence. The in-group bias leads to appeals from the in-group receiving greater attention than out-group appeals.<sup>145</sup> The stronger the identification of the individual with the group and the greater the level of interaction the more powerful such in-group appeals will be. Moreover, once the group begins to act its members will interpret events in a light that facilitates and justifies completion of the action.<sup>146</sup>

Radio played an especially important role in the dissemination of genocidal propaganda in Rwanda. Only 29% of Rwandans had radios but many Rwandans gathered in groups to listen to their friends’ radios. Among my eighty interviewees in Rwanda about two thirds listened to the RTLM (Radio-Télévision Libre des Mille Collines, a hate radio station) while a third read Kangura (a hate periodical). Radio is unique from other media in that individuals often listen to radio in group settings – perhaps this social dimension to radio listening reinforces the effects of propaganda on individuals? It is interesting to note that 38% of my interviewees listened to the radio in a group setting, one perpetrator even reporting that

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<sup>142</sup> Staub, *The Roots of Evil*, p. 17.

<sup>143</sup> Sternberg and Sternberg 38.

<sup>144</sup> Staub, *The Roots of Evil*, p. 16.

<sup>145</sup> Smith and Mackie 321.

<sup>146</sup> Donald L. Horowitz, *The Deadly Ethnic Riot*, (New Delhi: Oxford University Press, 2002), p. 88.

he listened to the RTLM at MRND meetings.<sup>147</sup> In some areas radios were also distributed freely by local authorities prior to the genocide.<sup>148</sup> The RTLM was a private station but it had numerous government ties and also often used the government's (Radio Rwanda) frequency.<sup>149</sup> The print media also played an important role in the Rwandan genocide. Sixty-six percent of Rwandans are literate and newspapers were widely distributed even in rural areas.<sup>150</sup>

Propaganda must be addressed to the needs of its audience. Genocidal propaganda provides external rationalisations to perpetrators (see below). These external rationalisations eventually become internal rationalisations as they are embedded in the subconscious of perpetrators. The crucial moment is when ideas become sentiments. At this moment perpetrators cease to remember where they received ideas from or even that they are ideas at all – they are driven by feeling. Few perpetrators in the midst of genocide are considering the merits of various ideologies – they are acting as they feel they must. It is important to emphasise that propaganda generally operates subconsciously. Moreover, at some point ideological rationalisation may no longer matter and people may become “unhinged” (see page 120 on the *sadistic shift*)

Propaganda is not always a top-down phenomenon – it may also be disseminated horizontally as group members indoctrinate each other. However, when similar propaganda is being heard in multiple locations it may indicate that a coordinated campaign is underway. Genocidal messages are interpreted on the basis of the perpetrators' own motivations and experience, as well as the local cultural context.<sup>151</sup> Propaganda disseminates an ideology in order to make certain acts acceptable (to neutralise resistance to killing for example) but the social context also enables (regulates) the penetration of propaganda.<sup>152</sup>

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<sup>147</sup> Rwanda Interview R55, fisherman (perpetrator), Rugerero TIG Camp, September 27, 2009.

<sup>148</sup> Des Forges 67.

<sup>149</sup> Des Forges 69.

<sup>150</sup> Des Forges 67.

<sup>151</sup> Hinton, *Why Did They Kill?*, p. 295.

<sup>152</sup> Ellul 63.

Propaganda greatly eases perpetration by providing *external justification* for actions. Although internal justification is more likely to result in changed attitudes/behaviour, external justification allows perpetrators to perpetrate without fundamentally attacking their self-image; i.e. perpetrators may believe that they did not perpetrate because they are bad but rather just because they were deceived or compelled by external forces.<sup>153</sup> Thus, external justification, through propaganda, minimises cognitive dissonance. Propaganda also communicates to perpetrators acceptable and expected actions.

## **2.5 Neutralisation-Drift Theory: Killing without Consequence?**

### ***Introduction***

Evil in the Third Reich had lost the quality by which most people recognize it – the quality of temptation.<sup>154</sup> – Hannah Arendt

There exists a general prohibition on killing (with extraordinary exceptions such as self-defence). Therefore, as a general principle, genocide is deviant (as a *malum in se* act), yet is normative in the societies in which it occurs. This is because genocide is a crime driven by the state or state-like structures. Normally crime is a break from the social order but this is not true in the case of genocide. Travis Hirschi's social-bonding theory argues that criminal behaviour is less likely with strong social bonds. These bonds consist of attachment (caring about others); commitment (commitment to conventional behaviour); involvement (time and energy devoted to participation in conventional activities); and belief in the moral validity of norms.<sup>155</sup> In genocidal societies however, social-bonding works in reverse: those individuals who are most closely bound to the mainstream are those who are the most likely to commit genocide (as a crime of obedience). In genocide attachment (caring about others) is transformed into caring about your group, commitment reflects conformity with other

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<sup>153</sup> Elliot Aronson, The Social Animal (8th edition), (New York: Worth Publishers, 1999), p. 212.

<sup>154</sup> Staub, The Roots of Evil, pp. 209-210.

perpetrators, involvement becomes learning by doing (socialisation to violence through exposure to violence), and belief is devoted to a new set of norms established by genocidal propaganda.

The normative nature of genocide comes both from cultural discourse and also the messages of the state and other perpetrators. These forces lead to a reversal of morality. The normative nature of genocide within particular social communities is demonstrated by the fact that even after the end of the Second World War many helpers of Jews in Poland were reluctant to reveal themselves because they “broke the socially approved norm.”<sup>156</sup> This is especially true of *transgressive communities* such as specialised killing organisations. Transgressive communities are bonded together through shared transgression – this concept will be elaborated in the next chapter.

Yet even if genocide is normative within its society it remains universally (externally) deviant. For example, an individual on trial for the killing of mentally ill persons in Frankfurt during the Second World War claimed that “this directive (the ‘Hitler Directive’) had partially suspended the general prohibition on killing.”<sup>157</sup> But how exactly is the prohibition on killing neutralised and how is morality reversed in cases of genocide and crimes against humanity?

The criminological theories of Gresham Sykes and David Matza provide a good basis for our analysis. Sykes and Matza’s neutralisation-drift theory posits that there are certain rationalisations that operate both as post-facto justifications for criminal conduct and as vocabularies of motive (subconscious pre-perpetration authorisation).<sup>158</sup> In fact, neutralisation may occur even before the perpetrator has contemplated action. Sykes and Matza argue that techniques of neutralisation release people into a state of drift where they can easily move between delinquency and the mainstream. Law-breaking behaviour occurs when the bond

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<sup>154</sup> Arendt 150.

<sup>155</sup> Lanier and Henry 184.

<sup>156</sup> Gross 190.

<sup>157</sup> De Mildt 122.

<sup>158</sup> The theory was originally developed to address the problem of juvenile delinquency. For a good overview of neutralisation-drift theory see Lanier and Henry pp. 169-178.

between action and legal norms is neutralised.<sup>159</sup> However, in the case of genocide the mainstream might be conceived as wider (universal) moral values, whereas the state of delinquency encompasses the entire genocidal state.

The techniques can only be effective if they invoke and amplify pre-existing beliefs among the population. These techniques of neutralisation (such as the denial of responsibility, claim or relative acceptability and denial of the victim) are connivances between the desire of the perpetrators and the desires of the societies in which they live. In mass crimes the motives of individual perpetrators are culturally-situated and impossible to separate from social structures. Thus, rationalisations allow perpetrators to do what they have chosen to do. If perpetrators commit deviant acts without neutralisation then they may develop a “deviant identity” with a concomitant feeling of self-rejection.<sup>160</sup> Both state and horizontal propaganda (within the group) drive neutralisation but neutralisation may also occur in a very subtle fashion when authority figures condone violence with statements such as ‘it was understandable’. This thesis will utilise a modified and expanded version of Sykes and Matza’s techniques of neutralisation that is particularly relevant to the crime of genocide:

**Figure 2.2 The Genocidal Techniques of Neutralisation:**



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<sup>159</sup> David Matza, *Delinquency and Drift*, (New Brunswick, USA: Transaction, 2009) p. 101.

<sup>160</sup> Howard B. Kaplan, “Deviant Identity and Self Attitudes,” in Bryant, Clifton D. (ed.), *Encyclopedia of Criminology and Deviant Behavior*. (Philadelphia: Brunner-Routledge, 2001), p. 111.

The first four of these techniques are part of the reversal of morality while the latter eight are primarily concerned with the reduction of moral cost. In other words the former authorise and inspire action while the latter simply reinforce belief in the contingent moral justifiability of participation in genocide. The fundamental importance of the techniques of neutralisation is that they help to reconcile self-concept with action. Perpetrators can maintain their view of themselves as good people if their actions are considered to be morally correct and justified.

This is in contrast to theories which posit that perpetration is accomplished through the creation of a separate ‘perpetrator self’ such as Robert Jay Lifton’s theory of “doubling.”<sup>161</sup> The problem with theories like doubling is that perpetrators cannot really create a separate and sealed perpetrator self. Even as they kill most perpetrators maintain some *consciousness of wrong-doing*. Perpetrators are often aware of the negative implications of their behaviour.<sup>162</sup> This is why neutralisation is needed. Stanley Milgram’s theory that perpetrators enter an ‘agentic state’ is also problematic as it supposes an abstract situation where all autonomy is surrendered and the perpetrator completely lacks will. This is not how it works.

In some cases perpetrators *do* feel their actions are completely justified and they have lost sight of the wrongfulness of their behaviour. For example, perpetrator R55 remembers: “I thought that what I was doing was good and that it would make me famous;” and R58 notes: “If I’d known I was doing something wrong I wouldn’t have gotten involved.”<sup>163</sup> Yet, in the presence of the universal prohibition on killing, such sentiments are only possible with the restructuring of morality that occurs as a result of neutralisation. About half of Rwandan

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<sup>161</sup> Robert Jay Lifton, *The Nazi Doctors*, (New York: Basic Books, 2000). Interestingly Fogelman argues that rescuers also create a separate “rescuer self” that enables them to do things that would normally be considered unethical. See: Kristen Renwick Monroe, *The Hand of Compassion: Portraits of Moral Choice During the Holocaust*, (Princeton, U.S.A.: Princeton University Press, 2003), p. 229.

<sup>162</sup> Diana Scully and Joseph Marolla, “Convicted Rapists’ Vocabularies of Motive: Excuses and Justifications,” *Social Problems*, vol. 31, no. 5 (June 1984), p. 530.

<sup>163</sup> Rwanda Interview R55 (perpetrator), fisherman, Rugerero TIG Camp, September 27, 2009; and Rwanda Interview R58 (perpetrator), farmer, Rugerero TIG Camp, September 27, 2009.

perpetrator respondents (47.5%) reported that they felt at that time that their actions were wrongful with one recounting “One day I told my friend I was doing something terrible. I felt like it was the end of the world!”<sup>164</sup> This sense of wrongfulness also seems to have fluctuated among many perpetrators, one reporting that: “one day we felt we were doing something wrong and the next day we didn’t.”<sup>165</sup> This might be indicative of the fact that perpetrator motivation is multivariate and complex, and the techniques of neutralisation contribute to perpetration by allowing “drift” from universal moral values but they do not usually completely erase ties to this pre-existing value system.

In genocide the techniques of neutralisation originate from four sources: state propaganda; horizontal propaganda (peer messages); internally-generated guilt minimisation; and social structures. Propaganda may directly provide perpetrators with messages of inspiration and authorisation yet perpetrators may also arrive at some of these techniques independently as a result of their desire to reduce their sense of guilt in order to maintain a positive self-image. For example, perpetrators who feel shame after participating in killing may revise their own history and come to believe that they had no other choice than to participate. Also, social structures, such as hierarchical organisations and group settings may also ease neutralisation. For instance, perpetrators acting in a group of many other perpetrators may feel as though they are less responsible than they would be if they were acting alone. Evidence in support of my approach will be provided from interviews with perpetrators in Rwanda and other countries which have experienced similar atrocities.

Let us now examine each of the techniques of neutralisation in turn.

### ***1. Appeal to Higher Loyalties***

Gentlemen, if there is ever a generation after us so cowardly, so soft, that it wouldn’t understand our work as good and necessary, then gentlemen, National Socialism will

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<sup>164</sup> Rwanda Interview R78 (perpetrator), farmer, Nyamata TIG Camp, October 28, 2009.

<sup>165</sup> Rwanda Interview R37 (perpetrator), farmer, Rwaza TIG Camp, August 30, 2009.

have been for nothing. On the contrary we should bury bronze tablets saying it was we who had the courage to carry out this gigantic task.<sup>166</sup>

– testimony at Nuremberg of Belzec concentration camp worker

In the appeal to higher loyalties the perpetrator frames their participation in genocide as a form of altruism where their deeds were done in service of others such as their family, their ethnic group, their country, or their ideology. The appeal to higher loyalties is often a utilitarian argument – placing one moral principle or virtue over others (the sanctity of human life). Yet, when coupled with extreme dehumanisation the perpetrator may come to believe that their intended victims are not equally human in the first place. The appeal to higher loyalties also involves the replacement of one set of moral values with another. Genocide involves many individuals acting in coordination to accomplish an overarching goal so it is not surprising that many perpetrators feel as though their perpetration is for a higher purpose. In Rwanda about half of the perpetrators that interviewed for this study felt their actions were beneficial to their ethnic group while more than a third felt that they were protecting their country. Propaganda often appeals to such sentiments, sometimes using guilt to isolate non-participants.

## ***2. Denial of the Victim***

In the denial of the victim it is argued that the victim is not really a victim at all. Often this is closely related to the survival discourse – the victim is seen as actually being a perpetrator and a threat to the survival of the perpetrator group. One perpetrator in Rwanda recounted that Hassan Ngeze’s propaganda in Kangura demanded that “we should hate the Tutsis and kill them before they killed us” while an RTLM on-air personality recounted her own radio message that “there are Tutsis outside who want to come back to kill us. There are Tutsis inside helping them. They have already sent their sons.”<sup>167</sup> Perpetrators see themselves

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<sup>166</sup> Staub, *The Roots of Evil*, p. 84.

<sup>167</sup> Rwanda Interview R39, farmer (perpetrator), Nyarusenge TIG Camp, August 31, 2009. See also: Rwanda Interview R73, RTLM Journalist (perpetrator), Kigali Central Prison, October 27, 2009.

as being victimised. In this context, all perpetrator actions are perceived as self-defence and therefore morally legitimate. This reversal of victimisation is frequently invoked in genocidal propaganda. As one Rwandan perpetrator reports, “there was no problem killing them. They were enemies.”<sup>168</sup> During the Bosnian war the Serb media framed the conflict as “a preventive war against a genocidal [Bosniak] force.”<sup>169</sup> Similar arguments were prevalent in Nazi Germany.

The denial of the victim may also take the form of arguing that the victim had the power to escape their suffering but chose not to do so. For example, Harry Truman justified dropping the atomic bomb on Hiroshima by arguing, “we will issue a warning statement asking the Japs to surrender and save lives. I’m sure they will not do that, but we will have given them the chance.”<sup>170</sup>

Denial of the victim may involve subjective self-defence – where the perpetrator makes a legal argument (a justification) that they committed their crime out of a mistaken belief that they were acting in self-defence. This argument was raised by a defence counsel in the *Einsatzgruppen* case, Dr. Rudolf Aschenauer, who said that the defendants had committed acts “in presumed defence on behalf of a 3<sup>rd</sup> party” [the Reich] and “under conditions of presumed necessity to act for the rescue of the 3<sup>rd</sup> party from immediate, otherwise unavoidable danger.”<sup>171</sup> He went on to argue that “an error concerning the prerequisites of self-defence or of an act for the protection of a third party is to be treated as an error about facts and constitutes...a legal excuse or – at the very least – a mitigating circumstance.”<sup>172</sup> The court rejected his arguments. This is not surprising as self-defence generally requires an objective element as well as necessity and proportionality.

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<sup>168</sup> Rwandan Interview R29, counsellor (perpetrator), Rugarero TIG Camp, August 26, 2009.

<sup>169</sup> Rachel Irwin and Edina Becirivic, “Visegrad in Denial,” Institute for War and Peace Reporting, December 1998, p. 6.

<sup>170</sup> Glover 102.

<sup>171</sup> De Mildt 10.

<sup>172</sup> De Mildt 10.

### ***3. Denial of Humanity***

The denial of humanity is a justification for violence on the basis of the victims' reduced humanity or complete absence of humanity. Such a perception means that they are not part of the moral community and not subject to the norm of reciprocity. For example, one perpetrator in Rwanda argued: "I heard [on the radio] that the Tutsis were killers and also that they had long tails and long ears."<sup>173</sup> Other génocidaires in Rwanda recount: "they told us they [the Tutsis] were animals" and "[propaganda said] cockroaches have come. Wake up so you can fight these people...even if you go to your plantation to dig, go with a gun...kill Tutsis wherever you find them."<sup>174</sup> Victims also recall being called "snakes" and "cockroaches" before the genocide.<sup>175</sup> The denial of humanity (dehumanisation) allows for perpetrators to deviate from norms without directly assaulting the norms themselves (the norms simply do not apply). Sykes and Matza also argue that "the potential for victimization would seem to be a function of the social distance between the juvenile delinquents [perpetrators] and others."<sup>176</sup> The denial of humanity (dehumanisation) seeks to create this social distance (the humanity gap).

### ***4. Just World Hypothesis***

"I felt they were enemies of Rwanda and myself."<sup>177</sup> – perpetrator R73

"We asked ourselves what must they have done to deserve to be killed?"<sup>178</sup> – perpetrator R35

The just world hypothesis supposes that we live in a just world so the victims must have done something to deserve their suffering. The just world hypothesis is situated in both

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<sup>173</sup> Rwanda Interview R4 (perpetrator), unemployed, Kigali Central Prison, July 7, 2009.

<sup>174</sup> Rwanda Interview R36 (perpetrator), farmer, Rwaza TIG Camp, August 30, 2009. See also: Rwanda Interview R15 (perpetrator), farmer, Gitarama Prison, July 28, 2009.

<sup>175</sup> Rwanda Interview R48 (victim), student, Nyamata, September 22, 2009.

<sup>176</sup> Gresham M. Sykes and David Matza, "Techniques of Neutralization: A Theory of Delinquency," *American Sociological Review*, Vol 22., no. 6 (December 1957), p. 665.

<sup>177</sup> Rwanda Interview R73 (perpetrator), RTLM Journalist, Kigali Central Prison, October 27, 2009.

<sup>178</sup> Rwanda Interview R35 (perpetrator), farmer, Rwaza TIG Camp, August 30, 2009.

belief in the goodness of human nature and moral myopia – an inability to consider the suffering of others less fortunate than ourselves. There are strong overtones of obedience to authority present as well. It must be remembered that genocide usually involves the participation of legitimate authority figures and this strengthens just world assumptions about the victim. In an experiment Lerner and Simmons demonstrated the just world hypothesis when observers reacted to a woman receiving electric shocks, not with sympathy, but with the belief that she must have done something wrong.<sup>179</sup> Even victims may not challenge the legitimacy of the regime's actions; studies of concentration camp inmates in the Holocaust show that these prisoners do not challenge the justness of the system but only argue that they have been mistakenly wronged.<sup>180</sup> Just world thinking effectively reverses the burden of proof – those accused by the state are guilty unless proven innocent (although innocence is not meaningful possibility).

### 5. *Denial of Responsibility*

“We had to join the others in the group so that we would not be killed ourselves” – R60<sup>181</sup>

“We were supported by the government so I didn't think about the victims.” - R55

“We didn't feel pity because we were told to kill them.” – R67

“For those of us who can't read or right we support the leaders.” – R11

“When ordinary people receive orders from the authorities they have no choice but to follow them.” – R61

“If I had tried to stop the killings I would have been killed too.” – R17

“The person who did something really wrong was the person who told us to kill the Tutsi.” – R26

“I never went because I wanted to – I was forced.” – R79

The denial of responsibility is a denial of individual volition. Most moral and legal responsibility involves intentionality and the denial of responsibility is a denial of this criminal

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<sup>179</sup> Smith and Mackie 159.

<sup>180</sup> Erich Fromm, The Anatomy of Human Destructiveness, (Greenwich, United States: Fawcett, 1979), p. 85.

<sup>181</sup> All of these respondents are Rwandan perpetrators. See Appendix 1.

intent. It includes justifications such as intoxication (I was too drunk to consider the morality of my actions), superior orders (I was following the orders of somebody else), and coercion/duress (I was forced against my will to do what I did). It would seem that intoxication may play some role in reducing inhibitions and facilitating violence.<sup>182</sup> This intoxication may take place before the crime is committed or afterwards (as a coping mechanism). For example, one participant in a massacre of Jews in Poland says that after they returned to their barracks “generous quantities of alcohol were provided, and many of the policemen got quite drunk.” Another policeman says “most of the other comrades drank so much solely because of the many shootings of Jews, for such a life was quite intolerable sober.”<sup>183</sup> Moreover, 88.2% of Rwandan perpetrators interviewed for this study reported they or other perpetrators they saw were drinking or using drugs.

Duress and obedience to authority are also frequently invoked by perpetrators of genocide. This study found that 61.3% of Rwandan perpetrators reported that the genocide was caused by authority and 71.9% of perpetrators believed that they had no choice but to kill. Intoxication and duress are viable criminal defences, in certain circumstances, but superior orders does not apply to genocide as all orders to commit genocide or crimes against humanity are considered to be “manifestly unlawful.”

In general, cognitive dissonance (the discomfort that arises when actions do not accord with previously held beliefs) does not result when responsibility for actions is attributed to someone else.<sup>184</sup> Research shows that dissonance effects are strongest when individual actions have serious consequences and/or people feel personally responsible for their actions.<sup>185</sup> This latter principle was employed *in extremis* in Argentina where superior officers in the junta actually signed release forms for each kidnapping absolving the direct perpetrators of

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<sup>182</sup> Brad J. Bushman and Harris M. Cooper, “Effects of Alcohol on Human Aggression: An Integrative Research Review,” *Psychological Bulletin*, vol. 107, no. 3 (1990).

<sup>183</sup> Browning pps. 69 and 82.

<sup>184</sup> Smith and Mackie 278.

<sup>185</sup> Aronson 212.

responsibility.<sup>186</sup> Similarly, in Nazi Germany a message from Hitler to the troops on the Eastern Front promised “no German participating in action against bands or their associates is to be held responsible for acts of violence either from a disciplinary or judicial view.”<sup>187</sup>

The effects of such removal of direct responsibility are clear. In Rwanda one perpetrator, who crushed as many as two thousand people taking shelter in a church with a bulldozer, reasons “I did not leave my house voluntarily to kill people. I was taken there and told to do it. So I don’t feel so bad about it.”<sup>188</sup> In some organizations (and states) responsibility is “free-floating” with every member of the organization convinced that they are acting at another’s beck and call.<sup>189</sup> Free-floating responsibility means that moral authority is incapacitated without being openly challenged or denied.<sup>190</sup>

### **6. Denial of Injury**

The denial of injury technique of neutralisation argues that the supposed victim was not actually hurt, that it was not the perpetrator’s intention to hurt the victim, or that the perpetrator did not cause the injury (or death) of the victim. The denial of injury may also include the idea that violence was a rightful (or even lawful) form of retaliation or punishment.<sup>191</sup> In order to make such a denial of injury possible the perpetrator may use euphemisms (i.e. “work” rather than “killing” as in Rwanda). Historian Raul Hilberg examined thousands of Nazi documents and determined that the only time the word “kill” was

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<sup>186</sup> Staub, *The Roots of Evil*, p. 84.

<sup>187</sup> Waller 188.

<sup>188</sup> African Rights, *Rwanda: Death, Despair and Defiance*, (London: African Rights, 1995), p. 405.

<sup>189</sup> Bauman 163.

<sup>190</sup> Interestingly, in the post-war German Euthanasia Case the court reasoned that the individual defendants suffered from “inertia of the will” for conforming with the goals of the Nazi state, whereas in the most famous Nazi propaganda film, “The Triumph of the Will,” the ideal of will was embodied in a collective endeavour of individuals acting in service of the organic state. See: Leni Riefenstahl (director), *Triumph of the Will*, 1935, re-released on DVD by Synapse Films, 2006.

<sup>191</sup> Sykes and Matza 668.

used was in an order concerning dogs.<sup>192</sup> This illustrates well the ubiquitous use of euphemistic language in genocide.

Compartmentalisation (the functional division of labour) also supports the denial of injury. Genocide, as a mass crime, makes use of organizations. It is quite possible to fulfill one task within such an organisation (such as the passing of messages) and not feel responsible for the entirety of the atrocity. Even Franz Stangl (the camp commandant of Treblinka and Sobibor) was somehow able to claim: “I never intentionally hurt anyone myself.”<sup>193</sup> Legally, individuals may still be held responsible in such circumstances under mechanisms such as the joint criminal enterprise theory of liability, complicity, and co-perpetration.

Distancing, the physical or emotional distance between the perpetrator and victim also eases the denial of injury. One interviewee in Rwanda reported shooting someone fleeing from a mob, in the leg with a bow and arrow, causing the injured person to be killed by the mob; yet, he remained adamant that he was not responsible for the victim’s death.<sup>194</sup> Killing is much more difficult at bayonet/machete range than it is at gun scope (mechanical sight) range, and killing at gun scope range is more difficult than killing from an airplane. Modern technology has resulted in a poor correlation between psychological guilt (shame) and degrees of moral responsibility.<sup>195</sup> The effects of distance on easing killing hold for all types of killing, not just genocide. Studies have shown a correlation between altitude and attitude among air crews in the Vietnam War. Those in high-altitude bombers (such as B-52s) spoke almost exclusively of questions of professional performance; fighter-bomber pilots glimpsed the victims of their attacks and had an inclination to explain and rationalise their actions; personnel of helicopter gunships saw everything and experienced the full set of psychological consequences felt by ground personnel.<sup>196</sup>

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<sup>192</sup> Waller 189.

<sup>193</sup> De Mildt 300.

<sup>194</sup> Rwanda Interview R79 (perpetrator), farmer, Nyamata TIG Camp, October 28, 2009.

<sup>195</sup> Glover 100.

<sup>196</sup> Lifton, *The Nazi Doctors*, p. 495.

Killers also frequently express a sense of derealisation – where they do not feel as though they are present and killing their victims but rather feel as though they are playing a game, acting in a movie, or living in a dream. One Rwandan génocidaire recounts that killing “was like watching a movie – I didn’t have much in my head” while another claims that “It was like a game and nobody thought about the consequences.”<sup>197</sup> Derealisation may also be accomplished through alcohol or “doubling” – the creation of a somewhat separate perpetrator self, thus insulating the perpetrator from the reality and consequences of perpetration. Many nurses and doctors involved in the euthanasia programs in Nazi Germany claimed that they were not fully aware of the consequences of their actions, that the doses of medication they were administering would actually kill their patients.<sup>198</sup>

### 7. *Claim of Normality*

“Killing Tutsis was not only normal, it was fashionable.”<sup>199</sup> – perpetrator R4

Under the claim of normality perpetrators believe their action is no longer a transgression because it has become “normalised” – many other perpetrators are performing the same action.<sup>200</sup> Moreover, they are performing the same kinds of acts without any form of negative sanctions and, often, receiving positive reinforcement. There is a strong tendency for individuals to conform and this certainly plays a role in perpetrator justifications for their actions. The “co-action” effect may also operate where people work faster when they see others also working.<sup>201</sup> During genocide, killing may very well be “normal” behaviour while avoiding killing may be seen as “shirking duty.”

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<sup>197</sup> Rwanda Interview R78 (perpetrator), farmer, Nyamata TIG Camp, October 28, 2009; and Rwanda Interview R22 (perpetrator), farmer, Tumba TIG Camp, August 24, 2009.

<sup>198</sup> See De Mildt 181 and also Lifton’s classic work Nazi Doctors.

<sup>199</sup> Rwandan Interview R4 (perpetrator), farmer, Kigali Central Prison, July 7, 2009.

<sup>200</sup> For more on the Claim of Normality see: James W. Coleman, The Criminal Elite: The Sociology of White-Collar Crime (5<sup>th</sup> edition), New York: St. Martin’s, 2002.

<sup>201</sup> Gillian Butler and Freda McManus, Psychology: A Very Short Introduction, (New York: Oxford University Press, 1998), p. 112.

### ***8. Claim of Universal Evil***

The claim of universal evil is closely related to the claim of normality. It is claimed that individual responsibility for contributing to evil is negligible in the face of the ubiquity of evil. The claim of universal evil may take the form of one of two arguments: 1) the metaphysical argument that the world is full of evil (so what I'm doing is not that bad or even normal), or 2) the condemnation of the condemners: you (my potential accuser) have done worse things yourself than I am doing. The claim of universal evil reduces the moral costs of perpetration by “normalising” it and removing it from the context of true deviancy. In genocide these claims may once again take the form of blaming the victim – they past abuses of the victim group render them unworthy of sympathy during their current victimisation.

### ***9. Claim of Inevitability***

“Who was I to stop the killing?” – R1

“The time for Tutsis was over.” – R2

“The people were supposed to die. I heard about people killing on the radio.” – R18

“One person could not stop this.” – R39

“My participation didn't mean much – those people would be killed if I did nothing.” – R62

“I had no power to prevent the genocide.” – R76<sup>202</sup>

This very common technique of neutralisation is grounded in a perceived impotence: the crime was going to occur whether or not I participated so my contribution to the criminal endeavour made no difference whatsoever. The perpetrator also believes that the consequences of their decision to participate are reduced because they would be lacking any power to stop genocide from occurring. In his detailed recounting of the Josefow massacre in the Second World War in Poland, Christopher Browning quotes one policeman who argues “without me the Jews were not going to escape their fate anyway.”<sup>203</sup> In Rwanda, 88.7% of the perpetrators interviewed for this study reported that they believed, at the time, that the

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<sup>202</sup> All of these quotations are from Rwandan perpetrators. See Appendix 1.

<sup>203</sup> Browning, *Ordinary Men*, p. 73.

victims would be killed whether or not they participated. Such beliefs further erode the sense of agency of perpetrators and reduce the magnitude of their harmful acts (even though genocide is ultimately the product of many individual bad acts). When evil is no longer extraordinary it loses its deviant quality.

### ***10. Claim of Relative Acceptability***

The claim of relative acceptability is the argument that your actions are less deviant because they are less harmful than the alternatives. The claim includes two different sub-techniques: *the lesser harm* – my violence was less extreme than others (so I am less morally culpable and less ‘evil’); and *killing as compassion* (mercy killing) – I am killing the victims to save them from future suffering. As an example of the lesser harm, Willi Mentz, an executioner at Treblinka concentration camp, argued that he was a compassionate man who never tormented his victims and complied with their wishes by leaving the decision of “who would be next” entirely to them.<sup>204</sup> Another perpetrator, this time in Rwanda, argued that his killing was more compassionate than that of his colleagues because he used a gun rather than the “hammers and knives” other perpetrators were using.<sup>205</sup>

In contrast, killing as compassion transforms the acts of the perpetrator from cruel to kind. Mercy killing was also present in the Josefow massacre; one man, who shot only children, argued “I reasoned with myself that after all without its mother the child could not live any longer. It was...soothing to my conscience to release children unable to live without their mothers.”<sup>206</sup> Similarly, in Rwanda, mother of six children Juliana Mukankwaya bludgeoned other children to death because “she was doing the children a favour, because they were orphans who faced a hard life.”<sup>207</sup> Another example of ‘mercy killing’ was the work of the Nazi doctors during the Holocaust.

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<sup>204</sup> De Mildt 263.

<sup>205</sup> Rwandan Interview R4 (perpetrator), unemployed/*Interahamwe*, Kigali Central Prison, July 7, 2009.

<sup>206</sup> Browning, *Ordinary Men*, p. 73.

<sup>207</sup> Roy F. Baumeister, *Evil: Inside Human Violence and Cruelty*, (New York: W.H. Freeman, 1997), p. 308.

It seems the claim of relative acceptability is nearly universal. Fully 96.6% of the perpetrators interviewed in Rwanda maintained the belief that other people were committing worse crimes than they were at that time. Mercy killing is something that occurs regularly but more rarely. In Rwanda around a quarter of my respondents reported believing that it was better for them to kill the victims quickly in order to prevent them from being tortured by someone else with one perpetrator reporting “we thought that if we didn’t kill these people they would be more cruelly killed by the Interahamwe.”<sup>208</sup>

### ***11. Claim of Inner Opposition***

The claim of inner opposition acknowledges that an individual is participating in the violence taking place but that they are doing so in a state of inner opposition. Because you are participating you still bear some moral responsibility but this responsibility (and moral cost) is reduced because you are not doing so eagerly. In other words, you may be performing the criminal act with a criminal mind but you do not have a criminal heart. In fact, such criminal conduct may be merely a ruse intended to dupe the “real criminals.” For example, Dr. Otto Bradfish, a former *Einsatzgruppen* official who had presided over the deaths of at least 15,000 people, claimed that he had been “inwardly opposed” to his actions.<sup>209</sup> Another perpetrator in Rwanda argued that “I had to show them I was together with them but I didn’t necessarily support them.”<sup>210</sup> The claim of inner opposition is also especially prevalent as a rationalisation after the fact.

### ***12. The Denial of Autonomy***

This last technique of neutralization is perhaps the most extreme. In the denial of autonomy the perpetrator completely denies their role in the violence and instead claims: ‘I did not kill – the group killed.’ In Cambodia when prisoners asked their captors why they were

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<sup>208</sup> Rwanda Interview R37 (perpetrator), farmer, Rwaza TIG Camp, August 30, 2009.

<sup>209</sup> Arendt 127.

<sup>210</sup> Rwanda Interview R17 (perpetrator), burgomaster, Gitarama Prison, July 28, 2009.

being detained and tortured they were told that *Angkar* (the state) was responsible and that they should “ask *Angkar*.”<sup>211</sup> The individual perpetrator self-objectifies in order to remove their agency and moral culpability.

This technique is related to Sigmund Freud and Gustave Le Bon’s views on crowd psychology (examined in the following chapter) where the individual ceases to exist and instead cedes all rationality to the crowd. The larger the crowd in question the easier it becomes for an individual to deny their agency. Much of the perpetration in the Rwandan genocide was done by crowds. Based on limited information gathered in the course of my interviews, it would seem that, generally speaking, the spatial position of perpetrators in the crowd bore some correlation to their willingness to kill. The most extreme and eager perpetrators (*vanguard perpetrators* as discussed in Chapter 3) were at the front of the crowd and bore the brunt of moral responsibility while drifters, who lingered around the fringes of crowds, felt less morally responsible. Groups diffuse responsibility and contribute to *de-individuation*, the reduction of individuality in favour of the group. The wearing of uniforms or hoods also greatly increases the de-individuation effect

Another facet of the denial of autonomy is *role conformity* where the perpetrator argues that they are not responsible (and not acting autonomously) because they were simply performing a role. This argument is especially powerful when this role is sanctioned by legitimate authorities, as is often the case in genocide. When asked why he had acted against his innermost convictions Ludwig Sprauer, a doctor in Nazi Germany responsible for the euthanasia deaths of at least 3000 of his patients, answered “my God I was a civil servant!”<sup>212</sup>

### ***Assessing the Techniques of Neutralisation***

It is difficult to determine whether the techniques of neutralisation are really just post-facto rationalisations (perhaps arising from a lack of moral courage). There is considerable

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<sup>211</sup> Hinton, *Why Did They Kill?*, p. 238.

<sup>212</sup> The court released him after only a short term because he didn’t have a “criminal personality” and had acted out of a “misunderstood conception of duty.” See De Mildt 106.

empirical support for the effects of neutralisation before perpetration including longitudinal studies.<sup>213</sup> Yet, when interviewing long after the fact it can be difficult to determine whether perpetrator neutralisation derives from the ideological messages of the time or the general tendency to minimise moral guilt (external and internal). Yet, this excuse-making may also be a way for perpetrators to indicate to their audience that they remain aligned with the social order even though they may have violated it.<sup>214</sup> Indeed the narrative of perpetrators with regards to their past transgressions is shaped by the society that they live in today. This is why such narratives must be examined critically, including the use of meta-data such as the disposition of the perpetrators when asked certain types of questions. Some theorists also posit that rationalisations indicate that the perpetrator feels that their victims are owed some kind of explanation.<sup>215</sup> Once again this brings us back to the universality of the more on killing.

Yet such theorising minimises the possible pre-perpetration effects of the techniques of neutralisation. Based on the evidence at hand (including the nature of the acts of the perpetrators) it seems apparent that perpetrators would not be able to kill their victims if they viewed them as valued equals and saw their acts as unjustifiable transgressions of the moral order. Perhaps neutralisation is a product of the tendency to minimise moral guilt, and the tendency to avoid the performance of guilt-inducing acts, but the specific forms such neutralisation takes are dictated by ideology and social structures.<sup>216</sup> Guilt is especially strong towards those you know, so rationalisations may be especially relevant in cases of neighbourly violence such as Rwanda.

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<sup>213</sup> Alexander Alvarez, "Adjusting to Genocide: The Techniques of Neutralization and the Holocaust," *Social Science History*, vol. 21., no. 2 (Summer 1997), pp. 139-178.

<sup>214</sup> Shadd Maruna and Heith Copes, "What Have We Learned from Five Decades of Neutralization Research?" *Crime and Justice*, Vol. 32 (2005), p 252.

<sup>215</sup> Maruna and Copes 253.

<sup>216</sup> This tendency to minimize moral (and legal) guilt has been shown in numerous studies including one that demonstrated, through anonymous personal histories, that child molesters grossly underreported their crimes even after conviction. See: Daniel Goldhagen, *Worse than War*. New York: Public Affairs, 2009.p. 171.

The question is whether transgression would occur without neutralisation. Although no linear causality can be drawn, the findings here do logically indicate that transgression is eased or even erased by an enabling environment provided through state ideology (messages of inspiration and authorisation). This ideology of motive, when combined with genocidal infrastructure, is difficult to resist.

There is a loop at work in the techniques of neutralisation where the criminal act is legitimised by propaganda (vocabularies of motive) but the commission of the act also creates the need for propaganda (rationalisation). Eric Hoffer correctly notes that “we cannot pity those we have wronged, nor can we be indifferent towards them. We must hate and persecute them or else leave the door open to self-contempt.”<sup>217</sup> This tendency is a function of our egoistic perspective of the world. Such self-justification may contribute to a restructuring of morality. The more a goal becomes a part of self-definition, the more it is transformed into a psychological need.<sup>218</sup> For a technique of neutralisation to be effective it must have plausibility and there must be a strong will on the part of the perpetrator to believe.<sup>219</sup> Neutralisation enables crime but it does not require it – the will of the perpetrator remains important.<sup>220</sup>

*Post-facto* systems of denial flow directly from deniability during perpetration. These systems of denial are characterised by deceptive planning and implementation including the use of euphemisms and coded commands, the concealment of human remains, and the destruction of incriminating orders.<sup>221</sup> Such denials draw on “shared cultural vocabularies” – collusion between people (often within organizations) to back up each others’ denials.<sup>222</sup> The facts are not completely ignored, but the meaning of the facts is altered. These systems of

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<sup>217</sup> Hoffer 95-96.

<sup>218</sup> Staub, *The Roots of Evil*, p. 15.

<sup>219</sup> Baumeister 307.

<sup>220</sup> Maruna and Copes 231.

<sup>221</sup> Stanley Cohen, *States of Denial: Knowing about Atrocities and Suffering*, (Cambridge: Polity Press, 2008), p. 14.

<sup>222</sup> S. Cohen 64.

denial function best when we are not even aware of them. Perpetrators effectively hide themselves from the implications of their actions: present and future, personal and societal.

According to David Matza, the law “contains the seeds of its own neutralisation” (in the form of justifications and excuses).<sup>223</sup> Even if perpetrators are not aware of justifications as legal defences, these forms of negation of the offence may be located in customary beliefs.<sup>224</sup> The law simply reflects and codifies these beliefs. Dr. Valentin Falthausen, a psychiatrist who, as director of the Kaufbeuren Mental Institution, was responsible for thousands of euthanasia killings in Nazi Germany, was sentenced to only three years imprisonment for manslaughter by a post-war German court. The court argued that Falthausen had committed his crimes out of “compassion” for his patients.... “one of the noblest motives of human conduct.”<sup>225</sup> In effect, the court had endorsed his claim of killing as compassion. Certain techniques of neutralisation do conform roughly to criminal defences such as the claim of universal evil/*tu quoque*, denial of responsibility/duress/intoxication, denial of the victim/subjective self-defence. In the case of genocidal societies, one can also say that some things are crimes legally but not psychologically because of collective approval and encouragement.<sup>226</sup>

Furthermore, some people would kill irrespective of neutralisation because of personal extremism. Even if the pathology of ideas is more important than the pathology of the perpetrators it must be remembered that not every perpetrator is ideological, and some perpetrators *are* pathological.

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<sup>223</sup> Matza 61.

<sup>224</sup> Matza 74.

<sup>225</sup> De Mildt 99.

<sup>226</sup> Gustav LeBon, The Crowd, (London: Dover Publications, 2002), p. 105.

## **2.6 Conclusion: Decision Priming**

Propaganda plays a crucial role in the perpetration of genocide. Such propaganda defines the enemy, absolves perpetrators, and incites violence. Propaganda is an exercise in *decision-priming*: it does not dictate perpetrator action but it helps to shape the perpetrators' perspective in a way that encourages the commission of violence. Writing about rape, Scully and Marolla argue that rape is:

Behaviour learned socially through interaction with others; convicted rapists have learned the attitudes and actions consistent with sexual aggression against women. Learning also includes the acquisition of culturally derived vocabularies of motive, which can be used to diminish responsibility and to negotiate a non-deviant identity.

The same is true for genocide. Yet, one could argue that not all genocidal behaviour is learned in the sense that not all perpetrators share extreme prejudicial views of the victims and not all perpetrators are ideologically-motivated. In fact, many perpetrators seem to participate in genocide simply because they perceive few other options. However, even passivity is bred through learning, as is obedience to authority and the devaluation of the victim that makes bystander intervention and resistance much less likely. As a social crime genocide requires a shared language of malevolence and propaganda provides such a language. It is propaganda that furnishes resentment with a human image and propaganda that gives purpose to cruelty.

## Chapter 3 – The Mobilisation of Genocide

### **3.1 Introduction: The State as a Criminogenic System**

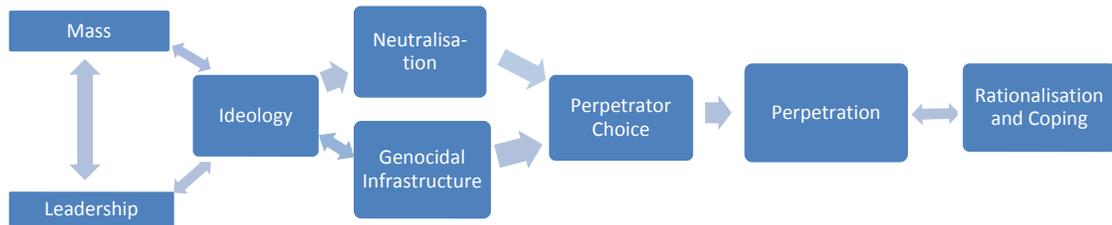
Genocide would not be possible without the structures that facilitate killing. These structures provide perpetrators with the opportunity to kill: both through the mobilisation of killing and through the realisation of the extraordinary power differential between perpetrators and victims. One of the most remarkable aspects of genocide is the degree to which perpetrators shift the authorship of their evil from themselves to the state. Part of this phenomenon is attributable to the tendency to consciously avoid moral responsibility for deviant acts but this does not give us the full picture. There is also a genuine belief on the part of many perpetrators that they are acting, without full volition, as instruments of the state. This belief is not without cause – perpetrator action *is* structured through the exercise of state power. The genocidal state is often authoritarian so there is a degree of coercion implicit in such states. Moreover, the messages of the state also influence the range of choices which perpetrators believe is available to them in any given situation.

It is important to make clear that the analysis here focuses on the state because genocide is generally committed by the state or with the connivance of the state. Nonetheless, the possibility of non-state genocides must not be ignored. These non-state genocides would still require state-like control mechanisms. Alternatively, non-state genocide would occur on a localised level, out of the range of state control. The Elements of Crimes of the Rome Statute of the International Criminal Court requires that acts of genocide be committed as part of a “pattern of similar attacks” but the text does not limit this pattern to states.<sup>227</sup>

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<sup>227</sup> Much of the case law of the ICTY is predicated on the notion that a lone génocidaire with the requisite genocidal intent can commit the act of genocide. The introduction of a policy element in the Rome Statute was somewhat of an innovation. Nonetheless, even if there is a policy requirement it is not clear that this “pattern or policy” threshold cannot be met by organised non-state actors.

**Figure 3.1** The Dynamic Process Model of Genocide



We have already discussed the role of state messages in authorising and inspiring the perpetration of genocide; in this chapter other elements of the genocidal process will be elaborated – namely the opportunity provided by the state, through its institutions, for the perpetration of genocide. These institutions can collectively be called “genocidal infrastructure.” As a part of this discussion the interaction between leaders and the mass will be analysed, as well as the mobilisation of genocide by state institutions. A special emphasis will also be placed on the importance of organizations in structuring individual participation in the killing enterprise.

The genocidal state functions as a criminogenic system – it encourages and facilitates the commission of genocide. One way in which it does this is by offering the coordination necessary for genocide - a crime requiring mass mobilisation. Furthermore, the power differential between victims and perpetrators, where the perpetrator is omnipotent and the victim is powerless, enables perpetration. The asymmetrical application of massive force is a distinguishing characteristic of genocide. This power differential is also related to the humanity gap as perpetrator omnipotence reinforces the ethnocentrism of the perpetrator

group while victim insignificance is derived from the devaluation of the victim group. This overall, state-level organizational culture encouraging genocide is reinforced and counteracted by organizational sub-cultures such as those of specialised killing organisations, elites, the clergy, and impromptu agglomerations of killers. The criminogenic state and the power differential between victims and perpetrators are both indispensable for the mobilisation of genocide.

### **3.2 Leaders: The “Controlling Minds” of Genocide**

#### ***Organisation and Mobilisation***

Leaders play an essential part in the creation of the structures and the dissemination of messages necessary for genocide. Leaders mobilise the mass, although the mass may also put pressure on leaders to perform certain actions. Extremist leaders usually emerge in extreme conditions, but they also create those conditions. Such leaders do not invent antipathy (it is usually rooted in the culture and history) but they actualise it. In other words genocide is both top-down and bottom up.

Leadership drives the vertical conformity pressures of obedience to authority, which works in conjunction with the horizontal conformity pressures of the group. Helen Fein observes: the “accommodation to authority, in the absence of counter authorities offering models for resistance, leads to the victimisation of the socially designated target.”<sup>228</sup> Thus, many individuals perceive few options but to conform to their peers and obey legitimate authorities. Genocide is a crime of conformity that requires some form of collective volition; leaders help to define and direct this collective desire. They play a crucial role in the creation of the “intent to destroy” mindset both through the creation of the social conditions which enable genocide and through direct incitement (where leaders exhort the mass to kill).

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<sup>228</sup> Fein 90.

Moreover, leaders may also contribute to the definition of the in-group and the out-group, the creation of ideology, and the construction of identity.

Leaders can be roughly divided into the categories of *entrepreneurs* (leaders using identity for instrumental reasons) and *ideologues* (true ideological fundamentalists). For entrepreneurs, violence and human rights violations are a “means of political control...a policy alternative to accommodation, one that is adjusted to the level of threat presented by the opposition.”<sup>229</sup> In contrast to entrepreneurs, for ideologues human rights abuses are not a means to “achieve or protect power, but a policy consequence of [the leader’s]...core values.”<sup>230</sup> Genocidal leadership is often a combination of these two, non-mutually exclusive, elements: the decision to commit genocide may be a “rational” response to a perceived threat, yet, it is also grounded in prejudicial beliefs.

Individuals take leadership roles during mass killing for various reasons including: 1) *bureaucratic* (someone who is a leader by virtue of their official position, 2) *traditional* (someone considered a leader by virtue of their hereditary status), 3) *expert* (a leader on the basis of their expertise and skill in genocide), and 4) *charismatic* (an individual who becomes a leader because of their personality).<sup>231</sup> Once again leadership is often a combination of these elements as people acting in an official capacity may assume additional *de facto* responsibilities on the basis of their competency or charisma. Charisma is difficult to define but, arguably, charisma is about the ability of a leader to connect with the mass. This connection takes place on an emotional level so that individuals in the mass come to believe that the leader reflects their ideals, rather than believing that they are receiving ideals from the leader. Hitler was one such charismatic leader. Professor A. von Muller recalls the first time he met Hitler:

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<sup>229</sup> Neil J. Mitchell, Agents of Atrocity: Leaders, Followers, and the Violation of Human Rights in Civil War, (Houndsmills, U.K.: Palgrave Macmillan, 2004), p. 32.

<sup>230</sup> Mitchell 41. Mitchell appears to have based his typology on: Max Weber, The Theory of Social and Economic Organization, (New York: Oxford University Press, 1947).

<sup>231</sup> See: Max Weber, The Theory of Social and Economic Organization, (New York: Oxford University Press, 1947) and: Richard Pettinger, Mastering Organisational Behaviour, (New York: Palgrave, 2000), p. 125.

At the end of my lecture I noticed a small group that made me stop. They stood as if mesmerized by a man in their midst who spoke to them in a strange guttural voice without stopping, and with increasing excitement. I had the peculiar feeling that their own excitement was caused by his, and simultaneously that theirs gave his voice its energy. I saw a pallid, thin face...with a short clipped moustache and conspicuously large, pale blue, fanatically cold, shining eyes.<sup>232</sup>

In the absence of a high degree of centralisation traditional, expert, and charismatic leaders take on an increasing importance.

The relationship between the leader and the mass is interactive – leaders influence the mass but the mass also influences leaders. Moreover, leaders are dependent on the mass to enact their decisions. Therefore, the relationship between leaders and the mass is also a relationship between principals and agents. For leaders (principals) there are three central problems in their relationship with the mass (agents): 1) *goal variance* – where agents have different goals than the principal; 2) *information asymmetry* – where agents have an information advantage over the principal, and 3) *ambiguity* – where agents do not correctly understand the intentions of the principal.<sup>233</sup>

Goal variance is always present in genocide. Individual motive and intent are variable and individual implementation of orders and incitement will be variable. In the case of genocide coercion and obedience to authority reduce the influence of goal variance and increase the compliance of agents. Goal variance is a function of: 1) norms and 2) structures of control. These norms and structures of control will lead individuals to respond to genocidal commands and incitement in a number of ways including: *acquiescence* (conforming with a demand which is not necessarily supported by the individual), *endorsement* (conforming with a demand which is supported by the individual), *internalisation* (seeing a demand as internally-generated rather than externally imposed), and *resistance* (refusing a demand or avoiding the implementation of a demand). When leaders lack adequate data (information

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<sup>232</sup> Fromm 462.

<sup>233</sup> Mitchell 45. I have added the principle of “ambiguity” to Mitchell’s original typology.

asymmetry) agents may act on their divergent goals and posture or evade in response to their orders. Similarly, if agents do not understand orders correctly they may act in contravention of them. Propaganda emanating from the state is crucial in communicating appropriate behaviour to agents/followers. The state and sovereign have a certain inherent legitimacy that is very difficult for most individuals to challenge, as they have been socialised their whole life to conform.

Genocide is not a spontaneous eruption of hate. Genocide would not occur without elites making a decision to organise perpetration. There are differing degrees of planning involved in different genocides (i.e. the Holocaust involved an extensive planning process as embodied in the Wannsee Conference whereas the genocide in Burundi in 1988 appeared to be largely reactionary). In both cases leaders feed and channel the energy of the mass into the elimination, through killing, of the demonised other. It seems that genocide might be planned on the central level and, at least partly, spontaneous on the local level. Beyond the official structures of the state genocide also often involves informal structures.

### ***Construction of Identity***

Leaders may also play an important role in the construction of group and individual identity. Group identity is established through the setting of group boundaries (demarcating who belongs and who does not), and by characterising both the in-group and the out-group. This characterisation is also a form of symbolisation as certain cognitive representations are attributed to groups through stereotyping. Moreover, leaders and state officials are often called upon to directly adjudicate racial identity. This was the case both in Nazi Germany (where requests for the “re-classification” of people of mixed ancestry, *Mischling*, were often considered directly by Hitler himself) and in Rwanda (where *bourgmestres* had the authority to decide contested ethnic classification, with dire implications for those on the wrong side of the ethnic boundary). Leaders, through the mobilisation of the mass movement, also give political meaning to ethnic and religious identity.

### ***Formation of Ideology***

Leaders carry the ideological banner into battle. Ideology is often the product of intellectuals but it is leaders who actualise such ideology by marrying it to political power and mass mobilisation. Ideology, as devised by intellectuals, may be modified by leaders to serve their political purposes. The irredentism of Serbian nationalists, such as Slobodan Milosevic, was more than just a reflection of the leaders' beliefs – it was also a vehicle for political power. In fact, one of the catalyzing events in Milosevic's rise to power was the infamous nationalist speech he delivered in Kosovo on the 28<sup>th</sup> of June in 1989. Milosevic did not invent Serbian nationalist ideology but he made it relevant.

### ***Incitement and Persuasion***

The influence of leaders goes beyond the mere conceptualisation and organization of genocide; leaders may also directly encourage participation. Vocabularies of motive are formulated and disseminated by leaders through propaganda. Perceived victimisation is transformed into righteous vengeance directed at the out-group. Moreover, the targeted group is dehumanised by leaders and portrayed as being a threat to the survival of the in-group. Such messages from leadership are made much more compelling by the authority and legitimacy that accompany leadership positions. With the commencement of genocide hate speech may be transformed into direct incitement (and ordering) to commit the crime of genocide.

In the absence of enabling propaganda the obstacles to participation become much higher. Genocide requires a degree of mass participation (or mass acquiescence) and a sustained effort that is difficult to envisage without hate propaganda dehumanising the victim group. This is especially true when perpetration is removed from strictly regimented environments such as concentration camps. Moreover, propaganda may influence perpetrators indirectly as it becomes embodied in cultural norms. Perpetrators who are unmoved by the propaganda that establishes the conditions for genocide (hate speech for example) may still be moved to participate by direct appeals from authority figures.

Leaders may make use of ethnic extremism for instrumental reasons – because identity groups provide a convenient base unit for leaders to mobilise support, or for primordial

reasons – because group identities have some real saliency and leaders may be true believers in the ideology which they articulate. Both entrepreneurs and ideologues may also engage in the process of ‘ethnic outbidding,’ where leaders vie for the loyalty of their in-group by taking increasingly radical and exclusionary positions. But leaders cannot lead unless the mass is prepared to follow.

### **3.3 The Mass**

#### ***The Formation of Mass Movements***

As a mass crime, all forms of genocide entail a degree of mass participation. The degree of participation may vary but there is always mass perpetration, mass victimisation, and massive numbers of bystanders. Even though leaders may exert tremendous influence on individuals, the message of leaders will not resonate unless the audience (the mass) is ready to hear it. It is the mass itself that directly perpetrates genocide. Therefore, genocide is more than just an elite exercise – the population must either participate or enable genocide as bystanders. For example, a survey of Germans done in the American zone of occupation in 1945 found that 20% professed to “fully supporting” Hitler’s Jewish policy and another 19% were “generally in favour but felt that he had gone too far.”<sup>234</sup> Moreover, the persistence of non-elite driven hate crimes in many societies demonstrates that hate ideology can thrive even in the absence of elites. All that is required for genocide is the participation of certain ideologically radicalised core constituencies and the acquiescence of others. In order to analyse the nature and formation of the mass - both the constituency and authors of genocide - we will draw on Eric Hoffer’s excellent discussion of mass movements found in his work *The True Believer*.<sup>235</sup>

The mass movement, broadly understood here as sustained collective action, attracts and holds a following by fulfilling our desire for transcendence, to be part of something larger

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<sup>234</sup> Midlarsky 185.

<sup>235</sup> Hoffer 42.

and more eternal than our seemingly insignificant lives. Moreover, submergence into the mass can provide a comforting divestment of individual responsibility. Hoffer writes: “as freedom encourages a multiplicity of attempts, it unavoidably multiplies failure and frustration.”<sup>236</sup> The burden for such failures is placed entirely on the shoulders of the autonomous individual. Ensclosed in the mass we can be anonymous – “no one can point us out, measure us against others and expose our inferiority.”<sup>237</sup> Mass movements form easily during periods of profound social transformation.

Mass movements also demand self-sacrifice. Unlike the revolutionary movements which Hoffer has in mind in his typology, most *génocidaires* do not need to be willing to die – they are engaging in collective action against a weak “foe.” In genocidal mass movements self-sacrifice is better understood as the sacrifice of individual will in deference to the collective will. With this in mind, let us examine Hoffer’s typology of characteristics of mass movements that promote this willingness to self-sacrifice.<sup>238</sup> Firstly, identification with the collective whole – the mass must eliminate individual separateness. This reduction of individual autonomy may also imbue participants in the mass with a sense of empowerment: strength is magnified through individual merging with the collective (as in Nazi Germany’s conception of the organic state).

Secondly, dramatisation – dying and killing seem to be part of a dramatic performance or a game (as with derealisation). This dramatic element is further emphasized through rituals, parades, ceremonies, and costumes (uniforms). Hoffer writes:

Glory is largely a theatrical concept. There is no striving for glory without a vivid awareness of an audience...we are ready to sacrifice our true, transitory self for the imaginary eternal self we are building up, by our heroic deeds, in the opinion and imagination of others.<sup>239</sup>

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<sup>236</sup> Eric Hoffer, *The True Believer: Thoughts on the Nature of Mass Movements*, (New York: Harper Perennial Modern Classics, 2002).

<sup>237</sup> Hoffer 33.

<sup>238</sup> Hoffer pp. 63-84.

<sup>239</sup> Hoffer 69.

Genocide is also theatrical. As Michael Ignatieff argues, genocide contains the promise of a world without enemies – the acting out of the extreme and symbolic violence of genocide is done for the benefit of its audience.<sup>240</sup> It is a theatrical repudiation of the worth of the victim group and a message to the future: ‘witness how we toiled in service of your utopia.’ Genocidal violence may include such highly symbolic and ritualistic acts such as the disembowelment of pregnant women (the destruction of the “procreative capability”), assaults on the head (the “decapitation of the intellect”), the mutilation of breasts (severing the link between mother and child and degrading the honour of the group), and forced incest (a reversal of the laws of nature and an attack on the reproductive function of the group).<sup>241</sup> Such acts make the devaluation of the victim group and the omnipotence of the perpetrator manifest. Green and Ward argue that these extreme acts of violence may also demonstrate perpetrators’ commitment to their ideology and their peers.<sup>242</sup>

Thirdly, mass movements require a deprecation of the present. The present is seen as miserable – a transitory phase before a glorious future. Killing is justified as part of a utopian struggle rather than an individual evil (murder).

Fourthly, hope provides an ephemeral means to escape from the present. Hoffer asserts that people are always more willing to die for what they don’t have yet than for what they already have.<sup>243</sup> For example, the Nazis offered Germans the promise of the Third Reich – a glorious empire to last a thousand years. Yet, it seems that genocidal killing is often grounded more in fear of the victims than in hope for a better future (although these two elements may be closely related). Moreover, even though the individual killing act itself may be rooted in fear, the genocide as a whole may be framed in the language of utopian hope for the future.

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<sup>240</sup> Michael Ignatieff, “The Danger of a World Without Enemies,” The New Republic, February 21, 2009.

<sup>241</sup> See, for example Liisa H. Malkki, Purity and Exile: Violence, Memory, and National Cosmology Among Hutu Refugees in Tanzania, (London: University of Chicago Press, 1995), pp. 92-93.

<sup>242</sup> Penny Green and Tony Ward, State Crime, (London: Pluto Press, 2004), pp. 181-182.

<sup>243</sup> Hoffer 77.

The fifth factor that Hoffer identifies as being necessary for individual participation in mass movements is doctrine (faith). There must be absolute certitude and belief without question; as Hoffer observes “it is startling to realize how much unbelief is necessary to make belief possible.”<sup>244</sup> During a Nazi swearing-in ceremony in 1934 Rudolph Hess exhorted “do not seek Adolph Hitler with your brains; all of you will find him with the strength of your hearts.”<sup>245</sup> In the case of genocide this belief does not necessarily take the form of hate ideology; remember that not all perpetrators are highly ideological (although some perpetrators may be zealots motivated solely by belief). The belief most fundamental to genocide may be the just world hypothesis – the conviction in the justness and legitimacy of the demands of authority.

Finally, fanaticism is necessary for the formation of mass movements. The cultivation of violent passions destroys inner balance and leads to a result which:

Is not only a compact and fearless following but also a homogenous plastic mass that can be kneaded at will...[the individual] turns into a highly reactive entity. Like an unstable chemical radical he hungers to combine with whatever comes into his reach. He cannot stand apart poised and self-sufficient, but has to attach himself wholeheartedly to one side or another.<sup>246</sup>

This sort of personal extremism lends itself to genocide, which is itself an extreme state. The complete annihilation of the dehumanised other requires a fanatical mindset. Legitimised violence offers a solution to fear of the other. Mass movements attract similar types of individuals regardless of the ideology they embody.<sup>247</sup> In genocide, structures may be more important than complex ideological beliefs, although the dehumanisation of the victim also eases perpetration.

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<sup>244</sup> Hoffer 79.

<sup>245</sup> Hoffer 81.

<sup>246</sup> Hoffer 84.

<sup>247</sup> In Weimar Germany the Nazis looked to the Communists as a recruitment pool and vice versa. See Hoffer 17.

The object of hate *is* important in the coalescing of mass movements. Hate gives impetus to unity – we must work together to defend ourselves from the hated other. The focus of this hate will be a group with which there is some kind of history of prejudice and/or conflict. Hate cannot be instantly produced out of the ether – there must be some kind of rationale, some cultural understanding for why the targeted group is worthy of hate. Hate itself is greatly intensified by fear – the targeted group is seen as threatening, either through its conventional power or through its corrupt, degraded nature, whereby it can be seen as a source of contamination. Some theorists argue that hatred can serve a useful purpose as anger aimed at destroying a source of danger.<sup>248</sup> In the case of genocide the source of danger is identified as the victim group.

Hate is often accompanied by a sort of inferiority complex: we hate them because they are more advanced in some way than us. But, as was pointed out in Chapter Two, this advancement is usually a backhanded compliment - cleverness is devious, beauty is indulgent. In a sense, this hatred seems to empower its target at first, but such hatred is ultimately disempowering as it represents the seeds of action to undermine its target. It may eventually be actualised in the form of discrimination or violence. Hatred, through hostile framing, also structures how we interact with others.

Hate may also be generated *post-facto* as part of this restructuring of moral norms: “we cannot remain indifferent to those we have wronged.” Hatred gives meaning to collective action and sustains genocide; indeed the complete elimination of the hated object is the only means to extinguish the hatred. The total annihilation envisaged by genocidal ideology is not possible without the collective action of the mass.

### ***Specialised Killing Organisations and Transgressive Communities***

Participation in genocide may take the form of: *Amateur* (informal) participation (often within a context of widespread participation in killing) or *Professional* participation in a

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<sup>248</sup> Sternberg and Sternberg 17.

highly regimented organisation dedicated to killing. Genocidal propaganda portrays the work of the professional killers as being necessary for the protection of society and endorsed by society as a whole. Amateurs participate in killing for various reasons (explored further in the next chapter) such as the appeal of the mass movement and the pull of social pressures. Even in genocides that make extensive use of professional killers (i.e. the Holocaust) mass support is often cultivated.

Most genocides contain a mix of both of these types of perpetrators: professionals (such as the army) may take a leading role but mass participation is still required in order to fully enact genocide. For example, in the Holocaust killing occurred at the hands of killing professionals, such as *Einsatzgruppen* and SS formations, in mass executions and gassings in concentration camps and mobile vans, but many amateur perpetrators also participated in killing actions such as the mass executions on the Eastern Front.<sup>249</sup> In Rwanda, the army and extremist militias played a crucial role but the killing would never have reached the extent it did without the mass participation of many killing amateurs.

Militia groups in genocide bear many similarities to criminal gangs. Such groups are often composed of marginalised individuals who are given a chance, through participation in the group, to increase their status. In some cases militias, like gangs exist in a power vacuum and individuals “will gravitate to joining the only real social organization present in their social environment.”<sup>250</sup> Young males are overrepresented in such groups as they are in violent crime in general.<sup>251</sup> Militia members may serve their own self-interest while simultaneously contributing to state political goals.<sup>252</sup> Militias may also allow their members to access an alternate social system where they have greater power and agency. For the genocidal regime, militias have the advantage of acting as force multipliers: they can be quickly mobilised (due

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<sup>249</sup> The use of local auxiliaries such as Lithuanians, Latvians, and Ukrainians was ostensibly done in part in order to spare the *Einsatzgruppen* personnel from the psychological burden of killing.

<sup>250</sup> Dawn L. Rothe and Christopher W. Mullins, “Genocide, War Crimes and Crimes Against Humanity in Central Africa: A Criminological Exploration,” in Alette Smeulers and Roelof Haveman (eds.), Supranational Criminology: Towards a Criminology of International Crimes, (Antwerp: Intersentia, 2008), p. 151.

<sup>251</sup> Alex Alvarez, Genocidal Crimes, (New York: Routledge, 2010), p. 91.

<sup>252</sup> Rothe and Mullins 152.

to their limited training) and free up regular forces for conventional battle (as militias focus on attacking civilians).<sup>253</sup>

Even in cases of mass participation in genocide, specialised killing organisations often take a leading role. Such organisations often involve rigid hierarchical organisation and extensive training and ideological indoctrination. Specialised killing organisations also often make use of ritualised initiation ceremonies and oaths, distinctive clothing (uniforms), the memorialisation of the dead as martyrs, and an organisational culture stressing the primacy of the group.<sup>254</sup> Training has the purpose of teaching obedience to authority and conditioning individuals to kill. It is these special characteristics of specialised killing organisations that increase behavioural conformity by reducing goal variance. Such specialised killing organisations comprise a sort of organisational sub-culture that reinforces the goals of the genocidal regime (overall genocidal culture of the criminogenic state). In specialised killing organisations self-objectification has already occurred, thus killing can be mobilised rapidly.

Specialised killing organisations, as well as other less formalised groups of hard-core killers, may become *transgressive communities*. These transgressive communities are groups which, through the process of killing, have become alienated from wider norms. The norms which they transgress may be norms within the society (this may be the case with rebel groups committing crimes against humanity) or universal norms (i.e. typical genocide perpetrators operating in a normative environment within their state). Transgressive communities are similar to the deviant subcultures described in differential association theory, except that my concept of transgressive community is broader, as such groups may not be deviant within their society. Acts of transgression may create a sort of unity where members of the group form interrelationships and interdependencies of validation. Fear, both in terms of coercion and societal shaming, serves to increase the cohesion of the group. Furthermore, the transgressive community may hold certain collective beliefs about the use of violence (particularly against

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<sup>253</sup> Alex Alvarez, *Genocidal Crimes*, (New York: Routledge, 2010), p. 90.

<sup>254</sup> Alvarez, *Governments, Citizens, and Genocide*, p. 94.

the enemy group) that pressures individuals to use violence in order to maintain their status within the group.<sup>255</sup>

Acts of initiation and coerced perpetration may forcefully implicate people in violence and integrate them into the transgressive community. This also features in other forms of mass atrocity, for example, one interviewee, who was a former member of the Lord's Resistance Army, recounted that upon being abducted he was forced to kill one of his (randomly chosen) friends with an axe. The body was then strung up in a tree and drained of blood, which the new conscripts were then forced to drink.<sup>256</sup> Such acts serve to alienate the perpetrators from society at large and their prior moral beliefs. This is particularly true in cases of existential violence by groups with little popular support. The rejection by society may actually increase commitment to deviant behaviour.<sup>257</sup>

Although forced perpetration also seems to have been commonplace in Rwanda, in Rwanda transgressive communities were more closely bound to mainstream society – mass participation had created a normative environment for genocide. In other words such groups were transgressing against universal norms but not necessarily the norms existing in Rwandan society at that time. Thus, the entire society may function as a sort of transgressive community. One villager remarked of soldiers abetting violence: “since they had guns they could have used them. Instead they led the villagers who were then told to do the killing.”<sup>258</sup> There is no return from this bloody baptism, no return to ordinary life, thus, no reason to adhere to norms. Killers may also seek to reframe their behaviour through the revision of moral rules.

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<sup>255</sup> Beck 272.

<sup>256</sup> Interview U10, Former LRA Abductee (male), Gulu, July 21, 2009.

<sup>257</sup> Howard K. Kaplan, “Deviant Identity and Self-Attitudes,” Bryant (ed.), p. 113.

<sup>258</sup> African Rights 998.

### *The Group*

The group exerts a pervasive influence on individuals. Humans, as social animals, behave differently when with other people. They react to the behaviour of others and will often mirror their behaviour in order to gain social consonance and approval. Experiments show that people will intentionally give the wrong answer to a question in order to more closely align themselves with others in the group who have expressed their preference for this answer.<sup>259</sup> People want to belong to groups so that they know who they are and what they should do. As one Rwandan genocide perpetrator put it, “we liked being in our gang.”<sup>260</sup> Groups (in situations like genocide) provide cues for the appropriate level of violence. This group phenomenon takes place on multiple levels including the immediate group of friends and comrades in the proximal environment, the ethnic group, and the state itself – where nationality can function in some ways like group membership.

In order to sustain the benefits of group membership (i.e. feelings of strength, anonymity, and immortality) individuals must retain their connection to the group. Thus, individuals will go to great lengths to protect the group from physical and rhetorical attacks. Cognitive psychologist Aaron T. Beck labels such behaviour “groupism.”<sup>261</sup> This collective counterpart of egoism leads to events being interpreted in terms of the group’s interests and beliefs. It also subordinates personal interests to the interests of the group and opposes the interests of the out-group. The same psychological mechanism which produces joy at personal triumphs also operates when the group triumphs.<sup>262</sup> Notions of duty to their comrades may also motivate perpetrators to participate in genocide.

An understanding of the behaviour of mobs is essential to any analysis of genocide as a mass crime. Much genocidal killing takes place in a group setting. In Rwanda killing was almost exclusively done in groups. Outrageous rumours often form the basis of mob action,

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<sup>259</sup> See, for example: The Asch Experiment of 1951. Smith and Mackie 311.

<sup>260</sup> Hatzfeld 12.

<sup>261</sup> Beck 144.

<sup>262</sup> Beck 146.

indeed the crossing of such a line demands action. In states of ambiguity people solicit information from trusted sources but such information becomes increasingly inaccurate.<sup>263</sup> Once formed, crowds manifest a volatile energy that needs to be dispersed rather than confronted. When the density of a crowd increases (packing) mobs become much more dangerous.<sup>264</sup> However, in genocide the mob has a degree of legitimacy – it will not be dispersed by the authorities unless it deviates from the collective goal to eliminate the enemy group.

The importance of groups in the commission of genocide is also acknowledged in the prosecution of genocide through the prosecution of groups (i.e. the joint criminal enterprise) as well as the joinder of similar cases.<sup>265</sup> For example, at the ICTR there have been two “military trials,” a “media trial,” and an “MRND trial” while in the post-Nuremberg Control Council Number Ten trials there were Krupp, I.G. Farben, High Command, *Einsatzgruppen*, and RuSHA cases, and at the ECCC in Cambodia there is a “government” case. The Nuremberg judgement went so far as to declare entire organisations as “criminal” such as the Nazi party leadership, Gestapo, and SS.

### **3.4 Perpetrators, Victims, and Bystanders**

#### ***The Perpetrator, Victim, Bystander Triangle Revisited***

Let us now examine the mobilisation of genocide from the perspective of the roles of the actors. Many theorists of genocide (and crimes in general) argue that there is an “atrocious triangle” with three primary types of actors: perpetrators (those who commit the crime), victims (those who are subject to the crime), and bystanders (those who are present but are

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<sup>263</sup> Staub, *The Psychology of Good and Evil*, p. 389.

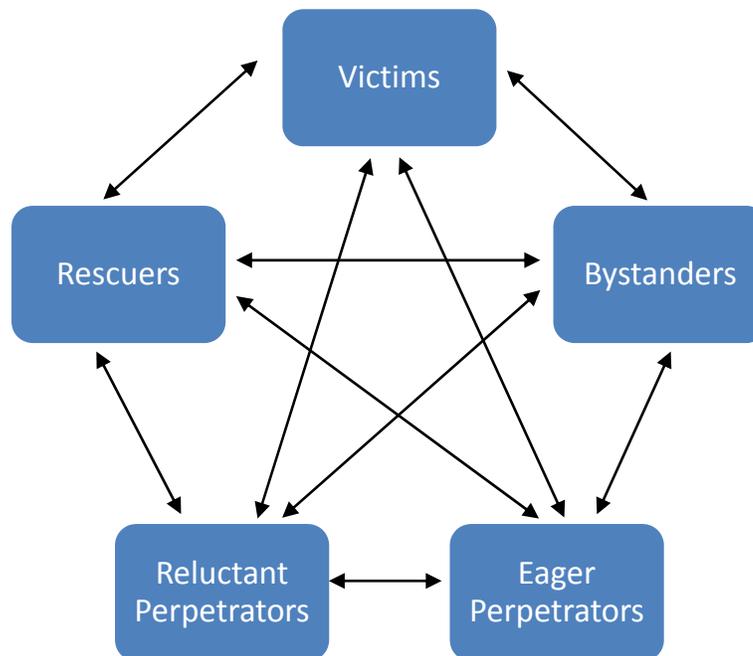
<sup>264</sup> S.K. Ghosh, *Riots: Prevention and Control*, (Calcutta: Eastern Law House, 1971), p. 8.

<sup>265</sup> Jennifer Balint, “Dealing with International Crimes: Towards a Conceptual Mode of Accountability and Justice,” in Alette Smeulers and Roelof Haveman (eds.), *Supranational Criminology: Towards a Criminology of International Crimes* (Antwerp: Intersentia, 2008) p. 318.

neither perpetrators nor victims). Yet, this conceptualisation, when applied to genocide, is a gross oversimplification. Individuals in genocidal societies are presented with many options for their participation or non-participation in the atrocity taking place. Perhaps the most troubling category is that of bystanders – what precisely is a bystander? If we assume that bystanders are passive witnesses then what of individuals who resist genocide and seek to prevent victimisation? Such rescuers are not accounted for in the model yet surely they play an important role in the way in which genocide unfolds (or even the non-occurrence of genocide in certain cases). Moreover, much interesting analysis can result from a minor disaggregation of perpetrators into *eager perpetrators* (*vanguard perpetrators*) and *reluctant perpetrators*. How do these different types of perpetrators relate to each other and to the victims, bystanders, and rescuers?

With these questions we can construct a modified model which illustrates these different relationships in situations of genocide:

**Figure 3.2 Actors in Genocide**



From this model then we can identify five primary types of actors and ten types of relationships between actors. Every relationship in this model is bidirectional. The actors in this model include:

1. Eager/Vanguard perpetrators
2. Reluctant perpetrators
3. Bystanders
4. Rescuers
5. Victims

Let us briefly examine each of these actors and their relationships with each other.

#### 10 Relationships of Genocide Actors

1. Eager perpetrators pressure reluctant perpetrators to participate.
2. Eager perpetrators pressure bystanders to participate.
3. Eager perpetrators persecute rescuers and rescuers undermine perpetrators.
4. Eager perpetrators attack victims and the victims are either passive or resist.
5. Reluctant perpetrators attack rescuers or allow them to escape.
6. Reluctant perpetrators attack victims or allow them to escape.
7. Reluctant perpetrators attack bystanders, pressure them to participate, or ignore them.
8. Rescuers have a neutral relationship with passive bystanders or pressure them to rescue.
9. Rescuers help the victims.
10. The victims are ignored by passive bystanders.

Eager killers are hard core perpetrators who generally either believe fervently in their mission of extermination (ideologues) or participate as a means to exercise their psychosis (i.e. sadism, anti-social personality disorder, etc.). Eager perpetrators may form a relatively small percentage of killing participants yet they usually kill a very disproportionate number of the victims. Moreover, such eager perpetrators may intimidate reluctant killers, bystanders, and rescuers into either participating in killing or failing to resist killing.<sup>266</sup> For example, in his book Machete Season, Jean Hatzfeld makes repeated reference to the use of “intimidators” in spurring on others to participate in the genocide.<sup>267</sup> Eager perpetrators may be difficult to control in bureaucratic contexts – this is why the *Einsatzgruppen* reportedly avoided the recruitment of sadists.<sup>268</sup>

Our typology refers to such eager perpetrators as “vanguard perpetrators” as they often lead the way by performing the most difficult killing tasks or being the first to transgress

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<sup>266</sup> The genocidal intent test utilised in *Trbic* also mentions “efforts to overcome the resistance of other perpetrators” as one factor indicative of genocidal intent. See: *Prosecutor v. Trbic* (Case no. X-KR-07/386), para. 202 (3) (4).

<sup>267</sup> Hatzfeld 1

<sup>268</sup> Bauman 247.

universal moral norms. Freud and Reidl argue that the initiators of group violence are often lacking emotional connections to others, thus, they are capable of transgressing norms without qualms and this transgression may make others aware of the possibility of deviancy.<sup>269</sup> A quotidian example of this phenomenon is with pedestrians waiting at a red light to cross a street with little traffic: as soon as one person crosses the street others will inevitably follow.

Atrocities in Bosnia and Herzegovina were led by militia groups that were true transgressive communities bonded together by macho culture and a mutual willingness to transgress societal norms. In Rwanda violence was also directed by such vanguard perpetrators; the vanguard perpetrators of Rwanda tended to be younger and less well-educated than perpetrators in general.<sup>270</sup> They also killed much more than other perpetrators, committing direct violence at the head of crowds with “ordinary” perpetrators observing the scene from the fringes. Vanguard perpetrators are often killing professionals but this is not necessarily the case.

Reluctant perpetrators, who kill mostly because it is perceived to be the path of least resistance, are likely the majority of amateur genocide perpetrators. Reluctant perpetrators may also avoid meaningful participation through measures such as *posturing* – pretending to kill while actually minimising their killing, or *avoidance* – avoiding killing by removing oneself from the scene of perpetration (see Chapter 4). This tendency for posturing, avoidance, and exaggeration is a direct consequence of the information asymmetry between principals and agents in genocide; where leaders are present compliance is likely greater.

Psychological avoidance may also be exercised through the abuse of substances such as drugs and alcohol. Posturing and physical avoidance will generally be resisted by vanguard perpetrators. It seems logical that reluctant perpetrators would be the most easily dissuaded from killing by measures intended to increase the costs of killing (i.e. the threat of criminal

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<sup>269</sup> Donald G. Dutton, *The Psychology of Genocide, Massacres, and Extreme Violence*, (London: Praeger Security International, 2007), p. 119.

<sup>270</sup> Scott Straus, *The Order of Genocide: Race, Power, and War in Rwanda*, (Ithaca, U.S.A.: Cornell University Press, 2006), p. 112.

prosecution, resistance from victims or rescuers, or a well-equipped and trained humanitarian intervention force).

Bystanders do not perpetrate genocide but they do fail to act to stop perpetration by others.<sup>271</sup> Bystanders may refrain from action out of a reluctance to get involved (absence of compassion) or because of feared consequences if action is taken. Bystanders may drift into other roles (such as reluctant perpetrators or rescuers) during the course of genocide. Bystanders may also be victimised by perpetrators who view their inaction as a form of opposition. In certain circumstances bystanding behaviour may be criminalised as a form of complicity – i.e. the case of command responsibility where a person in a position of *de facto* authority fails to discourage his subordinates from committing criminal acts. Evidence from experiments also shows that the presence of passive observers, who apparently approve of aggression, may cause subjects to behave more aggressively.<sup>272</sup> In fact, there are several “performance” cases from British jurisprudence that have criminalised such behaviour.<sup>273</sup>

### *The Victimology of Genocide*

The triumph of the SS demands that the tortured victim allow himself to be led to the noose without protesting, that he renounce and abandon himself to the point of ceasing to affirm his identity...they know that the system which succeeds in destroying its victim before he mounts the scaffold...is incomparably the best for keeping a whole people in slavery.<sup>274</sup>

- David Rousset, a former inmate of Buchenwald

“I try not to think about it or I will lose my mind” – Rwandan victim of genocide<sup>275</sup>

The position of victims in genocide literature is sacrosanct. It is victims who are the bearers of untold suffering at the hands of their tormentors, the perpetrators. Any further

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<sup>271</sup> See the conclusion for further discussion of the role of bystanders in genocide.

<sup>272</sup> Horowitz, *The Deadly Ethnic Riot*, p. 352.

<sup>273</sup> May, *Genocide*, p. 161.

<sup>274</sup> Arendt 12.

<sup>275</sup> Rwandan Interview R65 (female victim), student, Kigali, October 23, 2009.

examination of genocidal victimisation is challenging in the light of this understandable sanctification of the victim. Victims may be divided into three categories: *direct victims* (those directly attacked); *indirect victims* (those present at the scene of direct victimisation who are not “directly victimised” themselves); and *existential victims* (those not present at the scene of killing but who are nevertheless aware of the victimisation). Indirect victims and existential victims may suffer very direct psychological victimisation as they are forced to bear witness to horrors. We can further subdivide existential victims into *near existential victims* (those who are personally acquainted with victims) and *distant existential victims* (those who are not personally acquainted with victims). In the modern age, with globalised media, we are all distant existential victims. We are able to witness the suffering of others. Such witnessing can affect us, yet, sadly we remain relatively insulated from the suffering of the impersonal other (a conundrum we will return to in the conclusion).

Victimisation is not really possible without victim vulnerability (this issue will be further discussed through the lens of situational action theory in the following chapter). Yet often victims of genocide seem quite passive – sometimes even literally digging their own graves. One perpetrator recalled “some of them [the victims] knew they would be killed and they just sat down and waited.”<sup>276</sup> It is beyond the scope of this study to definitively explain this phenomenon but a few hypotheses may be advanced.

Firstly, victims are passive out of fear – genocide, by its very nature, is asymmetrical and the force arrayed against victims is often overwhelming. Moreover, fear may have a kind of paralysing effect on victims – this is what psychologists call the *fear paralysis reflex*. Secondly, victims are passive because of their isolation – they have no reasonable prospect of bystander response to their plight, thus no reason to hope. Thirdly, there is the possibility that some victims have internalised their dehumanisation, that their self-worth has been negatively affected by exposure to negative propaganda. It does seem quite unlikely that propaganda

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<sup>276</sup> Rwandan Interview R1 (perpetrator), MRND official/merchant, Kigali Central Prison, July 2009.

from an out-group would have such a pernicious effect on esteem, but the possibility must be considered.

Victim passivity is fundamentally a product of the relationship of victims to other actors. Perpetrators instil fear and resignation in victims while the failure of bystanders to intervene compounds these factors and underlies the isolation (and vulnerability) of victims. The vulnerability of victims combined with the omnipotence of the perpetrators is one factor which makes genocide possible. There is a bullying instinct that may come to the fore with certain perpetrators, such as sadists who enjoy dominating others.<sup>277</sup> The passivity and survival instincts of victims may actually be used by perpetrators of genocide to their advantage. In the Holocaust the incremental deportation of Jews from ghettos gave some the impression that they could be saved. *Judenräte* (Jewish councils) cooperated with the Nazis with the goal of sacrificing some in order to save many. Unfortunately, their cooperation only made the extermination campaign easier.<sup>278</sup> Victims who do resist genocide may do so in several ways including by confronting the regime (either violently or non-violently) or escaping (either hiding in plain sight by destroying or altering their appearance, documents, and other markers of identity or by removing themselves from society).<sup>279</sup>

The victims of genocide are profoundly alone, socially dead and standing apart from the rest of humanity. They are among the least socially powerful actors.<sup>280</sup> Generally, victims of crimes and human rights violations must rely on their state for redress but the nature of the genocidal state dictates that, without regime change, victims of genocide must seek redress

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<sup>277</sup> It is also interesting to note that studies of primate behaviour have shown that aggression (specifically the non-verbal communication of threat) will not be believed if originating from social inferiors – see Fromm 116.

<sup>278</sup> Bauman 139-141. Bauman poses two interesting moral questions in relation to the *Judenrate*: 1) provided cutting off limbs is unavoidable should I be the one to perform the surgery; and 2) provided some must be sacrificed, who am I to decide who and for whom?

<sup>279</sup> Frédéric Megret, “Not ‘Lambs to the Slaughter’ – A Program for Resistance to ‘Genocidal Law’,” Working Paper Series, McGill University, Faculty of Law, March 22, 2009.

<sup>280</sup> David Kauzlarich, “Victimisation and Supranational Criminology,” in Alette Smeulers and Roelof Haveman (eds.), *Supranational Criminology: Towards a Criminology of International Crimes*, (Antwerp: Intersentia, 2008), p. 451.

from their personal and institutional victimisers.<sup>281</sup> Of course the perpetrator state also renders victims of genocide extremely vulnerable to repeated victimisation – they are citizens subject to the will of the state without receiving the benefits of belonging to the state. The perpetrator’s act of killing the victims is also an act of definition – the very fact of the victims’ death is “proof” of their degraded value.

### **3.5 Genocidal Infrastructure**

#### ***Introduction: The Structure of Genocide***

The morphology of genocide varies depending on the conditions in the society in which it occurs. Nonetheless, structures and organisational culture do play an important role in the perpetration of genocide – bureaucratic structures also structure decision-making. Criminologists have called organisations “machines for controlling behaviour” and argued that “in order to function, bureaucracies must constrain and regulate their employees so that they perform in ways that benefit the agency rather than harm it.”<sup>282</sup> Bureaucratic goal displacement, the tendency of bureaucracies to undertake ever-expanding projects to justify their existence, may also play a role in certain genocides.<sup>283</sup> The law also has the power to legitimise certain groups and actions while delegitimizing others.

Genocidal campaigns require the coordination of large numbers of perpetrators and such coordination requires hierarchical organisation, specialisation, and (often) technicalisation. Technology and training may also increase killing efficiency. These elements of *genocidal infrastructure* are most applicable to professional killers in specialised killing organisations. Nonetheless, low-level perpetration is also facilitated by certain aspects of this infrastructure such as the use of euphemisms (*technicalisation*), training and

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<sup>281</sup> Kauzlarich 451.

<sup>282</sup> Alvarez, *Government, Citizens, and Genocide*, p. 106.

<sup>283</sup> Bauman 17. An example of this phenomenon may be the expanding vision of the Nazi regime in its Jewish policy – moving from the creation of Jewish protectorate in Poland, to a protectorate in Madagascar, then a protectorate in the USSR (beyond the Archangel-Astrakhan line), and finally extermination.

conditioning, technology, and the enabling environment of the group (transgressive community).

### *Hierarchical Organisation and Obedience to Authority*

Even if genocide occurs in democratic societies the perpetration of genocide is never democratic.<sup>284</sup> Genocide, like warfare, is a form of organised violence and in order for such violence to be controlled it must be directed by a hierarchical structure. This hierarchy need not be formalised but perpetrators must understand their place in the *de facto* hierarchy and their responsibilities.

Hierarchical organisations only function because of the strong predilections which individuals have to obey perceived sources of authority. This obedience to authority is a fairly universal human tendency and one that is ingrained in us from a very early age. As children we must obey our parents. There are two aspects to such early demands for obedience: 1) the need to obey the specific rule invoked, and 2) the general principle that rules are to be obeyed.<sup>285</sup> Schools act as institutional systems of conformity where those who obey rules are rewarded and those who disobey are punished. In fact, we spend our first twenty years as a “subordinate element in an authority system.”<sup>286</sup> As Milgram notes, job promotions have the effect of simultaneously rewarding obedience and further entrenching the hierarchical system.<sup>287</sup> Obedience is often implicit and authority is communicated through symbols. Napoleon’s subordinate Davoust used to illustrate [the French Secretary of State] Maret’s obedience and his own by using the following example:

Had the emperor said to us: ‘it is important in the interest of my policy that Paris should be destroyed without a single person leaving or escaping,’ Maret, I am sure, would have

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<sup>284</sup> For example, the various genocides which occurred against certain indigenous groups in the United States in the 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> centuries.

<sup>285</sup> Stanley Milgram, *Obedience to Authority: An Experimental View*, (New York: Harper Perennial Classics, 2004), p. 136.

<sup>286</sup> Milgram, *Obedience...*, p. 137.

<sup>287</sup> Milgram, *Obedience...*, p. 138.

kept the secret, but he could not have abstained from compromising himself by seeing that his family got clear of the city. On the other hand, I, for fear of letting the truth leak out, would have let my wife and children stay.<sup>288</sup>

Thus, obedience demands not only the sacrifice of one's own life, but a willingness to sacrifice the lives of others.

Obedience to authority was most famously demonstrated in the experiments of Stanley Milgram where the research subjects showed their apparent willingness to inflict physical harm on others at the behest of an authority figure.<sup>289</sup> The experiment has often been cited in studies of “crimes of obedience” such as mass atrocities. However, according to Waller, the experiments differed from mass atrocities in four significant ways.<sup>290</sup> Firstly, the destructive consequences of the subjects' actions were uncertain (the authority figure had told them that no permanent damage would result to the people being “harmed”). Secondly, the subjects had no previous exposure to the victims, whereas in genocide years of dehumanisation of the victims results in the display of “destructive obedience even when there is no authority figure physically present.”<sup>291</sup> In the Milgram experiment obedience substantially decreased when the authority figure left the room (it also increased as the victim was placed farther away from the

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<sup>288</sup> Gustav Le Bon, *The Crowd*, (London: Dover Publications, 2002), p. 85.

<sup>289</sup> See: Waller 104 and Browning, *Ordinary Men*, p. 172. In the Milgram experiment the research subjects were asked to participate in a (fake) experiment on learning. The subjects were asked to operate as teachers by turning a switch to activate electric shocks to the “learners” (in another room) when they incorrectly repeated a series of word pairs. As time went on the voltage of the shocks supposedly amplified and the experimenter increased the stridency of their verbal prods from: “please continue,” to “the experiment requires that you continue,” to “it is absolutely essential that you continue, and finally, “you have no other choice, you must go on.” Many of the research subjects continued all the way to supposedly dangerous levels of voltage, in spite of the protestations of the learners, merely because of the presence and exhortations of an authority figure. Several interesting variations of the experiment were conducted. One variation showed that if the actor couldn't see or hear the responses of victims obedience was much greater (a finding consistent with the inhibition on inflicting suffering on others). If the subject had to touch the victim to administer the shocks obedience also greatly declined as it did without the presence of an authority figure. Obedience increased to nearly total if the subject performed a subsidiary task and did not administer the shocks (a confirmation of the power of compartmentalisation). Moreover, when people were not under direct surveillance “cheating” occurred and people administered lower shocks (avoidance behaviour in a situation of information asymmetry). Milgram also argued that there is an evolutionary bias favouring obedience.

<sup>290</sup> Waller 107.

<sup>291</sup> Waller 107.

teacher – a confirmation of the importance of distance in the denial of injury). Thirdly, none of Milgram’s subjects were sadistic, although in genocide some perpetrators may be sadists – either as a matter of psychological abnormality or a transitory form of sadism (see the discussion of the *sadistic shift* in section 3.7e). Lastly, the Milgram experiment only lasted for one hour whereas genocide takes place over the course of months or years, opening up the possibility of re-perpetration, as well as the opportunity to experience shame when considering the wrongfulness of the acts.<sup>292</sup> We can add to Waller’s analysis that the Milgram experiment did not involve the perpetration of these acts under the horizontal pressures of a group context or *post-facto* positive reinforcement.

Obedience may also take place in a more indirect way where perpetrators do not directly obey authority but, rather, perform the actions that they think that authority figures would want them to perform. Furthermore, perpetrators may act in the spirit of orders rather than in strict conformity with orders themselves. This is what Holocaust historian Ian Kershaw dubbed “working towards the Führer.”<sup>293</sup> We must also consider the possibility that genocidal propaganda (hate speech) merely provides the gloss of autonomous self-justification to perpetrator actions that are really driven by obedience to authority. Yet, in spite of the importance of obedience, there is no doubt that dehumanising propaganda serves to increase the saliency of the messages of authority figures by reshaping perpetrator perceptions of the victim.

Obedience to authority results in a recalibration of responsibility where the emphasis is now placed on the superior’s right to command rather than the actor’s consent.<sup>294</sup> Effectively the perpetrator transforms themselves from a subject into an object of the will of others. The nature of organisations may reinforce this self-objectification tendency as every actor becomes

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<sup>292</sup> See the discussion of recidivism/re-perpetration in the next chapter.

<sup>293</sup> Ian Kershaw, “‘Working Towards the Führer’ Reflections on the Nature of the Hitler Dictatorship,” in Christian Leitz (ed.), *The Third Reich*, (London: Blackwill, 1999).

<sup>294</sup> Bauman 162.

convinced that they are acting at the initiative of another person. This leads to a responsibility vacuum where moral authority is incapacitated without being openly challenged.<sup>295</sup>

### *Specialisation*

Specialisation is another structural factor which facilitates the commission of genocide. It involves the functional division of labour: perpetrators each perform a specialised task which contributes to the overall campaign of genocide. These compartmentalised ‘fragments of perpetration’ allow the perpetrator to feel that their own contribution is insignificant and this, in turn, reduces feelings of cognitive dissonance or moral culpability. For example, a train engineer is allowed to believe that he is only maintaining the railway system when, in fact, his work is crucial for the transportation of concentration camp inmates to their deaths. Albert Speer once said that he “exploited the phenomenon of the technicians often blind devotion to his task... without any scruples.”<sup>296</sup> Specialisation also facilitates several techniques of neutralisation such as the claim of role conformity, a sub-category of the denial of autonomy, as well as the denial of injury.

Large corporations (like states) are “structurally and procedurally complex,” thus, there is limited scope for personal responsibility.<sup>297</sup> John Lachs spoke of “mediation of action” where there is somebody standing between you and your action, acting as a mediator.<sup>298</sup> Such a mediation of action increases the distance between principals and the consequences of their acts; as Raul Hillberg wrote of the Nazi bureaucrats: “they could destroy a whole people by sitting at their desk.”<sup>299</sup> The mediation of action is represented in the law in the form of complicity, or secondary responsibility. The importance of bureaucratic specialisation in genocide is also reflected in the use of the joint criminal enterprise theory of liability to try

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<sup>295</sup> Bauman 164.

<sup>296</sup> Lifton, *The Nazi Doctors*, p. 494.

<sup>297</sup> Alvarez, *Government, Citizens, and Genocide*, p. 104.

<sup>298</sup> Bauman 24.

<sup>299</sup> Bauman 24.

many genocide perpetrators, where all individuals who knowingly contribute to genocide are culpable.

***Technicalisation***

Technicalisation has already been discussed in the previous chapter but, briefly, technicalisation is the use of technical language and euphemisms to disguise the true nature of genocide. Such technicalisation greatly facilitates the perpetration of genocide and, as a denial of injury, insulates perpetrators from the implications of their actions. Technicalisation may be an official policy, enforced in bureaucratic structures.

***Knowledge/Skills***

The perpetration of genocide does not require a great degree of technical skill. This is demonstrated by the large number of amateur perpetrators in cases like Rwanda. Nonetheless, genocide may also involve numerous professional perpetrators. Many of those perpetrators who kill the most are soldiers or paramilitaries who have undergone extensive training and socialisation. This training, for genocide or other mass atrocities, may involve the dehumanisation and deindividuation of the killers themselves. The torture training schools of the Greek military junta made use of techniques such as humiliation, harsh discipline, sleep deprivation, isolation from the outside world and its norms, and physical exertion in order to progressively break down recruits.<sup>300</sup> At the same time perpetrators are made aware of their important role in history – a role that can only be actualised through brutality against the dehumanised other. Thus, in specialised killing organisations, brutality against the other becomes the main mechanism for the restoration of self-worth.

Socialisation to killing may involve the gradual exposure to violence and the development of conditioned response among the killers. For example, the *Interahamwe* trained on human shaped dummies while the training of Serb soldiers took an even more direct

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<sup>300</sup> J. F. Pederson and E. Stephensen (producers), "Your Neighbor's Son," (Denmark: Facets, 1976). 55 min., color, Greek (English subtitles); 16 mm.

approach where some recruits were taken to farms to wrestle pigs down, pull their heads back, and slit their throats.<sup>301</sup> This mode of killing – cutting the throat – was frequently used by Serb forces in the Bosnian war.

The process of recruitment to specialised killing organisations is also relevant to the commission of genocide. Recruitment may make use of existing networks (as happened with the recruitment of members of the Red Star Football Fan Club into Arkan's Tigers or the links between government-financed football fan clubs and the *Interahamwe* in the Rwandan genocide).<sup>302</sup> People who join such units may do so simply out of boredom or out of a desire for increased status (as is the case with elite units such as the SS in Germany and the *Eidikon Anakritikon Tmima* in Greece). Such socialisation to violence is common to all types of mass violence including not only genocide but also war and crimes against humanity.

### ***Technology***

Genocide does not require sophisticated technology. Génocidaires will make use of whatever weapons are available to them during that historical period.<sup>303</sup> Genocidal technology includes more than just weaponry, it also encompasses the other materiel used in genocide such as transport and communications systems and detention facilities. Transport may be required for the concentration or expulsion (in the case of ethnic cleansing) of the victims. Communication systems are used by authorities to dispatch orders to perpetrators (for example, some killers in the recent post-election violence in Kenya coordinated their

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<sup>301</sup> Alvarez, *Government, Citizens, and Genocide...*, p. 96.

<sup>302</sup> Alvarez, *Government, Citizens, and Genocide*, p. 92.

<sup>303</sup> Fascinatingly Himmler wrote in a memorandum in May of 1940 that deportation was the best method to resolve the "Jewish question": "if one rejects the Bolshevik method of physical extermination of people out of the inner conviction as un-German and impossible." Hitler responded to this observation by writing "very correct" in the margin. Similarly, a few months later, Heydrich argued that "biological extermination...is undignified for the German people as a civilized nation." The same argument (the civilised nature of the people precluding genocide) is sometimes used to deny genocides in countries such as Bosnia and Turkey. For the discussion of the recourse to physical extermination in the Nazi genocide, see: Benjamin Valentino, *Final Solutions: Mass Killing and Genocide in the 20<sup>th</sup> Century*, (Ithaca, United States: Cornell University Press, 2004), p. 175.

campaign through mobile phone text messaging).<sup>304</sup> Adequate communications systems are essential for the avoidance of ambiguity and information asymmetry. Finally, detention facilities may be used to hold the victims before they are killed or to kill them through means such as executions, poisonous gas, torture, exposure, or starvation.

### *‘Camp Worlds’ and Omnipotence*

The act of perpetration of genocide is a self-affirming manifestation of the omnipotence of the perpetrator and the powerlessness of the victim (the humanity gap). There is no denial of rights, and of humanity itself, more profound than the denial of the right to life. Nowhere is this dichotomy of omnipotence/powerlessness more apparent than in the highly structured environment of concentration camps and institutionalised torture systems. Concentration camps and systematic torture in detention facilities were used in such genocides as the Holocaust, the Armenian genocide, the Herero genocide, as well as other episodes of mass violence such as Stalin’s gulags. Within the ‘camp world’ perpetrators are gods, exercising limitless power over their dehumanised victims. Moreover, such camp worlds are often isolated from wider society and maintain their own strictly-regimented order. The same is true, to some extent of prisons in general, although, ideally, prisoners should not be dehumanised in the same way that concentration camp inmates are.

The Zimbardo Prison Experiment (Stanford Prison Experiment) illustrated well the power of such highly regimented environments. In the experiment college students were placed in a prison-like environment and arbitrarily divided into guards and inmates (essentially perpetrators and victims). Within a couple of days these students began to manifest their apparent roles: the guards exercised complete control over the inmates and used this power in a capricious and cruel manner. This experiment demonstrated the important role that rigidly controlled institutions such as camps may have in structuring the behaviour of perpetrators (and victims).

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<sup>304</sup> Tim Querengesser, “Cellphones spread Kenyans’ messages of hate,” [The Globe and Mail](#), February 29, 2008.

### *Systems of Denial*

Many of the structures used in the perpetration of genocide also function as *systems of denial*. These systems exist both within the state and within the broader cultural framework. Genocidal systems of denial may include such elements as the use of euphemistic language, the issuance of coded commands, the destruction of documents, and the concealment of human remains. For example, 80.6% of the Rwandan perpetrators interviewed for this study made some effort to conceal the bodies of those they had killed. Ideology may also play an important role in denial by privileging abstract ideological concepts over actual human suffering. These systems of denial operate through shared cultural understandings and many continue to exist long after genocide has actually occurred.

### **3.6 Genocidal Culture and Criminogenic State**

#### *The Nature of the Genocidal State*

Authority may be based on legitimacy or on coercion. Genocidal societies are almost always coercion-based. This does not mean that all perpetrators are directly coerced, but rather that genocidal societies are authoritarian, militarised societies where great pressures are brought to bear on individuals to obey and conform. Such pressures can be very difficult to resist. Hannah Arendt argued that totalitarianism used terror to “make real an abstract ideological understanding of the world, and to destroy all existing human solidarities in the name of this programme.”<sup>305</sup> These societies may already possess many elements of genocidal infrastructure. The criminogenic state also seeks to use coercion and a narrowed discourse to limit the perceived options available to potential perpetrators – they must believe that doing the bidding of the regime is their best or even only option.

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<sup>305</sup> Kevin Passmore, *Fascism: A Very Short Introduction*, (New Delhi: Oxford University Press, 2002), p. 19.

***Decision-Making and Ideological Radicalisation***

The recourse to genocide is often a response to particular events (i.e. a space of opportunity being opened up and/or the increasing threat of the victim group). These decisions also have an ideological aspect, as the annihilation of the victim group is not possible without some form of rationalisation. The decision-making of leaders will be discussed as a part of the model of decision-making advanced in Chapter Four, but let us consider here the formation of genocidal ideology.

Group interaction can be a social amplifier – the pre-existing beliefs of individuals are amplified as members interact without the moderating effect of outside influences.<sup>306</sup> Thus, over time beliefs may become more extreme. It is important to remember that the genocidal state is a closed system where extremist views are not moderated by alternative viewpoints. It has been shown in experiments that a pluralism of views greatly undermines obedience.<sup>307</sup> In the case of genocide, outbidding may also take place where leaders with ethnic constituencies take ever more strident and exclusionary positions in order to prove their loyalty and gain the support of their group. The viewpoints and emotions of other group members may also become more closely aligned through the processes of contagion and conformity. Thus, the opinions of group members (and members of society as a whole) will become more extreme and more closely aligned. This group radicalisation effect also underlines the narrowing of awareness.

In Rwanda the hardliners gained the upper hand because they controlled state and parastatal structures.<sup>308</sup> Moreover, the space for moderates was reduced by the atmosphere of insecurity and fear. In December of 1991 a military commission identified the country's "principle enemy" as "Tutsis inside or outside the country."<sup>309</sup> Thus, the entire group becomes criminalised. The Rwandan elites were feeling increasingly under siege – in the 1993 Arusha

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<sup>306</sup> Waller, *Becoming Evil*, p. 35.

<sup>307</sup> For example, in one variation of the Milgram experiment two experimenters disagreed in front of the subject and the subject showed substantially reduced compliance to the demands of the authority figures.

<sup>308</sup> Straus, *The Order of Genocide*, p. 89.

<sup>309</sup> Straus, *The Order of Genocide*, p. 25.

Accords the MRND (the long-time governing party) only received a third of the posts in the transitional government. The dismantling of the one-party state was only attempted at the behest of external pressure. Thus, in Rwanda we can see the process of ideological radicalisation as the saliency of ethnicity increased, in the context of a heightened “fear of the other” after the RPF invasion, and alternative viewpoints were eradicated.

### *Organisational Culture*

Many perpetrators of genocide are members of organisations. Organizational crimes are crimes committed on behalf of, or for, a group of people who form part of a particular unit. Such crimes are the outcome of organizational goals and constraints. Ideology provides organizational goals to genocidal organizations and constrains individual action to prescribed organisational norms. These organisational norms accrete into organisational culture which forms the context for the behaviour of all members of the organisation. Other sources of organisational culture include *routine* (the everyday practise of the organisation), *rituals* (training programs and ceremonies), *stories* (the narratives and myths which prevail within the organisation), *symbols*, *control systems* (systems of promotion and punishment), and *power structures* (those who are the most powerful/most senior are also the most closely associated with desired values).<sup>310</sup>

We know that genocide has the effect of objectifying the victim, but this is also usually accompanied by a self-objectification on the part of perpetrators. This self-objectification renders us as mere objects of the machine and frees us from moral conflicts. Thewelleit spoke of the “fascination of the machine,” how one can “live...without having any feelings” and mould one’s body into a “steel form.”<sup>311</sup> Thus, self-objectification involves both the denial of feeling and the denial of agency. Self-objectification can be accomplished through complete submergence into organizational culture.

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<sup>310</sup> Pettinger 189.

<sup>311</sup> Lifton, *The Nazi Doctors*, p. 495.

As posited in Chapter Two, strong social-bonding and loyalty to the state may actually increase the possibility that an individual will perpetrate genocide. In his detailed comparative research on the onset of genocide throughout Rwanda Scott Straus found that the most significant correlating variable for the onset of genocide in Rwanda was support for the MRND party.<sup>312</sup> Straus concluded that, in spite of the dissemination of hate speech throughout Rwanda, that variables such as ethnic hatred and deprivation were insignificant for the onset of genocide. This would seem to indicate that genocide is truly a “crime of obedience” that is driven by social-bonding and obedience. Yet, the choice of Tutsis as a target still indicates that the prior dehumanisation of the Tutsis likely played a significant role.

Certain organizations function as criminogenic systems: that is certain features of their internal structures play a role in generating criminal activity within the system. The genocidal state is one such criminogenic organization. Needleman and Needleman distinguish between “crime coercive” and “crime facilitative” systems.<sup>313</sup> Crime coercive systems are systems where crime flows directly from organisational goals and the individual is under intense coercive pressures. In contrast, crime facilitative systems are structures where crime is incidental to organisational goals but where conditions are favouring crime (even if such criminal behaviour is inimical to organisational interests). Corruption is one example of criminal behaviour in crime-facilitative systems. The genocidal state and genocidal organization (i.e. the transgressive community such as Interahamwe or SS) are both crime-coercive systems. Genocide occurs in genocidal states because it is an objective of both the criminal organisation and the state as a whole.

Organizational culture can structure the decision-making of individuals, causing them to shift from the individual rational choice calculus to “groupism.” Zygmunt Bauman describes the pervasive effects of organisational culture when he writes of “the deligitimation of all but inner-organizational rules as the source and guarantee of propriety, and thus denial

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<sup>312</sup> Straus, *The Order of Genocide*, p. 61.

<sup>313</sup> Martin L. Needleman and Carolyn Needleman, “Organizational Crime: Two Models of Criminogenesis,” *The Sociological Quarterly*, vol. 20, no. 4 (Autumn 1970), p. 518.

of the authority of private conscience, become now the highest moral virtue.”<sup>314</sup> Thus, organisational culture can also redefine moral rules.

### **3.7 The Progression of Genocide**

#### *The Continuum of Destruction*

Genocide generally unfolds in an incremental manner. The stages of genocide also represent progressive habituation and increasing levels of violence. Often genocide is the most extreme “solution” to the “problem” allegedly posed by the targeted group. Moreover, genocidal regimes are generally experiencing profound threats to their authority. Thus, genocide, and crimes against humanity are at the most extreme end of the exercise of coercive power. The stages leading up to genocide can roughly be conceived of as: firstly, prejudice; secondly, non-violent discrimination; thirdly, repressive and selective violence/the targeting of leaders; fourthly, incitement to violence; and, fifthly, genocide itself.

1. Prejudice
2. Non-violent discrimination
3. Repressive and selective violence (often targeting leaders)
4. Incitement to violence
5. Genocide

Genocide begins with -the formation of prejudice. Eventually this prejudice may be actualised in the form of non-violent discrimination. Hate propaganda may also be used in tandem with discrimination. When non-violent discrimination is deemed to be insufficient violence begins to be used, generally beginning with selective violence targeting leadership cadres. Ultimately hate propaganda may become direct and public incitement to violence and, eventually, mass violence itself.

Genocide may occur in many different forms – it may be relatively decentralised (as occurred in Rwanda where much of the killing was locally organised) or it may be highly

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<sup>314</sup> Bauman 22.

bureaucratic and centralised (as it was in Nazi Germany where there were at least 10,000 concentration camps, including ghettos, with hundreds of thousands of personnel working at killing institutions).<sup>315</sup> The concentration of victims in certain areas makes the task of controlling them easier. Bauman concludes: “the Nazi murder of European Jewry was not only the technological achievement of an industrial society, but also the organizational achievement of a bureaucratic society...the choice of physical extermination...was the result of routine bureaucratic procedures.”<sup>316</sup> The Holocaust, of course, was partially planned but it was also a “mosaic composed of discrete episodes, improvised by local decision-makers.”<sup>317</sup> Perhaps this is always true of genocide – local perpetrators, with myriad motives, each commit discrete individual acts (such as killing or rape), and the accumulation of such acts, with some central coordination and messaging from the state, forms genocide. At the local level violence is often highly personalised.

Mere mob violence is not enough to effect total annihilation – the sustained, organised nature of genocide is one of the characteristics that distinguishes it from other forms of mass violence such as the pogrom. Sabini and Silver argue: “thorough, comprehensive exhaustive murder required the replacement of the mob with a bureaucracy, the replacement of shared rage with obedience to authority.”<sup>318</sup> However, we must be careful not to over-universalise the Holocaust. The case of Rwanda shows that bureaucratic control can exist comfortably alongside mob violence, rage alongside obedience to authority – these elements are not mutually exclusive.

In Rwanda the killings originated with a central kernel of extremists who exercised a degree of control and influence over their local counterparts. This degree of control is reflected in the consistency of genocidal propaganda, the use of state agents (such as soldiers and administrators), and the widespread use of banana leaves and other foliage to distinguish

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<sup>315</sup> Goldhagen, *Hitler's Willing Executioners*, pp. 167-168

<sup>316</sup> Bauman 16-17.

<sup>317</sup> Gross 81.

<sup>318</sup> Quoted in Bauman 90.

attackers from victims.<sup>319</sup> The death of the president presented an opportunity which was then exploited by local extremists. In some cases, moderates were marginalised or killed as extremists from other areas of the country moved in and pressured others to participate in violence.<sup>320</sup> The genocide never occurred in Giti commune because the RPF entered the area before the hardliners gained the upper hand.<sup>321</sup>

The following are some representative accounts of Rwandan political leaders detailing the process of genocide in Rwanda. Interviewee R1 (an MRND official) recalls: “It all started in October 1993 with a meeting in Nyamirambo Stadium. After this the intensive training of *Interahamwe* in camps began...in December 1993 lists were prepared of people who had to die.”<sup>322</sup> The *Interahamwe* were indoctrinated at mass rallies and attended three week long training camps.<sup>323</sup> Similarly, R75, a sector counsellor “was at lots of political meetings where they were talking about genocide. It was my duty to call all local leaders at the cell level and order them to kill. A list had been prepared in 1991 – the people on the list were mostly elites, wealthy people, and Hutu opposition.”<sup>324</sup> The crash of Habyarimana’s plane was the catalyst to enact these genocidal plans. R74, another sector counsellor remembers: “I heard before the genocide [in meetings] that after Habyarimana was killed there would be no Tutsis left in Rwanda...When I heard that Habyarima’s plane had crashed I thought ‘now it’s time’.”<sup>325</sup>

Violence unfolded in a similar manner in Bosnia where central authorities (such as the state security apparatus) sent officials to each municipality looking for trusted allies who were then told that the Muslims needed to be cleared out for security reasons.<sup>326</sup> This trusted person was sometimes the mayor, sometimes the local police chief or a hospital administrator. There was no formal chain of command in operation.

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<sup>319</sup> Des Forges 234.

<sup>320</sup> Straus, *The Order of Genocide*, pp. 90-91.

<sup>321</sup> Straus, *The Order of Genocide*, p. 242.

<sup>322</sup> Rwanda Interview R1, MRND official/merchant, Kigali Central Prison, July 2009.

<sup>323</sup> Alvarez, *Genocidal...*, p. 90.

<sup>324</sup> Rwanda Interview R75, sector counselor, Kigali Central Prison, October 27, 2009.

<sup>325</sup> Rwanda Interview R74, sector counsellor, Kigali Central Prison, October 27, 2009.

<sup>326</sup> Goldhagen, *Worse Than War*, p 127.

The Rwandan government also used previously existing infrastructure such as security committees, bureaucracy, the army, and the media. This included the posting of public notices in places where such notices would normally be posted. As explained in Chapter Three, there was also a projected equivalency between genocidal killing and *umuganda* (the norm of regular communal labour).<sup>327</sup> Public notices included work details (with schedules and names of required participants), just like in *umuganda*. Furthermore, *bourgmestres* dispatched subordinates for house to house searches. Authority figures of some kind were often present at killings themselves, including religious authorities, who provided on the scene endorsement for killers, absolution for their sins from “servants of God.” Such spiritual endorsement also contained the implicit corollary that the victims were not in God’s favour.

The relentless (no-refuge) aspect of genocide means that genocide is not only a “war on social groups” (as Martin Shaw observed) but entails the *criminalisation* of entire social groups.<sup>328</sup> These social groups are deemed to have, through rule-breaking behaviour, violated society’s norms. As such, the state, with its near-monopoly on coercive force, is justified in employing all means at its disposal to combat the problem and punish those responsible. Such violence against deviants is justified in the defence of the common interest. A sort of “deviancy creep” may operate where the state progressively broadens the scope of deviancy to encompass more and more categories of people. At first the focus may just be on marginal members of the out-group (such as thieves) or on other “bad apples” such as insurgent leaders. But eventually, the authorities may conclude that the whole bunch is rotten, thus the entire tree must be removed root and branch to prevent the spread of disease. In fact, the criminalised groups may cease being “them” and become “it” at some point as they are dehumanised and objectified. The processes outlined below also contribute to the manufacture and sustainability of genocide.

### *The Conflict Spiral*

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<sup>327</sup> 87.6% of Rwandan perpetrators interviewed for this study participated in *Umuganda* prior to the genocide.

<sup>328</sup> Martin Shaw, *War and Genocide*, (Cambridge: Polity Press, 2003).

In certain circumstances a “conflict spiral” may develop, where conflict and violence are escalating in a reciprocal manner. The conflict spiral can generate its own sort of momentum and lead to genocidal massacres. As a cycle of transgression and retaliation develops it becomes unclear which group first initiated the violence. Competition will also contribute to prejudice and conflict – the Robbers’ Cave experiment of Mazafer Sherif showed that intergroup conflict was only eliminated by the introduction of mutual interdependence, where participants needed to work together in order to solve common problems.<sup>329</sup> In a sense, genocide can be said to be on the most extreme end of the continuum of ethnic violence. It is a collective crime and an intergenerational crime. Nevertheless, genocide is not the inevitable result of ethnic conflict: other conditions must be present such as extremist ideology and extremist elites.

### *Learning by Doing*

Individuals change their self-image and worldview as a result of their actions. Eventually, this self-image will reflect their engagement in an activity. If individuals find their actions to be personally enriching then they will restructure their perception of their action to find their activity more worthwhile and their benefits more deserving; concomitantly, those that are harmed by these actions (the victims) will be devalued.<sup>330</sup> In other words, individuals participating in genocide will modify their views to conform with their actions in order to maintain their psychological integrity. The persistency of the self also overrides new, and contradictory, information. Furthermore, individuals will eventually come to see themselves as the authors of their actions (agents). This is consistent with the internalisation of propaganda, where recipients cease to see propaganda as received ideas and instead consider it internally-generated sentiment.

### *The Sadistic Shift*

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<sup>329</sup> Waller 274.

<sup>330</sup> Staub, *The Psychology of Good and Evil*, p. 326.

I remember the first slap, just as I was being brought in. Already then something was lost forever, a basic trust. If there's an exquisite collection of Meissen porcelain and a man takes a cup and deliberately drops it to the floor, shattering it, why wouldn't he then proceed to smash everything else? What difference does it make, cup or tureen, after a man has made clear his disregard for porcelain...If they could do that to me, [the first slap] why wouldn't they do worse? Indeed how could they stop themselves? A single blow is a dot, meaningless. It's a line that is wanted, a connection between the dots that will give purpose and direction. One blow demands a second and then a third and onwards.

– excerpt from Beatrice and Virgil by Yann Martel

Human beings have a tremendous capacity to adapt to their circumstances. At its best this adaptation is manifested in the will of concentration camp inmate to struggle for survival in the face of horrific circumstances. At its worst the initially reticent concentration camp guard becomes numb to killing. This habituation evolves over time. For instance, in order to ease the men into killing, the *Einsatzgruppen* massacres in Eastern Europe normally commenced with the killing of men before progressing to women and children. Moreover, the extraordinary violence of the SA in the early years of the Nazi regime, and the lack of resultant negative consequences, may have also socialised Germans to accept the legitimacy of violence.

The opponent process theory of Richard Solomon helps to explain habituation. Solomon argues that psychological processes are homeostatic: the initial response to killing (the *alpha process*, visceral aversion) is followed by a *beta process* (a restorative process including feelings such as euphoria or pleasure). Initially the beta process is weak but over time the processes reverse and aversion weakens while pleasure strengthens.<sup>331</sup> This reduced marginal cost of perpetration means that it becomes easier to kill over time. Guilt acts as a mechanism of social control by moderating our actions; yet, in cases of genocide this sense of guilt is removed. The desensitisation of the perpetrator runs as a parallel process to the dehumanisation of the victim (much like perpetrator self-objectification operates in tandem

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<sup>331</sup> Dutton 116.

with the objectification of the victims). Moreover, through positive reinforcement after perpetration, perpetrators may develop a conditioned response where they are socialised to respond in a predictable way to a certain stimulus (i.e. the appropriate response to the appearance of a member of the enemy group may be to kill that person).

Mass killing may also be encouraged through a “culture of cruelty” in the killing environment, which celebrates “gratuitous and inventive cruelties.”<sup>332</sup> This culture of cruelty may also be accompanied by a mood of elation and creativity.<sup>333</sup> For example, one testimony from the notorious Tuol Sleng prison in Cambodia recalls young guards kicking the heads of dead prisoners’ corpses “frivolously for fun.”<sup>334</sup> Another example of such excesses was revealed in the order issued by General Westmoreland (the commander of American forces in the Vietnam War) in October of 1967 for commanders to prevent soldiers from severing the fingers and arms of the dead.<sup>335</sup> Killing may be accompanied by humour or even glee. Satisfactions available to perpetrators in such an environment include reputation and standing among peers, the alleviation of boredom, and the sensation of mastery. The freedom from social constraint may also contribute to the euphoria which may be present in situations of extreme cruelty.

Individuals may actually enjoy killing. Sociobiologists speak of the pain-blood-death complex – that animals (including humans) may receive certain positive reinforcements from the actual process of predation/killing. The victims’ physical sequelae – attempts at escape, screams, death throes, blood, may actually trigger euphoric feelings in some perpetrators.<sup>336</sup> As evidence for this hypothesis sociobiologists note that most animal and human hunting is actually very inefficient, so it must serve other purposes. As gruesome as this is, it may form part of our understanding of cruelty in genocide.

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<sup>332</sup> Fred E. Katz cited in Christopher Browning, Ordinary Men, p. 208.

<sup>333</sup> Katz in Browning 208.

<sup>334</sup> Osman Ysa, “Prak Khan and Interrogation at S-21,” Documentation Centre for Cambodia, Searching for the Truth, No. 10 (October 2000), p. 14.

<sup>335</sup> Dutton 70.

<sup>336</sup> Dutton 143.

It also seems that in the course of participating in extreme violence many perpetrators undergo a *sadistic shift* where they start to exhibit sadistic behaviour, even if they cannot be psychologically diagnosed as sadists. Many perpetrators go beyond their mere duty to kill and begin to kill with cruel inventiveness. In his theory of anomie Emile Durkheim argued that external social control is necessary because we lack internal controls; thus, the breakdown of external controls leads to insatiable desires.<sup>337</sup> “Because of what people were doing they were crazy. They looked as though they could kill each other,” remembers one Rwandan perpetrator.<sup>338</sup> In the women’s concentration camp at Ravensbruck one survivor recounted how inmates would make a game of guessing how long it would be until “humane” guards would begin to act sadistically.<sup>339</sup> It remains to be seen whether the sadistic shift hypothesis is correct, yet, it does seem that some people behave in outrageous ways when given the opportunity to do so. One such opportunity is presented by perpetrator omnipotence in the context of genocidal killing.

### ***The Goal Gradient and the End of Genocide***

The goal gradient is a theory developed by Kurt Lewin which contends that the closer that you are to a goal to be reached, the greater the incentive for continuation and the greater the disincentive to abandon the goal.<sup>340</sup> The interruption of goal-directed behaviour is a source of tension, and the closer an individual is to reaching their goal the greater the tension.<sup>341</sup> In other words, genocide may be perpetuated to a certain degree by the desire of perpetrators to complete the mission on which they first embarked.

Killing may also gain a certain momentum as individuals who have already killed demand conformity from their peers. Conformity in killing is also a gesture of equality. Furthermore, considering that genocide is normative and encouraged by the state, individuals

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<sup>337</sup> Wallace in Bryant, p. 20.

<sup>338</sup> Interview R30 (Rwandan perpetrator), bank worker, Butare (with TIG workers on break), August 27, 2009.

<sup>339</sup> Alvarez, *Genocidal...*, p. 107.

<sup>340</sup> Staub, *The Psychology of Good and Evil*, p. 330.

<sup>341</sup> Staub, *The Psychology of Good and Evil*, p. 330.

may also try to outdo each other in their realisation of the collective normative goal of exterminating the enemy. The accomplishment of a socially-endorsed task (such as “doing your job”) can bring emotional and material rewards and the desire to do your job well may become an end in itself.<sup>342</sup> Such rewards *can* be important. One perpetrator in Rwanda recounts:

One time he [Brigadier-General Léodimir Mugaragu] brought us Primus beer. He told us we hadn’t done any work and that even the battalion which had handicapped people had done a better job in the town of Ruhengeri, meaning they had been more successful in killing Tutsis.<sup>343</sup>

The same commanding officer paid other perpetrators 50,000 Rwandan francs for “a job well-done.”<sup>344</sup> The sequential nature of perpetrator actions also means that the cessation of killing may imply recognition of the wrongful nature of acts committed to that point.<sup>345</sup> Thus, in a sense it is psychologically easier for perpetrators to continue killing and to maintain their positive self-image (with a redefined moral landscape) than to once again challenge their beliefs and face cognitive dissonance. The reestablishment of the self after the moral restructuring that enables acts of atrocity can be traumatic.

When comparing contemporary genocides it seems that once genocide starts it generally does not stop of its own accord. The Rwandan Genocide, Holocaust, and Cambodian “genocide,” all ended only as a result of foreign military intervention. Moreover, many other cases of pogroms appear to have ended because of government intervention – this was true of pre-1994 episodes of violence in Rwanda as well as a plethora of riots in India.

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<sup>342</sup> See the discussion of *social role conformity* in Chapter Four and of the *role margin of discretion* in Chapter Six.

<sup>343</sup> Omaar 232.

<sup>344</sup> Omaar 234.

<sup>345</sup> Milgram, *Obedience...*, p. 149.

Thus, state authorisation and state-power play a crucial role in the recourse to genocide and other forms of mass violence.<sup>346</sup>

*The Problem of the Jew Next Door*

Even in criminogenic states where the state has authorised killing and the narrowing of awareness has occurred there remains a possibility or the rekindling of old collegiality, the remembrance of old loyalties. For those who care about humanity this is a hopeful sign, yet for the criminogenic state it is a problem to be overcome. Consider, for example, the following 1938 Report from the Nazi German state of Saxony:

When the people read of the measures taken against the Jews in the big cities, then they approve of them. But when a Jew of their circle of close acquaintances is affected, then the very same people moan about the terror of the regime. Then compassion stirs in them again.<sup>347</sup>

In a speech in October of 1943 Himmler also derided this tendency saying:

‘The Jewish people is to be exterminated,’ says every party member. ‘That’s clear, it’s part of our programme, elimination of the Jews, extermination, right we’ll do it!’ And then they all come along, the eighty million good Germans, and each one has his decent Jew. ‘Of course the others are swine, but this one is a first-class Jew’.<sup>348</sup>

Similarly, as Allison des Forges observed in Rwanda: “some [reluctant Hutus] might massacre strangers in churches or at barriers, knowing only that they were Tutsi, and refuse to attack neighbours, knowing that they were Tutsi but knowing also that they were not enemies.”<sup>349</sup> One Rwandan génocidaire argued: “We saved the lives of some people because

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<sup>346</sup> Jews in Poland often knew about impending pogroms – *Kehillas* (Jewish communal authorities) had for centuries maintained special funds designated for the appeasement of local authorities (who would then head off the pogrom). See Gross 19.

<sup>347</sup> Goldhagen, *Hitler’s Willing Executioners*, p. 122. It is also interesting to remember that there was opposition in Germany to the murder of some Jews (German Jews and war heroes for instance) because they were seen as “good Jews”.

<sup>348</sup> Bauman 187.

<sup>349</sup> Des Forges 262.

*you can't kill someone you love.*"<sup>350</sup> Yet, this is not entirely true, as the prevalence of intimate violence in ordinary crimes (i.e. domestic violence) shows.

How can people simultaneously act as murderers and rescuers? Individuals are complex: they can simultaneously demonise and persecute a group while exempting individual members of the group from these generalisations. Bauman argued that the source of *the problem of the Jew next door* (as I have labelled it), is the difficulty in separating the metaphysical Jew (the cognition of Jew) from the personal Jew (the individual Jew that is known by the perpetrator). One could use the same terms in other genocides: the *metaphysical Tutsi* (insidious underminer of the Hutu race, bent on dominating the African Great Lakes), or the *metaphysical Armenian* (greedy, treacherous threat to the Turkish people). In order to make the metaphysical other stick to the personal other there must be a complete social death of the victim group. Hans Mommsen writes:

Only after cumulative discrimination legislation had pressed Germany's Jews into the role of social pariahs, completely deprived of any regular social communication with the majority population, could deportation and extermination be put into effect without shaking the social structure of the regime.<sup>351</sup>

The persistent personalisation of the victims allows some perpetrators to simultaneously participate in genocide both as a perpetrator and a rescuer (killing strangers and rescuing family members for example).

Criminal law also recognises that intent is dynamic. Even though genocide is a sustained campaign, individual intent may shift during the course of genocide. Consider the case of Goran Jelusic, a Bosnian Serb who held a position at the Luka camp during the Bosnian war. Jelusic allowed a Muslim to escape after playing Russian roulette with him, in spite of expressing the desire to "exterminate" all Bosnian Muslims and calling himself the "Serbian

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<sup>350</sup> Rwanda Interview R67, farmer, Hindiro TIG Camp, October 25, 2009.

<sup>351</sup> Quoted in Bauman 190.

Adolf”.<sup>352</sup> Moreover, Clément Kayishema (the *prefet* of Kibuye) incited genocide yet rescued seventy-two Tutsi children after a massacre.<sup>353</sup> George Ruggiu also incited genocide but rescued people as (purportedly) did many of the perpetrators interviewed for this study (91.9% of Rwandan perpetrators interviewed claimed to have also rescued people).<sup>354</sup> Such behaviour is possible because individuals that you know well may be excluded from the dehumanised other. One can also draw a distinction here between *abstract killing* and *actual killing* – in the abstract a perpetrator may want to kill all Armenians, but in actuality they may find it difficult to shoot the small child in front of them. In a sense all genocidal killing must marry abstraction to actuality.

### **3.8 Conclusion: The Structure of Genocide**

The central question to emerge from our discussion of the messages and structure of genocide in this chapter and the last is: which is more important for the commission of genocide? Is genocide fundamentally about the hate which one group feels for another or the obedience of countless individuals acting under the aegis of a genocidal leader? The answer, of course, is that both structures of obedience and hate propaganda are essential for genocide.

In the modern area the exercise of violence is centralized in the state. The state acts as a “manager of coercion,” using its organisational units and resources in order to structure the decision-making of individuals.<sup>355</sup> Organisations are instruments of collective action, machines for controlling human behaviour. Indeed, no action is possible in the collective dimension without organisational coordination of some kind. When individuals are embedded

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<sup>352</sup> *Prosecutor v. Goran Jelusic* (Case No. IT-95-10), Trial Chamber Judgement, 14 December 1999, para. 102.

See also: Paul Behrens, “A moment of kindness? Consistency and Genocidal Intent,” in Ralph Henham and Paul Behrens (eds.), *The Criminal Law of Genocide*, (Aldershot, United Kingdom: Ashgate, 2007), p. 128.

<sup>353</sup> *Prosecutor v. Clement Kayishema, and Obed Ruzindana* (Case No. ICTR-95-1-T), Trial Chamber Judgement, 21 May 1999.

<sup>354</sup> *Prosecutor v. Georges Ruggiu* (Case No. ICTR-97-31-I), Trial Chamber Judgement, 1 June 2000.

<sup>355</sup> The phrase “manager of coercion” comes from Bauman 106.

in the organisation violence is completely disassociated from moral evaluation. Furthermore, the state directly mobilises genocide and provides eager perpetrators the opportunity to perpetrate by placing them in front of marginalised and weakened victims in situations where killing is expected. The power differential between empowered perpetrators and disempowered victims greatly facilitates the commission of genocide.

Yet, messages also play a crucial role in the perpetration of genocide. The definition of the victim as criminal is a product of messages from the state and horizontal propaganda. The criminogenic state encourages and directs violence. Violence is normally carefully controlled by the state and social norms. Without the definition of the victim by propaganda, violence would be boundless and would directly attack the social order. Indeed the narrowing of awareness would not be possible and many Jews would be a personal Jew, a Jew next door. The state must permit violence and communicate this to perpetrators. Coercive structures are also essential to ensure that those individuals less moved by propaganda participate in genocide regardless of their beliefs. In the Holocaust German mass killing transcended genocide and also included groups such as prisoners of war and the mentally ill – thus, Anti-Semitism cannot form a complete explanation for the crimes of the Nazi regime.<sup>356</sup> Without the effects of both structures of obedience and dehumanising propaganda goal variance and information asymmetry would render genocide inert. Moreover, state structures and messages demand the transformation of the individual into a killing tool devoid of feeling, personal connection to the victims, and free will.

There is an element still missing from our discussion of participation in genocide. Cultural factors, propaganda, and social structures have each been analysed in depth. However, if we assume that these factors represent the sum total of genocide causation we are left with a highly-deterministic model that would not explain the different responses individuals have to similar social circumstances. Thus, in the next chapter the question of

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<sup>356</sup> Browning, *Ordinary Men*, p. 207.

individual will is considered with the goal of constructing a model of perpetrator decision-making that takes account of all relevant factors.

## Chapter 4 – The Criminals: A Rational Choice Model of Participation in Genocide

### 4.1 Introduction: The Individual, Society, and Rational Choice

Individual perpetrators are products of the society in which they live. This is even truer for genocide than for most crimes as genocide is a highly socially-situated mass crime committed as part of a political policy. Yet individuals also shape the environment in which they live and are able to decide how they react to their social circumstances. This free will means that perpetrators still choose their course of action, although these choices may be severely constrained by social circumstances. As has already been set out elsewhere in this thesis, individual perpetrators of genocide require four things: *inspiration* (hate ideology and propaganda to justify the crime), *authorisation* (societal authorisation to commit the universally deviant act of genocide), *opportunity* (the ability to commit their crime), and, finally, *will* (the desire to commit their crime).

Will is the *mens rea* (guilty mind) and it is necessary for all perpetrator action. As David Matza observes, the removal of controls is not enough for a deviant act to arise – perpetrator will is also necessary.<sup>357</sup> This will does not imply that perpetrators are completely autonomous actors but rather that they maintain some power to act in consonance or contrary to social influences. Inspiration and authorisation were examined in Chapter Two while opportunity was surveyed in the preceding chapter, in the context of state mobilisation for genocide. In this the perspective of perpetrators will be assessed as well as perpetrator decision-making parameters. Why do perpetrators decide to commit genocide? Are there any special characteristics which set them apart from other “ordinary” individuals?

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<sup>357</sup> Matza 181.

Let us briefly consider the issue of perpetrator opportunity before moving on to analyse individual and collective intent. Perpetrator opportunity is a multi-faceted phenomenon spanning genocidal messages and genocidal infrastructure. Opportunity consists of impunity, capability, context, and the vulnerability of the victims. Perpetrator opportunity is facilitated by apparent impunity. This impunity is derived largely from the messages of the state and also the lack of negative sanctions for genocidal acts. In genocide the rule of law may still be operational but only in service of a restructured moral order. Secondly, the perpetrators must have the capability to commit genocide, primarily in terms of the necessary power differential between perpetrators and victims. Thirdly, if violence is already occurring this makes it easier for perpetrators to kill as the occurrence of such violence provides legitimation to perpetrator acts (even if the acts are merely opportunistic violence they still appear part of a politicised campaign of violence) and anonymity (as many others are also killing or even present in the same group of killers as the perpetrator). A context of dehumanisation also greatly facilitates genocide. Finally, opportunity arises from the vulnerability of victims. This last aspect of perpetrator opportunity will be examined further in our perpetrator decision-making model.

This discussion will begin with an analysis of the characteristics of the perpetrators themselves. It will then move on to construct a perpetrator decision-making model. The parameters of decision-making that impact the model will be assessed both in terms of direct perpetrators (killers/primary perpetrators) and indirect perpetrators (leaders/secondary perpetrators). Finally, the costs of perpetration themselves will be analysed. How easy is it to kill and, once perpetration has been enabled by neutralisation, what are the effects on perpetrators? Perpetrator decision-making is strongly influenced by the background of the perpetrator, their role in society, the society in which they live, and the immediate environment of perpetration. The decision to kill is often taken in a context where the perpetrators has already effectively surrendered their free will, thus, it is a non-decision.

## **4.2 Individual and Mass Motive and Intent in Mass Crimes**

Motive, as the rationale for the commission of crime, is essential for any discussion of participation in genocide and related violence. Thus, the issue of motive will be considered in greater depth here from the perspective of the social and legal dimensions of mass violence/mass crimes. Mass violence (violence occurring on a large scale) has recurred throughout history, its manifestations only limited by the human imagination. Genocide, the annihilation of an entire ethnic, racial, national, or religious group, is one type of mass violence. Such violence is not possible without some kind of coordination. Mass violence *events* (the overall historical episode of violence, i.e. the Rwandan genocide) can be distinguished from *crimes*, which deal with the involvement of particular individuals in criminal acts. When we consider mass violence events as a whole, the perpetration of such violence generally has an overarching aim or ‘collective intent’ and an overarching justification or ‘collective motive.’ Yet it must be emphasised that this motive will not be shared by every perpetrator. In order to commit the crime of genocide perpetrators must possess some form of genocidal intent, but motive can certainly vary.

The meaning of the terms “collective motive” and “collective intent” require some further elaboration. Jeremy Bentham argued that motive causes intent.<sup>358</sup> Therefore, a génocidaire would not intend to commit the crime of genocide without some form of motive. Collective motive is the notion that genocide, as a mass crime, contains an overarching rationale. The state, although not a completely organic entity (a natural person), does contain some element of collective will, shaped by organizational culture. We can distinguish between mere aggregated individual intent where perpetrators are acting in parallel with the same intent (coincidental action) and collective intent where perpetrators knowingly work towards the same goal as part of an organised campaign (concerted action). Mere geographical or temporal congruity is not enough to be indicative of true collective intent.

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<sup>358</sup> Larry May, Genocide: A Normative Account, (New York: Cambridge University Press, 2010), p. 139.

Larry May argues: “if there has been communication or interaction among these individuals, and the communication or interaction has influenced these individuals to come to hold similar intentions, then things are different.”<sup>359</sup>

As this work seeks to demonstrate, not every perpetrator is ideologically motivated. People participate for a variety of reasons. Motive may also be disaggregated between high-level perpetrators (leaders) and low-level perpetrators. In general high-level perpetrators tend to be motivated either by instrumentalism (gaining or maintaining political power) or by ideological extremism. For example, only 34.4% of the Rwandan *génocidaires* interviewed for this study had heard of the so-called Hutu Ten Commandments and many of those were high-level perpetrators; as one former school employee now imprisoned for genocide argued: “the Hutu Ten Commandments were something for the cities, not the countryside.”<sup>360</sup> High-level perpetrators also utilise the structures and propaganda power of the state in order to motivate the vanguard of “true believers” among low-level perpetrators and provide authorisation (justifications) for others.

In contrast, low-level perpetrators tend to participate due to a mix of structure (coercive and conformist pressures) and authorisation/inspiration (neutralisation through genocidal propaganda). Thus, low-level perpetrators tend to be less ideological and more influenced by social pressures. Minor perpetrators may commit criminal acts without sharing the collective motive of the event, while high-level perpetrators may not commit any criminal acts in spite of the fact that they fervently conform to the collective motive.<sup>361</sup> Once genocide is underway, killing authorisation and conformity pressures are far more important than transforming the worldview of the perpetrators.

The social group may also heavily influence individual participation in a genocidal campaign. Individuals may become members of *transgressive communities* - groups which

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<sup>359</sup> May, *Genocide...*, p. 119.

<sup>360</sup> Rwandan Perpetrator Interview R53, former public school employee, Mont Kigali TIG Camp, September 24, 2009.

<sup>361</sup> May, *Crimes Against Humanity...*, p. 140.

have transgressed against society's norms. The shared transgression of such norms creates a kind of unity where members of the group are self-validating and held together by fear (coercion and fear of societal shaming).

In a legal sense, the motive of individual perpetrators does not need to be synonymous with the overall goals of a coordinated criminal action. Moreover, with the absence of a clear motive requirement in the Genocide Convention criminal participation in genocide may occur without the individual perpetrator sharing the aggregate motive to destroy the group for reasons based on ethnic hatred. In contrast the collective intent to destroy must be shared by the individual perpetrator. Nonetheless, the simultaneity principle dictates that a perpetrator need only have possessed criminal intent at the time of the commission of the crime, not before or afterwards.

There is a very detailed discussion of genocidal intent in the Milorad Trbic Judgment at the War Crimes Chamber of the Court of Bosnia and Herzegovina. The Court expands on the test used in *Stupar et al.* and states that genocidal intent may be deduced from:

- 1) The general context of events in which the perpetrator acted including any plan to commit the crime.
- 2) The perpetrator's knowledge of that plan; and
- 3) The specific nature of the perpetrator's acts including the following:
  - 1) No acts to the contrary for genocidal intent;
  - 2) Single mindedness of purpose;
  - 3) Efforts to overcome resistance of victims;
  - 4) Efforts to overcome the resistance of other perpetrators;
  - 5) Efforts to bar the escape of victims;
  - 6) Persecutory cruelty to victims;
  - 7) Ongoing participation within the act itself
  - 8) Repetition of destructive acts (i.e. more than one act or site);
  - 9) The acts themselves (the *Kravica Test*)
    - a. The number of victims;
    - b. The use of derogatory language towards members of the targeted group;
    - c. The systematic and methodological manner of killing;
    - d. The weapons employed and the extent of bodily injury;
    - e. The methodological way of planning;
    - f. The targeting of victims regardless of age;
    - g. The targeting of survivors; and

h. The manner and character of the perpetrators' participation.<sup>362</sup>

Most of the elements in this test are discussed elsewhere in this thesis (for example, the relentless aspect of genocidal killing and the efforts of vanguard perpetrators to coerce reluctant perpetrators), but it is crucial to emphasize that perpetrator intent is complex and multivariate; not all perpetrators will fulfill all of the conditions of the *Trbic* test.

The genocidal context is also crucial in determining perpetrator intent. May argues: “if it is also known that other people see themselves as acting in a concerted manner, and the person nonetheless acts in ways that conform to the pattern of others' behaviour, then it is again more likely than not that the individual act is related, not merely coincidental, to the pattern of behaviour.”<sup>363</sup> The presence of interaction or communication between actors is also indicative of some form of coordination. Furthermore, individuals possess the requisite intent when they act “either by directing others to act in a coordinated endeavour or through intending to participate in a coordinated endeavour.”<sup>364</sup> The first condition is, of course, more relevant to leaders and the second to followers. The second condition is similar to the “common purpose” mode of perpetration found in Article 25 (d) of the Rome statute and joint criminal enterprise provisions found in many jurisdictions where the joining of criminal groups, with knowledge of the criminal purpose of such groups, may itself be criminalised. The introduction in the Rome Statute of a contextual element for both genocide and crimes against humanity indicates that both crimes are moving away from purpose-based approaches and becoming increasingly knowledge-based crimes. Under these knowledge-based approaches individual genocidal intent becomes less important than an individual's knowing participation in a genocidal campaign.

The formation of non-coincidental collective motive and intent is driven by the state or state-like structures. Propaganda from the state is essential in providing individuals with

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<sup>362</sup> *Prosecutor v. Milorad Trbic* (Case no. X-KR-07/386), First Instance Verdict, Court of Bosnia and Herzegovina, 16 October 2009, para. 202.

<sup>363</sup> May, *Genocide...*, p. 100.

<sup>364</sup> May, *Genocide...*, p. 129.

‘vocabularies of motive.’ Moreover, collective intent on a mass level is only possible with the coordination of the masses through state structures and messages.

### **4.3 Typology of Genocide Perpetrators**

Genocide involves so many perpetrators that it is difficult to construct a profile of a typical genocide perpetrator. Genocide perpetrators seem to, in most respects, reflect their society as a whole. Most of them do not have unique psychological characteristics. There are studies that link aggressive behaviour to psychological characteristics such as narcissism and low self-esteem but the mass perpetration of genocide would indicate that perpetration is not limited to individuals possessing these traits.<sup>365</sup> Perpetrators may be divided into the following general categories based on their motivation:

#### **Perpetrator Typology:**

1. Sadists
2. Ideologues
3. Entrepreneurs
4. Drifters
5. Compromised perpetrators

Sadists are perpetrators motivated primarily by the desire to inflict pain on others and/or to control others. In contrast, ideologues are fanatics who are guided primarily by their system of belief. Entrepreneur is a general category for all those perpetrators who are primarily motivated by some sort of material or power gain (including careerists within organisations). Finally, drifters are perpetrators who do not have strong material, sadistic, or ideological motivations but nonetheless they choose to participate in genocide primarily for reasons of conformity. Sadists and ideologues are generally self-motivating, while careerists and drifters require a push to commit brutality. This push may take the form of incitement or coercion. Almost all perpetrators contain a mix of these characteristics with certain ones being more

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<sup>365</sup> Smith and Mackie 480.

important to certain perpetrators. To these categories of perpetrators we can add what criminologists Alette Smeulers and Barbara Hola call “compromised perpetrators” – those perpetrators who are compromised into collaboration with perpetrators because of their vulnerable position (i.e. child soldiers, members of the victimised group).<sup>366</sup>

Many génocidaires may have the intention to kill the person standing in front of them, while not necessarily possessing the intent to destroy the group. This is because of the diversity of individual motives, which, in a sense, cause intent. In a sense, sadists, and similar criminals taking advantage of the genocidal context to commit “ordinary” crimes are not génocidaires at all as they are lacking genocidal intent. Such opportunistic violence always occurs in genocide.

For some perpetrators (i.e. ideologues) genocide may be rooted in hatred of the other, well for others hate is less important or even a mere post-facto justification (i.e. ‘I was poisoned by bad ideas but I am not a bad person’). As with domestic hate crimes, bias against the victim group is present in most perpetrators (about half of perpetrators interviewed for this study in Rwanda confessed to being supporters of the Hutu nationalist movement) but it may not be the primary motivating factor for violence (i.e. many domestic perpetrators of hate crimes seem to be motivated by the “thrill” of criminality and many génocidaires are motivated by conformity and instrumental concerns).<sup>367</sup>

It is equally important to note that not all evil is banal - some perpetrators choose to kill because of a profound hatred of the victim group or a desire to inflict pain on other human beings. One Rwandan perpetrator confessed that “I supported the Hutu power movement because it called for the killing of Tutsis.”<sup>368</sup> Philip Zimbardo found in his Stanford Prison Experiment that about one third of the “prison guards” [perpetrators in a sense] were “cruel and tough”, less than 20% were “good”, and the remainder (around 50%) were rule-

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<sup>366</sup> Alette Smeulers and Barbara Hola, “Criminology Discovers International Criminal Law,” (unpublished paper, February 15, 2009), p. 10.

<sup>367</sup> Jack McDevit, “Hate Crime Offenders: An Expanded Typology,” *Journal of Social Issues*, vol. 58, no. 2 (2002), p. 307.

<sup>368</sup> Rwandan Perpetrator Interview R67, farmer, Hindiro TIG Camp, October 25, 2009.

oriented.<sup>369</sup> This probably roughly coincides with the breakdown for genocide participation (vanguard perpetrators are a minority as are rescuers, while the majority of individuals are bystanders or reluctant perpetrators). Psychologist Stephen Baum calls this proportion the “Bell Curve of Hate” and estimates that 15-20% of individuals are perpetrators, 60-70% are bystanders, and 15-20% are rescuers.<sup>370</sup> Baum also argues that those with low social development (maturation) are more likely to be perpetrators.

As argued throughout this work, perpetrator motivation is multivariate. Both high-level perpetrators and low-level perpetrators may be partially motivated by status anxiety, particularly in situations of insecurity and change. Yet, as argued above, there also differences between these two broad categories of perpetrators. High-level perpetrators are normally motivated primarily by ideology and/or instrumentalism, but low-level perpetrators tend to participate because of a mix of structure (coercive and conformist pressures), opportunities for personal gain, and authorisation (the techniques of neutralisation). For example, one Rwandan génocidaire claimed that “we only killed one person because the others gave us money” and 35.2% of Rwandan perpetrator interviewees admitted to having stolen from the victims.<sup>371</sup> Nonetheless, the low-status of the victims (because of dehumanising propaganda) may have ultimately eased the killing of this individual. Low-level perpetrators may also participate because propaganda has made them authentically fear the enemy group. Ideology will be utilised by high-level perpetrators in order to motivate the vanguard of “true believers” among low-level perpetrators and provide authorisation (excuses) for others.

There are also various ways in which perpetrators may participate including as: *direct perpetrators* (committing acts of violence), *accomplices* (aiding direct perpetrators), *encouragers* (abetting or inciting other perpetrators), *informers* (providing information to perpetrators on matters such as the location of victims), and *leaders* (ordering and directing

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<sup>369</sup> Browning, *Ordinary Men*, 171.

<sup>370</sup> Stephen K. Baum, *The Psychology of Genocide: Perpetrators, Bystanders, and Rescuers*, (London: Cambridge, 2008), p. 105.

<sup>371</sup> Rwandan Perpetrator Interview R55, fisherman, Rugerero TIG Camp, September 27, 2009.

perpetrators). These roles appear to be somewhat dictated by gender – many female perpetrators act as informers or accomplices rather than direct perpetrators. The people who most eagerly support genocide are often people who feel more acutely threatened by the victim group, people closely bonded to the mainstream (state) or people who are already habituated to the use of violence.<sup>372</sup>

Mann also argues that violence is often led by older males, who have been socialised during an earlier phase of violence. For example, the early Nazi cadres were dominated by First World War veterans who formed paramilitary organizations such as the *Freikorps* and *Wehrverband*.<sup>373</sup> Almost 30% of high-ranking *Waffen SS* officers had *Freikorps* experience while many SA were former *Wehrverband*.<sup>374</sup> The SA was also dominated by unemployed young men. Moreover, many radicals were from the so-called lost territories in the east. A study of over six hundred Nazi biographies showed that first generation Nazis came largely from anti-Semitic and authoritarian backgrounds (focussed on the restoration of German honour after the First World War), second generation Nazis were more ideologically-oriented and less focussed on the war defeat, while a subset of second generation Nazis, the “marcher-fighters” (those prone to street violence such as SA) were often from fatherless and/or abusive homes.<sup>375</sup>

Perpetrators may also be drawn voluntarily to their roles because of self-selection (i.e. sadists seek out roles that give them an opportunity to commit sadistic acts). Self-selection is likely especially important for vanguard perpetrators, although even in specialised killing

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<sup>372</sup> Mann 8-9. Michael Mann argues that core constituencies of genocide may include groups such as: 1) refugees and people in threatened border districts, 2) people dependent on the state for subsistence and values (i.e. bureaucrats and clients of the state in patron-client relationships), 3) those living outside the main sectors of the economy (in the case of class conflict), 4) those socialised to accept physical violence as a means to solve social problems and achieve personal advancement (i.e. soldiers, police, criminals, bullies, and athletes), and 5) young males striving to assert themselves. These categories are fairly similar to Hoffer’s typology of individuals who are susceptible to joining mass movements. Hoffer argued the frustrated are predominating among the early adherents of all mass movements. See Hoffer xiii and 47-59.

<sup>373</sup> Mann 195.

<sup>374</sup> Mann 195.

<sup>375</sup> Kressel 128.

organisations, such as the SS, there were many individuals who were transferred there for mundane reasons such as their unfitness for active combat as a result of injury.<sup>376</sup> Moreover, sometimes people prone to violence (i.e. convicted criminals) are utilised by perpetrating forces because of their perceived habituation to the use of violence. For example, one writer estimates that the Serb militias in Bosnia were comprised of 20% fanatical Serb nationalists and 80% released prisoners (motivated by the prospect of material gain).<sup>377</sup> This is not representative of perpetrator profiles in general, although it may be somewhat typical of militia-type specialised killing organisations. Only a small number of Holocaust perpetrators had prewar criminal records with the exception of Kapos (prisoner foremen), many of whom had criminal records.<sup>378</sup> None of the perpetrators chosen to be interviewed for this study (through random sampling) had criminal records prior to the genocide.

Criminals are also sometimes deliberately selected for participation in genocide. In the Armenian genocide some criminals were pardoned so that they could take part in the violence.<sup>379</sup> Similarly, in Darfur some *Janjawid* were “Arab” criminals who had been released from prison – their participation in the militia gave them the opportunity to commit “legitimate” acts of violence.<sup>380</sup>

However, in general, genocide perpetrators are fairly representative of the societies in which they live. Education is no immunization to evil: many genocide perpetrators are well-educated. One study of the SS found that two thirds held university degrees and a third had doctorates (many in law).<sup>381</sup> Furthermore, the study found that only sixteen percent had suffered the loss of a parent before the age of nineteen, while only twenty-four percent had their employment disrupted (through unemployment, business failure, or embezzlement

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<sup>376</sup> Goldhagen, *Hitler's Willing Executioners*, p. 337.

<sup>377</sup> Jacques Semelin, “Ethnic Cleansing in Yugoslavia: Analysis of a Mass Crime,” in Robert Gellately and Ben Kiernan (eds.), *The Spectre of Genocide: Mass Murder in Historical Perspective*, (New York: Cambridge University Press, 2003), p. 366.

<sup>378</sup> Mann 223.

<sup>379</sup> Mann 183.

<sup>380</sup> Julie Flint and Alex de Waal, *Darfur: A Short History of a Long War*, (New York: Zed Books, 2005), pp. 103-104.

<sup>381</sup> Midlarsky 182.

charges).<sup>382</sup> Many génocidaires are the “absolute antithesis of ‘the criminal’ as conventionally conceived.”<sup>383</sup> For instance they may be intelligent, focussed on productive activities, and closely bonded to the mainstream.

The predominately illiterate-peasant makeup of the Khmer Rouge is indicative of the nature of the movement as a class struggle. Yet, the leaders of the Khmer Rouge were often well-educated and highly ideological. Most of the torturers at Tuol Sleng were also ideologues. It is interesting that many Khmer Rouge perpetrators were children; this was due to the Khmer Rouge’s denial of the concept of childhood and also the relative ideological malleability of children (children have less integrated cognitive belief systems).<sup>384</sup> The energy and idealism of the young also creates ideological, vanguard perpetrators. In 1976 the makeup of the Khmer Rouge S-21 (security police) consisted of only twenty-five personnel over the age of twenty-five, one hundred eight between 18-22 years of age, and twenty under the age of eighteen.<sup>385</sup> In Rwanda thousands of children were charged with genocide, including a seven year old.<sup>386</sup>

Women are also always involved in genocide, albeit usually in different roles than men, such as acting as informants or providing moral and material support rather than directly killing. There are certainly many exceptions to this generalisation. In 1998 there were 1,200 women imprisoned in Rwanda for involvement in the genocide.<sup>387</sup> Women involved in such

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<sup>382</sup> Mann 222-223.

<sup>383</sup> David O. Friedrichs, “The Crime of the Century? The Case for the Holocaust,” Crime, Law and Social Change, no. 34. (2001), p. 29.

<sup>384</sup> Ea Meng-Try and Sorya Sim, Victims and Perpetrators? Testimony of Young Khmer Rouge Comrades, (Phnom Penh, Cambodia: Documentation Center of Cambodia, 2001), p. 12.

<sup>385</sup> David Chandler, Voices from S-21: Terror and History in Pol Pot’s Secret Prison, (Chiang Mai, Thailand: Silkworm Books, 2000), p. 33.

<sup>386</sup> Ruth Jamieson, “Genocide and the Social Production of Immorality,” Theoretical Criminology, no. 3 (1999), p. 144.

<sup>387</sup> Mann 463.

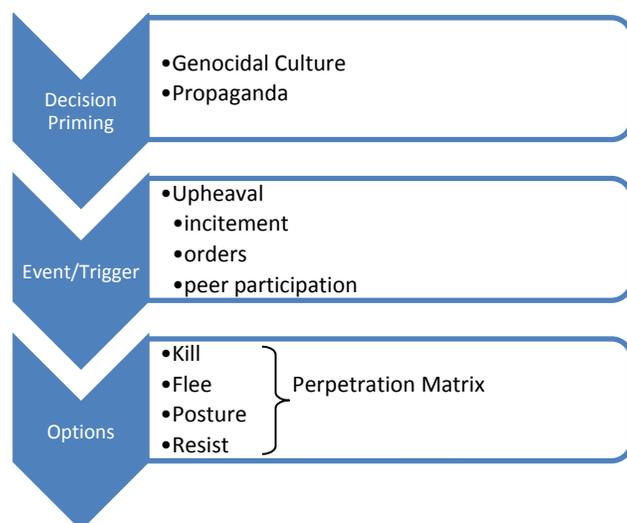
extreme violence are often granted a degree of agency but only as part of a movement directed against the “other” – they are not free to challenge patriarchal norms.<sup>388</sup>

#### **4.4 Decision-Making Model**

##### ***Introduction***

Individual motivation is always complicated. In a sense, every decision we make is the product of who we are. If decisions were made solely on the basis of the surrounding context then every individual would react in a predictable (and similar) way to the same stimulus. Needless to say, this is not the case. As the last chapter illustrated, individuals presented with the same circumstances may become eager or reluctant perpetrators, bystanders, or rescuers. How do we account for these individual differences? We will examine a decision-making model for perpetrators shortly but first let us survey perpetration in a more general sense.

**Figure 4.1 Perpetration Process**



This is another way of presenting the central perpetration model of this thesis. Genocidal culture, the social conditions which underlie genocide, acts as a form of *decision-*

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<sup>388</sup> Nishaant Choksy, “Woman as Victim, Woman as Perpetrator: The Various Roles of Women in the Gujarat Riots,” unpublished paper, University of Michigan, 2007, p. 9.

*priming* for perpetrators. This decision-priming prepares perpetrators to make the decision to commit genocide. For example, years of dehumanising propaganda may change a perpetrators' definition of a situation. When an event takes place (such as a political collapse) this event will be interpreted in light of the propaganda which has become embedded in the subconscious of the perpetrator. The presence of certain triggers such as incitement to violence, orders from authority figures, and peer involvement in genocide may place the perpetrator under additional pressure to participate in genocide.

In the final stage the perpetrator will consider their options – what is labelled here as the “perpetration matrix”. The consideration of options generally occurs subconsciously and rapidly. Decision priming ensures that perpetrators have often effectively chosen their action before being presented with a decision. Kelman and Hamilton argue that rightly assert that obedience to authority sometimes means that “once a demand is seen as legitimate, the person acts as if he were in a non-choice situation” (self-objectification).<sup>389</sup> In many cases, the perpetrator is able to kill, while avoiding the *decision to kill*. The act of perpetration, and the influences on this act of perpetration, will be examined further later on in this chapter but suffice it to say at this point that génocidaires are not only presented with the classic “fight or flight” scenario. They are may also *resist* participation in killing or *posture*, where they seek to convince others that they are fully participating while, in fact, they minimise their participation.

### ***Cost-Benefit Analysis***

Almost all perpetrators are rational. This does not mean that their decisions are correct, or even that these decisions are beneficial to them either in the short term or the long term. But, from the perspective of the perpetrators in that moment, they are participating in genocide because the benefits outweigh the costs. What is rational in the moment of perpetration within a genocidal society may not seem rational to us. Recent iterations of

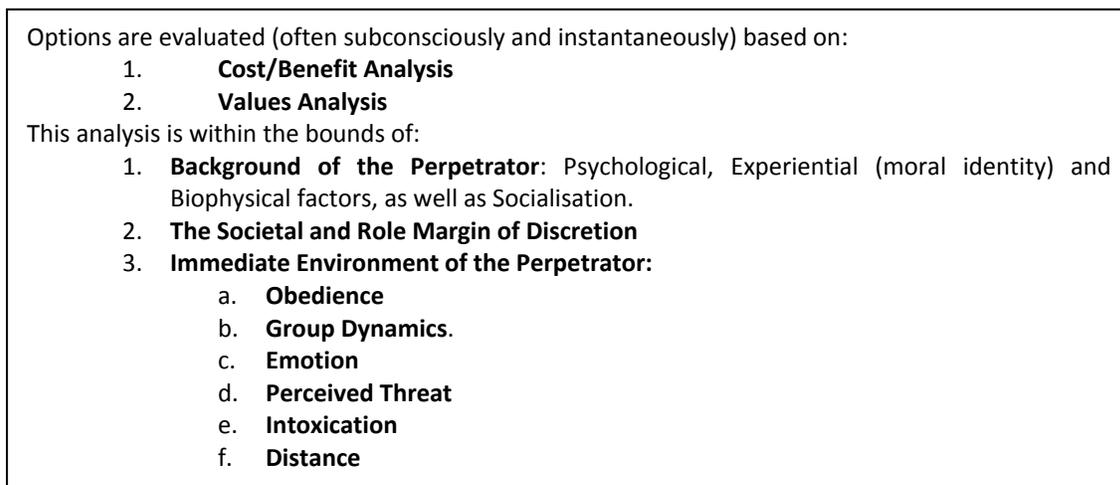
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<sup>389</sup> Herbert C. Kelman and Lee Hamilton, Crimes of Obedience, (New Haven, U.S.A.: Yale University Press, 1990).

rational-choice theories of crime acknowledge that criminal behaviour is socially-situated and that decisions are made in a context of limited knowledge.<sup>390</sup> Even within an enabling organisational culture genocide still requires neutralisation as a way to distance perpetrators from universal moral values (such as the prohibition on killing). This contrasts with some theories of white-collar (organisational crime) where organizational culture is enough to determine behaviour, but genocide differs from such crimes because of its *mala in se* status.<sup>391</sup> Thus, cost-benefit analysis and perpetrator rationality remain important.

Perpetrators may not deliberate at length but they are not acting as martyrs, they are still satisficing – choosing their best option, the path of least resistance. This helps to explain why many non-ideological perpetrators kill – they do so because, in the genocidal context, obeying legitimate authority it is the easiest thing for them to do. It is often said that studies of genocide must explain why people kill; it might be better to ask why, in an environment strongly encouraging killing, some people chose not to kill. Hannah Arendt wrote: “under the conditions of the Third Reich only ‘exceptions’ could be expected to react normally.”<sup>392</sup>

**Figure 4.2: Comprehensive Perpetrator Decision-Making Model**



<sup>390</sup> Alex Piquero and Stephen G. Tibbets (eds.), Rational Choice and Criminal Behavior, (New York: Routledge, 2002), p. 265.

<sup>391</sup> For a contrasting theory of white-collar crime see, for example, Diane Vaughan, “Beyond Macro and Micro Levels of Analysis, Organizations and the Cultural Fix,” in Henry N. Pontell and Gilbert Geis (eds.), International Handbook of White Collar and Corporate Crime, (New York: Springer, 2007), p. 11.

<sup>392</sup> Arendt 27.

This consideration of options is common to all génocidaires (although the way in which these options will be considered will differ). Perpetrators of genocide assess the situation on the basis of 1) *cost/benefit analysis* (the fulfillment of needs and wants versus the potential for negative consequences), and 2) *values analysis* (the consideration of whether the action in question accords with values held by the perpetrator and society as a whole). We shall begin by discussing cost/benefit analysis.

In cost/benefit analysis the potential costs of the action are evaluated in light of the benefits which it may bring the perpetrator. Some considerations here may be the degree of effort required, the amount and immediacy of the reward, and the likelihood and severity of punishment.<sup>393</sup> Benefits are always related to individual needs or wants (needs and wants are almost indistinguishable among most people except in times of jeopardy); needs include things such as money, sex, status, excitement, and approval. Ervin Staub differentiates between *destructive needs satisfaction* (needs satisfaction that harms the needs of others) and *constructive needs satisfaction*, which does not harm others.<sup>394</sup> Needless to say, participating in genocide in order to fulfil personal needs is always destructive to the needs of others.

Financial incentives may lead some individuals to participate in genocide and related crimes. These financial incentives may include immediate benefits, such as goods looted from the victims or payments received for their act of perpetration, or more long-term benefits such as possible promotions within bureaucratic structures. Careerists and drifters are the most likely to respond to financial needs. Sex may also motivate some perpetrators much in the same way that sex motivates “ordinary” rapists – they receive sexual gratification as well as a rush from exercising complete dominance over the victims. Of course, this dominance need not take on sexual tones – sadists may also “need” to kill as a way of gratifying their need to control and hurt other people.

As argued in the previous chapter, involvement in genocide may also be exciting as members of the mass feel that they are part of something worthwhile and eternal. This will

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<sup>393</sup> See Lanier and Henry’s discussion of Cornish and Clarke’s Reasoning Criminal model on Lanier and Henry 91.

<sup>394</sup> Staub, *The Psychology of Good and Evil*, p. 61.

also earn the approval of their peers and an enhanced status within society. In contrast, within the genocidal state, non-participation may lead to social ostracism or even physical jeopardy. The fear of standing alone can be a powerful incentive for participation in genocide.

The costs of genocide are lowered substantially by the social conditions present in the genocidal culture. Individuals learn through propaganda that their acts will not be punished with any negative social or legal sanctions. The prospect of impunity, both through domestic approval and external apathy, makes the perpetration of genocide much less costly.

Routine Activity Theory posits that the presence of motivated offenders and suitable targets greatly increases the likelihood of crime.<sup>395</sup> For our purposes, we can distinguish here between *general suitability* and *specific suitability*. In the case of genocide, all individual members of a marginalised group that has been targeted for extermination are generally suitable as targets. When we consider specific suitability (the actual suitability of the target at the moment of the crime) it is logical to consider the more vulnerable victims as being more suitable targets for killing. The most common risk factors identified for victimisation (in respect to ordinary crimes) are *exposure* (physical visibility and accessibility of the victim), *guardianship* (“the effectiveness of those persons or objects who prevent violations from occurring”), and *attractiveness* (“the material or symbolic desirability of persons or targets to potential offenders”).<sup>396</sup> Of course in genocide all members of the targeted group have a high degree of symbolic desirability (attractiveness).

The vulnerability of the victims also reduces the cost of perpetration. In his work on ethnic riots (pogroms) Donald L. Horowitz argued that perpetrators in ethnic riots are risk-averse, that they only attack after calculating target resistance and police response.<sup>397</sup> This is equally true for genocide: if victims were strong and prepared to resist this would make

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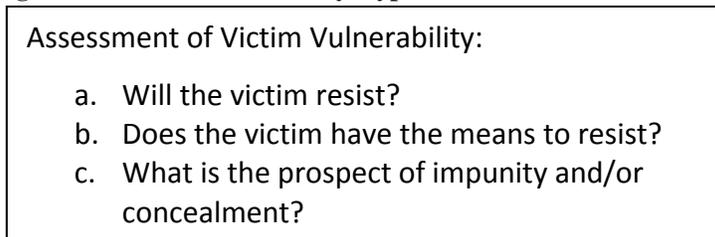
<sup>395</sup> Lanier and Henry 93.

<sup>396</sup> Lawrence E. Cohen, James R. Kluegel, and Kenneth C. Land, “Social Inequality and Predatory Criminal Victimization: An Exposition and Test of a Formal Theory,” *American Sociological Review*, vol. 46 (October 1981), pp. 505-524. See also: Christopher Birbeck and Gary LaFree, “The Situational Analysis of Crime and Deviance,” *Annual Review of Sociology*, vol. 19 (1993), p. 126.

<sup>397</sup> Donald Horowitz, *The Deadly Ethnic Riot*, (New Delhi: Oxford University Press, 2002), pp. 386-387.

perpetration much more difficult and even dangerous. Individual victims must be vulnerable as must the victim group as a whole; individual vulnerability is intimately connected the vulnerability of the group especially during the narrowing of awareness which characterises genocide. Victim vulnerability may be assessed on the basis of several factors:

**Figure 4.3 Victim Vulnerability Hypothesis**



The question of whether the victim will resist is an assessment of demeanour. Seemingly passive victims represent attractive targets to génocidaires just as a submissive child is victimised by bullies in a school. Aggression in animals may be induced by stimulating the hypothalamus (region of the brain) but even then aggression will only occur if there is an “appropriate” target to attack (i.e. a subordinate target).<sup>398</sup> It is a testament to the vulnerability of the victims of the Holocaust that, in *Einsatzgruppen* operations in the East, victims often outnumbered the perpetrators by as much as fifty to one.<sup>399</sup> In the Soviet Union in 1941 a force of 135,000 guards controlled a gulag of approximately one point five million prisoners, while in Cambodia seventy thousand Khmer Rouge soldiers and one thousand political cadres dominated eight million people.<sup>400</sup> Such disparity is common in genocide and this is a result of the vulnerability of the victims and also their passivity (i.e. the norm of obedience and the difficulty in resisting “legitimate” authorities). Benjamin Valentino notes that a group of twenty-five thousand killers each killing one person a week could kill 100,000 people per month and 1.2 million per year. The means of resistance may be assessed on the

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<sup>398</sup> Jo Groebel and Robert A. Hinde (eds.), *Aggression and War: Their Biological and Social Bases*, (New York: Cambridge University Press, 1993), p. 13.

<sup>399</sup> Valentino 36.

<sup>400</sup> Valentino 36.

basis of the numbers of members of the victim group (normally they are a minority), the weaponry possessed by the victims, and the likelihood of outside support. Groups with affine populations in neighbouring states are less vulnerable than isolated groups.

Finally, impunity makes victims more vulnerable as does the prospect that victimisation itself can be easily concealed. Concealment may take the form of hiding bodies, destroying documents, or similar measures, and is much easier in situations where the group is isolated (i.e. no external observers) or where confusion predominates (such is in a war where it can be difficult to distinguish atrocities from “ordinary” conflict killing). For example, an order issued to a reserve police unit participating in genocidal killing in the East during the Holocaust stated:

Confidential! 1. By order of the higher SS and Police Leader...all male Jews between the ages of 17 and 45 convicted as plunderers are to be shot according to martial law. The shootings are to take place away from cities, villages, and thoroughfares. The graves are to be levelled in such a way that no pilgrimage site can arise. I forbid photographing and the permitting of spectators at the executions. Executions and grave sites are not to be made known. 2. The battalion and company commanders are especially to provide for the spiritual care of the men who participate in this action. The impressions of the day are to be blotted out through the holding of social events in the evenings. Furthermore, the men are to be instructed continuously about the political necessity of the measures.<sup>401</sup>

In this excerpt we see several of the central elements of genocide: the importance of concealment, the provision of ideological rationalisation for killing, and the use of other coping mechanisms for the perpetrators. The prospect of preventing genocide by increasing the costs of perpetration will be examined in Chapter Five.

### *Values Analysis*

In addition to measuring the costs of an action in terms of its costs and benefits, perpetrators may also consider whether their act of perpetration accords with their values.

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<sup>401</sup> Browning, *Ordinary Men*, p. 14.

Genocide perpetrators, like other individuals, want to avoid cognitive dissonance. Cognitive dissonance occurs when an individual holds two incompatible cognitions (ideas). It may also occur, for example, when an individual's actions do not match their beliefs (cognition). Such dissonance makes individuals uncomfortable.

Individuals may try to avoid cognitive dissonance through various means including the exclusion or reimagining of disconfirming information, changing cognitions so they are more compatible, or by creating new cognitions that help to bridge the gap between the original cognitions.<sup>402</sup> The techniques of neutralisation can both restructure existing cognitions and introduce new cognitions. Before people undertake an action they may also assess whether the intended act accords with their beliefs. We may think here of value costs – actions which exemplify your values are a sort of deposit in your positive self-image while actions that discord with your values are a deduction or even an attack on your self-image.

Genocide may engender cognitive dissonance as killing contravenes several universal moral norms. Nonetheless, génocidaires may also avoid dissonance through making use of the techniques of neutralisation. These techniques reduce dissonance by changing the perpetrator's view of the victim and of the situation generally. If the victim is no longer seen as an innocent, or if your involvement is seen as involuntary, then dissonance becomes less likely. Thus, the techniques of neutralisation lower the value costs of engaging in violent acts. This values analysis is consistent with situational action theory which posits that moral beliefs act as a mediating factor between perpetrators and perpetrations (the victims). Ideology may also alter values analysis as perpetrators come to restructure their own values, thus their own assessment of the situation.

It is interesting to consider here the relationship of individual decisions to the group enterprise of genocide (the individual motive to the collective motive). The atrocities that take place during genocide differ from war atrocities because in genocide discipline and group solidarity actually enable rather than restrain abuse to civilians, while in war discipline usually

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<sup>402</sup> Aronson 183.

reduces illegitimate violence.<sup>403</sup> Therefore, in both genocide and other forms of mass violence the individual's decision to commit violence is heavily impacted by the group context, but in genocide that group context actually encourages the commission of atrocities.

#### **4.5 Direct Perpetrator Decision Parameters**

This decision-making model of cost/benefit analysis and values analysis is not enough to account for the individual decision to participate in genocide. We must also consider individual differences and how these differences effect the assessment of costs. In order to do that we will consider the position of direct perpetrators (i.e. those present at the killing site) versus indirect perpetrators (those not present at the killing site such as leaders or some bureaucrats involved in specialised tasks). In general, the factors which might influence perpetrators can be divided into three categories: 1) the background of the perpetrator, 2) the social and role margin of discretion (the perceived choices available to the perpetrator based on their role in society and the society that they live in), and 3) proximal influences (influences in the immediate environment of perpetration). Each of these categories of factors will be analysed in turn before moving to an analysis of indirect perpetrators and whether there are unique factors that may impact their decision-making process.

##### ***Background of the Perpetrator***

###### **i. Psychology**

Cruelty and fear are man-made, and men who perpetrate them are ruled by them. Such men are only half-made things. They live out their unresolved lives by attempting to destroy everything that challenges the void in themselves. A child holds a blanket over its face in fear. A fear-filled man transposes his inadequacy onto another. He blames them, hates them, and hopes to rid himself of his unloved self by hurting, or worse, destroying them.

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<sup>403</sup> Macartan Humphreys and Jeremy M. Weinstein, "Handling and Manhandling Civilians in Civil War," *American Political Science Review*, vol. 100, no. 3 (August 2006), p. 433.

– Ben Keenan (former hostage)<sup>404</sup>

Perpetrators are not empty vessels at the moment of perpetration. They arrive in that moment with all of the baggage of their experience, personality, and education. These things do not propel the perpetrator towards this moment, considering the highly political nature of the crime of genocide, but they may impact upon how the perpetrator interprets the situation they are in and which decision they take. It must already be evident from this work that there is nothing unusual about most genocide perpetrators. Nonetheless there are still individual differences in behaviour during genocide and this might partially be a product of perpetrator experiences and attributes. The background of the perpetrator includes learned behaviour as well as any genetic dispositions which may impact the perpetrator's interpretation of a situation. These include the perpetrator's psychological makeup, experience, conditioning (socialisation), and biophysical factors such as genetics and medical conditions. We will begin our consideration of the impact of background on decision-making by considering individual psychology.

Most génocidaires do not seem to have any particular psychological characteristics; with the possible exception of social psychological characteristics arising from their relationship with the social group - such as an inflated sense of group worth and vulnerability to narcissistic wounds. Nonetheless, there are certain psychological characteristics set out in the field of abnormal psychology such as sadism and psychopathy (also known as anti-social personality disorder or sociopathy) that may influence the perpetration of genocide among certain perpetrators.

Contrary to popular perception, the vast majority of génocidaires do not suffer from psychological abnormalities, although sadism and psychopathy may be disproportionately represented among those perpetrators who kill the most (vanguard perpetrators). Many individuals possess some sadistic tendencies but these are balanced by other traits.<sup>405</sup> Sadists

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<sup>404</sup> Glover 33.

<sup>405</sup> Fromm 324.

are people who need to experience power over others (often through behaving cruelly towards them or inflicting suffering on them). To sadists living being become objects of control (we can see a parallel here with the objectification of victims by the perpetrators of genocide). One apparently sadistic “injector” who worked as an assistant to a doctor in a concentration camp embodied this urge for control when he stated: “I had an interesting dream – a dream that after my death I would live in a special place where I would rule, where I would be sent thousands of people to kill personally with phenol injections. It was a wonderful dream.”<sup>406</sup> Sadists require a response from their victims or they will escalate violence – they greatly fear the loss of control.

For sadists, as well as some other individuals, there can be a connection between their pleasure and others’ pain. Bullies also experience a similar relationship with their victims. A 2008 study at the University of Chicago indicated that youths who are bullies experience a positive physiological response from watching others suffer.<sup>407</sup> Josef Stalin was a classical sadist: he enjoyed exercising arbitrary and total control over others and ensuring that they knew he was in control.<sup>408</sup> Power structures where one group exploits another (i.e. apartheid systems, prison settings, or ‘camp worlds’) generate sadistic individuals.<sup>409</sup>

Psychopaths (individuals with psychopathy or Anti-Social Personality Disorder as it is now known) are people who are self-obsessed, disconnected with others, lack self-reflection, and, in extreme cases, are asocial, aggressive, and highly impulsive. Psychopaths lack empathy and have difficulty forming lasting bonds with others. Most genocide perpetrators are not psychopaths but psychopaths might be overrepresented among the vanguard perpetrators (there is a paucity of research in this area). *Reactive offenders* – those who react with violence only to specific situations can be distinguished from “primary psychopaths” who have adopted violence as a way of life (i.e. vanguard perpetrators drawn from the ranks of

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<sup>406</sup> Lifton 264.

<sup>407</sup> University of Chicago (press release), “Bullies may Enjoy Seeing Others in Pain,” November 7, 2008.

<sup>408</sup> Fromm 321.

<sup>409</sup> Fromm 331.

career criminals), although most *génocidaires* are also not true reactive offenders, in the sense that they are participating in a political crime.<sup>410</sup> General studies of crime show that violent recidivism is much more common among psychopaths than among other individuals.<sup>411</sup>

In his study of former SS personnel, psychologist John Steiner argued that some people are “sleepers” who have certain dispositions and characteristics that lie dormant until activated by circumstances.<sup>412</sup> Thus, the sadistic dispositions of sadists may be dormant until they are provided with the opportunity (during a genocide for example) to act sadistically. An example of this is notorious American serial killer Arthur Shawcross who had the opportunity in the Vietnam War to torture, kill, and mutilate; he later said: “I was never happier.”<sup>413</sup> Another serial killer Joe Fischer began to kill in the Second World War and said “killing felt too good to stop.”<sup>414</sup> In all forms of mass violence anti-social elements emerge to engage in opportunistic violence such as killing, rape, theft, and kidnapping.

Abnormal socialization and development processes (usually originating in early childhood) can cause personality disorders and dispositions to personality disorders (latent personality disorders).<sup>415</sup> People with depression and low self-esteem may also be attracted to violence as a means to relieve boredom.<sup>416</sup> However, the usual offender psychological typologies (i.e. offenders with a weak superego, weak ego, neurotics, etc.) are not very relevant to genocide given the extent of participation in genocide and the political nature of the crime. Kren and Rappoport estimate that only 10% of SS men working in concentration camps could be diagnosed as psychologically abnormal.<sup>417</sup> There is some possibility that the conditions present during genocide may increase the prevalence of psychopathy (i.e. people

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<sup>410</sup> Beck 135.

<sup>411</sup> D.A. Andrews and James Bonta, The Psychology of Criminal Conduct, (Cincinnati: Anderson Publishing, 1994), p. 219.

<sup>412</sup> Staub, The Roots of Evil, p. 133.

<sup>413</sup> Baumeister 224-225.

<sup>414</sup> Baumeister 225.

<sup>415</sup> Lanier and Henry 129-130.

<sup>416</sup> Fromm 278.

<sup>417</sup> Alvarez, “Adjusting to Genocide,” p. 156.

with certain predispositions may become psychopaths) and sadism.<sup>418</sup> Yet the fact that few genocide perpetrators have severe psychological problems is evinced by the normal lives many of them have lead after perpetration.<sup>419</sup> One of the psychologists who examined Adolph Eichmann reported, with apparent surprise, that he was “more normal, at any rate, than I am after having examined him.”<sup>420</sup>

## ii. Experience

Perpetrators’ personal experiences may also impact their perception of a situation and therefore contribute to perpetration. According to Cornish and Clarke’s Reasoning Criminal Model, experience may include the following: direct and vicarious experience of crime; self-perception; conscience and moral attitudes; and foresight (planning).<sup>421</sup> To this list we can add the environment that a perpetrator was raised in and the perpetrator’s experience of violence (as a victim, bystander, or perpetrator). Negative experiences at the hands of the enemy group may lead the perpetrator to infer that all members of that group possess certain negative characteristics which cause them to commit such evil acts. It is also important to remember that individuals live vicariously through the group – evils done to their in-group are often perceived as personal evils. Moreover, people from previously victimised groups are overrepresented in genocide perpetrators.<sup>422</sup>

Psychologists also argue that there is a relationship between an individual’s upbringing and their propensity for aggression. Punishment (especially physical), parental rejection, hostility, and violence in the home all increase the likelihood of aggression; moreover, studies show that the withdrawal of affection and physical punishment decrease children’s concern for

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<sup>418</sup> Sabrina Weber, Katrin Amunts, and Frank Schneider, “Structural Brain Abnormalities in Psychopaths – A Review,” *Behavioral Sciences and the Law*, No. 26 (2008), p. 25.

<sup>419</sup> Alvarez, *Government’s Citizens, and Genocide*, p. 22.

<sup>420</sup> Arendt 25.

<sup>421</sup> Lanier and Henry 91.

<sup>422</sup> See Mann and Midlarsky for example.

the welfare of others.<sup>423</sup> Slobodan Milosevic had a history of depression in his family and a severely disrupted childhood – both of his parents committed suicide. A high percentage of adult criminals were abused as children.<sup>424</sup> For example, some psychologists have argued that Adolf Hitler suffered abuse as a child and that this accounted for his highly neurotic behaviour and his use of the Jews as an external scapegoat for these neuroses.<sup>425</sup> In some circumstances, over-permissiveness (a lack of consequences for bad behaviour) may also be associated with aggression as it constitutes a sort of positive reinforcement.<sup>426</sup> Attachment theorists, such as John Bowlby, argue that children with frequent separation from the affection of their mothers in their early years have a difficulty in bonding with others and typically lack empathy for others.<sup>427</sup>

Notorious Bosnian Serb militia leader Zeljko Ranatovic (Arkan) fled an abusive and alcoholic father at the age of nine entering into a life of juvenile delinquency and crime. In 1973 he was arrested for assault but family connections led to a dropping of the charges.<sup>428</sup> Shortly afterwards he was recruited into the secret police and began a new career harassing and killing Yugoslav political exiles throughout Europe. He also committed bank robberies during this period and was convicted of armed robbery in Belgium, The Netherlands, and Germany and was on trial in Sweden but escaped when members of his gang drew their weapons in court.<sup>429</sup> In the late 1980s he became the head of the fan club for the football team Red Star Belgrade (Arkan's pastry shop was opposite Red Star Stadium) and this group of football hooligans eventually formed the basis for the militia Arkan's Tigers. Alvarez argues that it is not surprising that that Arkan's Tigers were formed from a football fan club as there

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<sup>423</sup> Staub, *The Roots of Evil*, p. 72.

<sup>424</sup> Staub, *The Psychology of Good and Evil*, p. 200.

<sup>425</sup> Kressel 110-111. Other studies of Hitler such as Alice Miller's examination in *For Your Own Good* argue that Hitler came from an abusive background and that he was a sadist with anal-retentive impulses.

<sup>426</sup> Staub, *The Psychology of Good and Evil*, p.201.

<sup>427</sup> Lanier and Henry 134.

<sup>428</sup> Mann 404.

<sup>429</sup> Alex Alvarez, *Genocidal Crimes*, (New York: Routledge, 2010), p. 80.

is a connection between the phenomenon of sports hooliganism and such militia; both types of groups are linked to identity, territory, and masculinity.<sup>430</sup>

Genocide involves perpetrators of varied experience and social strata – thus the experience of perpetrators is not that important for the decision of the majority of perpetrators to participate in genocide (although it may be relevant for certain individuals such as Arkan). The one aspect of perpetrators' backgrounds that may be important is the effects of growing up in a society where the victimised group is denigrated or deemed a threat to the in-group.

### iii. Conditioning

We fed the heart on fantasies,  
The heart's grown brutal from the fare.  
- William Butler Yeats, "Meditations in Time of Civil War"

The conditioning (socialisation) of perpetrators also influences their attitudes and perception in the moment of perpetration. In Chapter Two the role of propaganda in the formation of attitudes was extensively analysed as was training in Chapter Three. Conditioning may heavily influence perpetrators' behaviour when you consider that, in the moment of killing, they will not have great opportunity for deep processing (the consideration of all aspects of the situation) and instead they must react quickly.

Social learning theory posits that individuals seek out role models (real or fictional) and seek to model their behaviour after these individuals. Thus, if génocidaires grow up in families that sanction violence (or discrimination) against out-groups it would be normal that the children growing up in such an environment would model their behaviour after their parents (this is part of the intergenerational aspect of the crime of genocide). One would also expect similar types of learned behaviour from peer role models, as is the case with the transgressive communities outlined earlier. If the results of their negative behaviour (i.e. killing) are positive then this will reinforce their belief in the model. Furthermore, *self-*

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<sup>430</sup> Alvarez, Genocidal..., p. 107.

*socialisation* may occur where existing characteristics drive an individual's behaviour and this behaviour elicits reactions that further develop those characteristics.<sup>431</sup> Socialisation is especially strong in the highly structured environments of military and police units where individuals may be conditioned to obey and to kill.

#### **iv. Biophysical**

Lastly, we must consider what role, if any, biophysical factors such as genetics and medical conditions, may play in perpetration. As with psychological factors, the effects of biophysical factors will be negligible for the vast majority of perpetrators, who are perpetrating a political crime within a certain social context. Moreover, in criminology in general the search for a “crime gene” has proven fruitless as have older biological explanations for crime such as human physiognomy (the study of facial features) and phrenology (the study of the shape of the head). Certain individuals may have a greater genetic predisposition to aggression but this is in no way determinative.<sup>432</sup> Genes do not really code for behaviour – the precise outcome of development cannot be predicted from starting conditions alone.<sup>433</sup>

The presence of brain injuries or abnormalities may also contribute to aggressive behaviour.<sup>434</sup> This is illustrated well by the famous case of Phineas Gage, a Vermont railway worker who had a tampering iron driven through his prefrontal cortex as a result of a 1848 explosion. Gage's behaviour changed completely from being mild mannered to belligerent.<sup>435</sup> Moreover certain types of brain tumours may sometimes cause irrational outbursts of violence (this was likely the case with multiple murderer Charles Whitman who killed sixteen people

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<sup>431</sup> Staub, *The Psychology of Good and Evil*, p. 207.

<sup>432</sup> Staub, *The Roots of Evil*, p. 35.

<sup>433</sup> Patrick Bateson, “Is Aggression Instinctive?” in Groebel and Hinde (eds.) 44.

<sup>434</sup> For a more detailed discussion of brain anatomy and its relation to aggression consult: J. Herbert, “The Physiology of Aggression,” in Groebel and Hinde (eds.), pp. 62-69.

<sup>435</sup> Dan J Stein, “The Neurobiology of Evil,” *Ethnicity and Health*, vol. 5, no. 3 (2000), p. 306. See also: Jeffrey Kluger, “What Makes us Moral,” *Time*, December 3, 2007, p. 36.

from a bell tower at the University of Texas in 1966.<sup>436</sup> Cerebospinal disorders and certain viruses (i.e. the Borna violence) have also been linked to neuro-behavioural and emotional problems while there are also theories linking aggression to factors such as an extra Y chromosome, defective genes, biochemical imbalances, low intelligence, brain chemical disorders, perinatal trauma, and low levels of the neurotransmitter serotonin.<sup>437</sup> Although there might be certain disparate individuals who are influenced by unusual conditions but the great majority of perpetrators will not possess these traits.

Some scientists also argue that collective violence serves certain genetic functions by directing aggression away from the in-group, thus protecting the gene pool.<sup>438</sup> Fromm distinguishes between *biologically adaptive benign aggression* (phylogenetically programmed aggression, common to animals and men, in response to threats to vital interests and focussed on the removal of that threat) and *biologically non-adaptive malignant aggression*.<sup>439</sup> Genocide and similar forms of violence are malignant in that they are socially-produced conceptions of threat, often without basis in reality and they are not directed at the mere removal of the threat but rather the complete destruction of the ‘sub-species’ (according to Kai Erickson’s concept of pseudo-speciation).

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<sup>436</sup> Whitman left a suicide note which read: “I have been a victim of many unusual and irrational thoughts...overwhelming violent impulses...after my death I wish that an autopsy would be performed on me to see if there is any visible physical disorder. I have had tremendous headaches...I decided to kill my wife...I cannot rationally pinpoint any specific reason.” An autopsy was performed and it was found that Whitman had a walnut-sized malignant tumour in the hypothalamus region of his brain and that this was the “probable cause of his criminal actions.” Lanier and Henry 101-102.

<sup>437</sup> Perinatal factors (factors occurring around the time of birth) that have been linked to criminal behaviour include: low birth weight, perinatal trauma, birth defects, and maternal smoking. See: Lee Ellis, “Biological Factors Associated with Criminal/Antisocial Behaviour,” in Clifton D. Bryant (ed.), Encyclopedia of Criminology and Deviant Behavior, (Philadelphia: Brunner-Routledge, 2001), p. 27. See also: Lanier and Henry 102.

<sup>438</sup> Konrad Lorenz also argued that intra-specific aggression could be useful to 1) ensure the spacing of individuals of one species over available habitat and 2) eliminating weak individuals through natural selection. Erich Fromm rebuts Lorenz’s thesis of an evolutionary bias for aggressive behaviour by pointing out that population densities were relatively low in prehistory and that aggressive men would be killed as a result of their behaviour, thus natural selection would favour non-aggressive individuals as aggressive individuals would die before they were able to produce many offspring. See Fromm 39.

<sup>439</sup> Fromm 212.

Collective violence does not generally occur among animals, with some possible exceptions. Insects found in the class Hymenoptera (ants, bees, and wasps) will engage in “warfare” sometimes resulting in thousands of deaths and the complete extermination of a colony. Primates such as chimpanzees, gorillas, and vervet monkeys do engage in intraspecific group violence but it is generally instrumental (territorial, resource-based, or to further reproduction).<sup>440</sup> Humans are unique in that we have the capacity to project future and potential threats, we can be persuaded of false threats through the medium of language (propaganda) and our brain capacity, and our range of vital interests is much broader.<sup>441</sup> Moreover, sadistic behaviour seems to require complex brain organisation (chimpanzees are the only animal, besides humans, which sometimes engages in sadistic behaviour).<sup>442</sup> There is no real parallel to genocide in the animal kingdom, perhaps because only humans are capable of the ideological belief which drives genocide.

### ***The Social and Role Margin of Discretion***

The social and role margin of discretion are far more important than the background of perpetrators in terms of effecting the decision to perpetrate.<sup>443</sup> The *social margin of discretion* is the perceived range of choices available to the perpetrator based on the society in which they live, while the *role margin of discretion* is the perceived range of choices available to the perpetrator based on their role within that society. The social margin of discretion has already been discussed extensively in this thesis, though it was not named as such. In genocidal societies the victim group is extensively dehumanised and strong vertical and horizontal conformity pressures are placed on all individuals within the group. It can be very difficult to resist such pressures. Growing up in a genocidal society is itself a form of psychological

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<sup>440</sup> For further information of these sociobiological/ethological questions consult Jeffrey H. Goldstein in Groebel and Hinde pp. 13-32.

<sup>441</sup> Fromm 223.

<sup>442</sup> Dutton 12.

<sup>443</sup> For further information on this subject see: John M. Steiner, “The role margin as the site for moral and social intelligence: The case of Germany and National Socialism,” no. 34. (2000), pp. 61-75.

conditioning. The perpetrator may actually believe that they have no choice other than to perpetrate when they are embedded in such an environment. In effect the perpetrator has a limited social margin of discretion. This does not mean that the perpetrator does not possess the ability to choose not to perpetrate, but rather that their perceived range of choice is narrower than it would be for an individual in a different society.

The role margin of discretion may also significantly influence perpetrator decision-making. For example, if a perpetrator is a police officer they may believe that it is their duty to carry out the orders of the regime, even if these orders extend to genocide. Such extreme commitment and identification with duty was called “role narcissism” by George De Vos.<sup>444</sup> It has been identified in this thesis as the “denial of autonomy” technique of neutralisation. Perpetrators may also be heavily influenced by the organizational culture which exists within their particular organisation. Both the social and role margin of discretion may also contribute to the self-objectification of perpetrators as the social and role context of perpetrators may increase their tendency to conform to their peers and/or obey authority.

### ***Proximal Influences***

#### **i. Obedience to Authority/Conformity**

The final category of factors which impact perpetrator decision-making is proximal influences, those influences present in the immediate environment of the perpetrator. Proximal influences include factors such as obedience to authority, conformity, group dynamics, threat perception, emotion, distance, and intoxication. We will examine each of these elements in turn, beginning with obedience to authority.

When speaking of obedience to authority our analysis actually incorporates several closely related phenomenon including: *coercive obedience* (obedience aimed at avoiding negative consequences for the recipient of the demand), *habitual obedience* (obedience resulting from conditioning rather than any direct fear of negative consequences), and *social*

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<sup>444</sup> Hinton, Why Did They Kill, p. 268.

*obedience* (obedience rooted in social conformity and the existential fear of standing alone). All three of these forms of obedience are prevalent in genocides to a varying degree. Habitual obedience and coercive obedience both flow from structures of authority (such as government) and the difficulty most people have in resisting the power of such structures.

Social obedience is driven by the fear of standing alone; this existential fear seems to be a part of the human condition. Singular individuals are often marginalised by the community. Yet, even without the fear of negative social sanctions standing alone (non-conformity) can be frightening for many people. Knowledge of and compliance with “situational etiquette” (the action appropriate in a particular situation) greatly eases social relations. Breaking ranks with your comrades is an asocial act.<sup>445</sup> Moreover, the refusal of an unpleasant communal obligation is both a form of duty shirking (leaving others to do the “dirty work”) and an expression of moral reproach (in the Josefow massacre in the Holocaust non-shooters had the tendency to attribute their behaviour to being “too weak” rather than “too good”).<sup>446</sup> Shame is a strong mechanism of social control: people will seek to avoid negative social evaluation by conforming with their peers. As both Fromm and Hoffer observed, individual freedom also multiplies the potential for failure and the consequences of such failure (without any diffusion of responsibility or social support system). Genocide perpetrators may drift into perpetration because they fear being socially ostracised (this fear of social isolation is reflected in the *claim of normalcy* technique of neutralisation).

Conformity, the convergence of individuals towards a social norm, has strong effects on individual behaviour. This was demonstrated in the famous Asch experiment in 1951 where individuals were shown two cards, one with a standard line and another one with three lines (two of which were an obviously different length than the standard line). When asked which line was the standard line, after other individuals had already stated their opinions, subjects usually gave a totally wrong answer in order to conform better to the responses of

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<sup>445</sup> Browning, *Ordinary Men*, p. 185.

<sup>446</sup> Browning, *Ordinary Men*, p. 185.

their peers.<sup>447</sup> Conformity is rooted in our need for connectedness and the construction of a shared reality; this shared reality can take the form of ideology. Individual's making decisions also often use a "reference group" of trusted sources of information to make their judgement. One genocide perpetrator states: "the jeering of colleagues is awful to overcome...When the killings begin you find it easier to ply the machete than to be stabbed by ridicule and contempt."<sup>448</sup> Killing may actually become a means to demonstrate loyalty to the group.

The desire to conform greatly magnifies the power of groups to influence individual behaviour. Social psychologists have observed the *coaction effect* – that people work faster when they see others work, as well as the *audience effect* (also known as *evaluation apprehension*) – that people work faster when observed by others.<sup>449</sup> It is reasonable to believe such effects also operate in the case of genocidal killing in group settings; indeed, several interview respondents explicitly stated that their participation in genocide occurred, in part, as a result of observing the genocidal behaviour of their peers.

In one variation of Asch's study where the subjects had an ally, conformity decreased to only 10%.<sup>450</sup> This finding is important because it shows that the spell of individual conformity can easily be broken where the individual being pressured is not alone. Similarly Milgram's finding that arguments between the experimenters greatly reduced obedience to authority shows the importance of the singularity of discourse and narrowing of awareness in genocide.

It is common for authority figures to be present in the environment of perpetration. Even when genocide is decentralised there is still state involvement of some sort. In Rwanda, authority figures such as military, police, and state officials were usually present at killing sites. In some cases individuals may be directly pressured to kill, with the implication that non-compliance will have serious negative consequences for them. Yet, this seems relatively

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<sup>447</sup> Replications of this study have shown that conformity is even greater in inter-dependent cultures than in independent cultures. See: Smith and Mackie 311.

<sup>448</sup> Hatzfeld 226.

<sup>449</sup> Butler and McManus p. 112.

<sup>450</sup> Smith and Mackie 317.

rare; rather, most obedience is habitual, cultural, or self-interested. These factors can lead to the formation of a sort of “subjective necessity.”<sup>451</sup> Post-war German prosecutors searched Nazi records and found no case “in which refusal to carry out an order would have entailed an objective danger for the life and limb of the recipient of that order.”<sup>452</sup> For example, Ernst-Boje Ehlers of the *Einsatzgruppen* refused an order and was transferred to an office job.<sup>453</sup> In specialised killing organisations, such as the SS, obedience is habitual. In some cases individuals may face a choice between committing a definite wrong (by violating the norm of obedience) and a possible wrong (by killing a person condemned by legitimate authorities).<sup>454</sup>

## ii. Group Dynamics

Most perpetrators are presented with the opportunity to kill while they are within a group of killers. As we already demonstrated in Chapter Three the group can also exert a tremendous influence on individual killers. Psychologists have also observed the phenomenon of “emotional contagion” where we mimic the emotions of others.<sup>455</sup> Emotional contagion is present in group settings – when the people around us are projecting hate against the dehumanised other (or joy at tormenting them) these emotions may exert a powerful effect on us.

The group also gives perpetrators a degree of anonymity and diffuses responsibility. The anonymity effect of group perpetration allows people to behave in ways they would not normally if they were faced with the prospect of being singled out and ostracised. As Oscar Wilde wrote, “give a man a mask and he will tell you the truth.” The more closely a perpetrator is bonded to the group the lower their costs of perpetration and the less likely it is that they will feel like an autonomous actor. Without autonomy, perpetrator decision-making

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<sup>451</sup> Mann 269.

<sup>452</sup> Mann 268.

<sup>453</sup> Mann 268.

<sup>454</sup> Baumeister 267.

<sup>455</sup> For example, when a baby cries, others will also start to cry; when a person yawns, other people will feel the urge to yawn. See: Beck 146.

is isolated from the weight of consequence. Group cohesion tends to increase in times of tension and conflict (such as genocide). In strong groups all individuals must participate (or appear to participate). An individual who has experienced a strong degree of de-individuation (such as someone in a specialized killing organization) may experience an extensive reduction of moral cost as their individual identity is eroded (the denial of autonomy).

### **iii. Perceived Threat**

When perpetrators perceive the victims as a threat to their personal safety (either in the short or the long term) this may greatly impact the decision to perpetrate. Indeed the benefits of perpetration increase (or rather the costs of non-perpetration increase). Moreover, the killing act, when directed against individuals who are a ‘threat’ to the perpetrator or their social group is transformed into an act of self-defence, thus not threatening to the values of the perpetrator. According to psychologists threats and frustration are the two main sources of aggression.<sup>456</sup> Victims may be deemed to pose a threat to perpetrators either on a personal level (this person is a threat to me) or on a generalised level (this person is a part of the out-group that threatens the in-group that I am a member of and therefore they are threat to me). Ideology connects these two notions of threat – the “personal Jew” with the “metaphysical Jew.”

### **iv. Emotion**

When perpetrators feel anger towards their victims certain biophysical responses are triggered easing perpetration (and perhaps bypassing cost/benefit analysis and values analysis entirely). Some studies show that aggression, the intent to harm others, is linked to anger and other negative emotions (i.e. frustration, fear, pain), although anger is often simply expressive.<sup>457</sup> Aggression may also be an effective means to excise anxiety.<sup>458</sup> The

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<sup>456</sup> Staub, *The Roots of Evil*, p. 35.

<sup>457</sup> Smith and Mackie 480; and Seymour Feshbach, “The Bases and Development of Individual Aggression,” in Jo Groebel and Robert A. Hinde (eds.), *Aggression and War: Their Biological and Social Bases*, (New York:

frustration-aggression hypothesis posits that aggression may be caused by non-attainment of an expected goal. An individual who is provoked to anger often views the actions of the target as only the most recent provocation in a long series.<sup>459</sup> Thus, the anger of *génocidaires* may be an anger born from the dehumanisation and hostile framing of the victim group. This genocidal form of hate and anger may significantly alter the rationality of perpetrator decision-making.<sup>460</sup> Emotional arousal tends to limit people's potential to carefully process information and therefore such emotional states make aggression more likely.<sup>461</sup> Furthermore, groups are less capable of anger-suppression than individuals.<sup>462</sup>

Research on “ordinary crimes” such as murder have also linked spikes in violence to unpleasant atmospheric conditions (i.e. extraordinarily hot weather).<sup>463</sup> No such studies have been done on forms of mass violence such as genocide and crimes against humanity. However, the nature of genocide as a political and ideological crime means that such violence does not occur spontaneously, although individual acts of violence may be partially driven by emotional arousal.

#### **v. Distance**

The greater the physical distance between the perpetrator and the victim the less the perpetrator is able to sense the human consequences of their act (inflicting suffering on a fellow human being) and the lower the value costs of such an act are. In fact, through the denial of injury, the perpetrator is able to completely deny the implications of their act. Moreover, the costs of perpetration decrease as perpetration becomes easier, requiring less effort on the part of the perpetrator (it is easier to kill someone by pressing a button on the

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Cambridge University Press, 1993), p. 80. Anger may be manifested in physical sequelae such as muscle tensing.

<sup>458</sup> Fromm 224.

<sup>459</sup> Horowitz, *The Deadly Ethnic Riot*, p. 538.

<sup>460</sup> The same argument has been made with respect to “ordinary” hate crimes. See: Piquero and Tibbets 267.

<sup>461</sup> Smith and Mackie 486.

<sup>462</sup> Jacob M. Rabbie, “Group Processes as stimulants of Aggression,” in Groebel and Hinde (eds.) 150.

<sup>463</sup> Berkowitz in Groebel and Hinde 99.

other side of the world than it is to wrestle them into submission and drive a knife through their throat). One perpetrator recalls, “killing with a gun is a game compared to the machete, it’s not so close up.”<sup>464</sup>

#### **vi. Intoxication**

Intoxication may have the effect of lowering perpetrator inhibitions and this can influence the perpetrators’ assessment of value and other costs. In fact, all of these costs are lowered as the perpetrator is under the thrall of their high. Studies show that alcohol makes people more aggressive.<sup>465</sup> For example, many Latvians in auxiliary police battalions during the Holocaust drank before, during, and after killings.<sup>466</sup> A survivor of Omarska concentration camp in Bosnia recounts “the beating was constant; they were always completely drunk.”<sup>467</sup> The effect of intoxicants in influencing perpetrator intent is recognised in many jurisdictions as an excuse. Of course, the perpetrator’s treatment of the victims is not only a product of proximal factors but also structural constraints (i.e. entrepreneurial cruelty was discouraged within many Nazi concentration camps), and the perpetrator’s view of the victims.

### **4.6 Indirect Perpetrator Decision Parameters**

Indirect perpetrators are subject to the background conditions and the social and role margin of discretion like direct perpetrators. The proximal factors are not relevant because the indirect perpetrator is not present at the scene of perpetration. Indirect perpetrators rarely see the consequences of their perpetration, thus they can maintain the purity of their utilitarian ideology without being concerned with the implications of their beliefs. For example,

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<sup>464</sup> Hatzfeld 22.

<sup>465</sup> Busman and Cooper 348. It is not entirely clear whether alcohol facilitates aggression directly by paralysing inhibitors in the brain, indirectly through the cognitive changes which accompany alcohol consumption, or whether alcohol is linked to aggression through predispositions.

<sup>466</sup> Mann 284.

<sup>467</sup> Alvarez, Governments, Citizens, and Genocide, p. 24.

Himmler, upon witnessing the execution of two hundred Jews in Minsk, was on the verge of physical collapse.<sup>468</sup> Nonetheless, there are other factors relevant to the cost/benefit analysis and values analysis of indirect perpetrators.

As argued elsewhere indirect perpetrators may participate for purely instrumental reasons (the desire to gain or maintain power or material benefits) or for ideological reasons (the desire to implement a program of political/social change). This distinction between entrepreneurial and ideological leaders roughly corresponds to Max Weber's typology of instrumental rationality and value rationality and the distinction in my work between cost/benefit analysis and values analysis.<sup>469</sup> Therefore, indirect perpetrator decision-making may be driven primarily by instrumental factors/cost-benefit analysis (i.e. the maintenance of power) or by values analysis (i.e. ideology). One may then place genocidal leaders on a continuum of instrumentality with some leaders (Pol Pot for example) placing lower on the scale of instrumentality, as he is more ideologically-driven.<sup>470</sup>

Instrumental leaders may choose to use genocide as an extreme measure to eliminate threats to the state or to the power of state leaders. This opposing threat may be considered on the basis of its size, organisation (i.e. is it a cultural organisation or a political party?), goals (does it seek to transform or destroy the existing state and state leadership?), and tactics (does it use violence?).<sup>471</sup> War, as an extreme threat to the state and state elites, may justify extraordinary violence in the eyes of indirect perpetrators.<sup>472</sup> Genocide may also be a means for leaders to increase their power as genocide demands unity in the face of threats.

#### **4.7 Perpetration and Post-Perpetration**

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<sup>468</sup> Midlarsky 187.

<sup>469</sup> See: Max Weber, The Theory of Social and Economic Organization, (New York: Oxford University Press, 1947).

<sup>470</sup> For further detail on these concepts consult the work of Maartje Weerdesteijn at the VU University, Amsterdam.

<sup>471</sup> Mitchell 32.

<sup>472</sup> Mitchell 32.

### *The Killing Inhibition*

#### **i. “Willing Executioners”**

Now that we have analysed the decision-making of perpetrators we must also consider the killing act itself and what happens to perpetrators after perpetration (including the process of recidivism). One of the central debates in the field of genocide studies is how difficult it is for perpetrators to kill. Some theorists, like Daniel Goldhagen, argue that génocidaires are ‘willing executioners’ who are driven by hate to kill their victims. In contrast, other specialists, like Christopher Browning, argue that most perpetrators are reluctant. The evidence gleaned from my research shows that the conclusions of Goldhagen over-emphasize the determinative nature of genocidal hate ideology. Thus, if Browning’s view is correct and perpetrators are reluctant, what is the nature of this inhibition? In order to answer this question the work of military psychologist Dave Grossman is informative.<sup>473</sup> Grossman concludes in his research that killing is quite difficult but that almost any person can learn to kill if conditioned to do so.

Why is killing difficult? Perhaps the difficulty arises partly from the moral prohibition on killing that is ingrained in us from a very young age, but perhaps also the challenge of killing arises from human intelligence itself: we recognise something of ourselves in our victims and it is this capacity for empathy that must be overcome (through dehumanisation for instance). One Rwandan perpetrator recalls, with agonising clarity, the killing moment:

Still I do remember the first person who looked at me at the moment of the deadly blow. Now that was something. The eyes of someone you kill are immortal, if they face you at the final instant. They have a terrible black colour. They shake you more than the streams of blood and the death rattles, even in the great turmoil of dying. The eyes of the killed, for the killers, are his calamity if he looks into them. They are the blame of the person he kills.<sup>474</sup>

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<sup>473</sup> Dave Grossman, *On Killing*, (New York: Back Bay Books, 1996).

<sup>474</sup> Hatzfeld 22.

After witnessing the mass killing of one hundred Jewish persons in 1941 *Einsatzgruppen* general Erich von dem Bach-Zelewski protested:

Look at the eyes of the men in this Kommando, how deeply shaken they are! These men are finished for the rest of their lives. What kind of followers are we training here? Either neurotics or savages!<sup>475</sup>

We must also consider the possibility that the source of the killing inhibition in some individuals is not moral so much as it is disgust with the literally visceral nature of killing.

Another SS officer went so far as to argue that “the people really worthy of pity were we, the liquidators, because our men were in worse nervous condition than those who had to be shot.”<sup>476</sup> This is not really true, rather Roy Baumeister spoke of the *magnitude gap* – the fact that most perpetrators (of all crimes) place much less emphasis on their crimes than victims.<sup>477</sup> Perpetrators also tend to speak of their crimes in minimalistic, detached language and do not consider the effects of the past on the present.<sup>478</sup>

Yet, one reason the Nazis shifted from direct killing (executions, gas vans) to industrialised killing was the psychological toll that repeated killings took on the perpetrators. A psychiatrist with the *Einsatzgruppen* estimated that 20% of troops suffered psychological “decomposition” (half of these from “moral issues” and half from the “unpleasantness” of the task).<sup>479</sup> The use of alcohol and other intoxicants is also indicative of the difficulty which some perpetrators experience while killing. One Nazi doctor who worked in a concentration camp recalls: “one got drunk every time...a certain number of bottles were provided for each selection.”<sup>480</sup> There is a wide range of perpetrator reactions to killing. One witness in the Eichmann trial stated “the variety of their [SS men] reactions to killing was quite extensive...some get almost hysterical, some close to a nervous breakdown and some just go on shooting and killing.”<sup>481</sup> Freud argued that conflict between moral regulation (the

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<sup>475</sup> Lifton 159.

<sup>476</sup> Mann 247.

<sup>477</sup> Baumeister 19.

<sup>478</sup> Baumeister 42-43.

*superego*) and instinct (the *id*) can lead to feelings of guilt (cognitive dissonance, in a sense). The *id* will be moulded and sublimated to meet the demands of the *superego* (neutralisation). The resistance to killing can be overridden by structures enabling killing as well as vocabularies of motive.

## ii. Fight or Flight Revisited

In light of this killing inhibition, the so-called fight or flight response to danger may be revised to help explain the choice matrix available to genocide perpetrators. It is true that reluctant perpetrators, when placed in the killing environment, may choose to *fight* (kill) or *flee* the scene (avoid killing), but they may also choose to *posture* (simulate killing) or *resist* (refuse to kill entirely). The option which a perpetrator chooses may be dependent on the decision-making structures discussed earlier in this chapter.

Often avoiding behaviour (posturing or flight) is tolerated among groups of killers. One perpetrator in Rwanda explains, “if someone presented a little excuse, we would offer to take on his part of the job that one time.”<sup>482</sup> Another perpetrator recounts “those who wanted to chat, chatted, those who wanted to dawdle, dawdled – if they could avoid being noticed.”<sup>483</sup> In Christopher Browning’s history of the Jozefow massacre he recounts that about a dozen men (out of five hundred) accepted commanding officer Major Trapp’s offer to not take part in a mass execution. Moreover, “almost tacitly everyone refrained from shooting infants or small children,” and

Some policemen who did not request to be released from the firing squads sought other ways to evade. Non-commissioned officers armed with submachine guns had to be assigned to give so-called mercy shots ‘because both from excitement *as well as intentionally*’ individual policemen ‘shot past’ their victims...others...hid in the Catholic priest’s garden until they grew afraid that their absence would be

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<sup>479</sup> Mann 271.

<sup>480</sup> Lifton 193.

<sup>481</sup> Sivan 20:56.

<sup>482</sup> Hatzfeld 12.

<sup>483</sup> Hatzfeld 13.

noticed...others hung around the marketplace because they did not want to round up Jews during the search. Still others spent as much time as possible searching the houses so as not to be present at the marketplace, where they feared being assigned to a firing squad. A driver assigned to take Jews to the forest only made one trip before he asked to be relieved. 'Presumably his nerves were not strong enough' [commented the man who took over his driving duties].<sup>484</sup>

One participant in the massacre recalls "I myself took part in some ten shootings, in which I had to shoot men and women. I simply could not shoot at people anymore...at the end I repeatedly shot past...other comrades were also relieved sooner or later because they simply could no longer continue."<sup>485</sup>

One might attribute such avoidance behaviour to the fact that many of the participants in the massacre were not violence professionals. Yet, as Dave Grossman argues in his important work *On Killing*, there is a long history of professional soldiers intentionally 'shooting past' their would be victims (this was confirmed in the firing studies of SLA Marshall dealing with the lethality of American soldiers in the Pacific Theatre of Operations during the Second World War).<sup>486</sup> Moreover, there is significant evidence that destructive aggression occurs in conjunction with momentary or chronic emotional withdrawal (i.e. killing occurs in moments when the inhibition is lowered).<sup>487</sup> However, improved training (socialisation and conditioning) techniques have greatly reduced posturing and flight among soldiers in combat.<sup>488</sup> Accordingly, one would expect that posturing and flight would be greatest in genocide among amateur, rather than well-trained professional perpetrators.

### *Rationalisations and Coping Mechanisms*

#### **i. Rationalisation and Ideological Self-Justification**

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<sup>484</sup> Browning, *Ordinary Men*, pp. 62-63.

<sup>485</sup> Browning, *Ordinary Men*, p. 65.

<sup>486</sup> Dave Grossman, *On Killing*, (New York: Back Bay Books, 1996).

<sup>487</sup> Fromm 147.

<sup>488</sup> See Grossman.

I admit and recognize my obedience at that time, my victims, my fault, but I fail to recognize the wickedness of the one who raced through the marshes on my legs, carrying my machete. That wickedness seems to belong to another self with a heavy heart.<sup>489</sup> – Pio, génocidaire

The neutralisation of the killing inhibition is not a complete neutralisation. Most perpetrators still face psychological consequences for their killing in the short term and the long term. The moral prohibition on killing is not completely removed. It seems logical to posit that the psychological consequences for direct perpetrators are greater than for the indirect perpetrators (even though indirect perpetrators such as leaders may be responsible for many more deaths than direct perpetrators). There are various ways that the psychological and moral impact of killing may be reduced including through rationalisations, psychological defence mechanisms, and substance abuse.

We have already extensively discussed perpetrator rationalisations in Chapter Two but we can add two techniques of neutralisation here that are only post-facto: the *ledger metaphor* and the *denial of genocide*.<sup>490</sup> The ledger metaphor is not a true technique of neutralization (in the same vein as the others) because it is really only employed as a *post-facto* rationalization rather than a vocabulary of motive. In some sense the techniques of neutralisation may be especially useful as explanations of persistence or desistance in crime – the perpetrators commit their acts without great consideration in a setting of intense social pressures and then, when they have more time for reflection, they must rationalise their acts in order to re-perpetrate.<sup>491</sup> Yet, as argued previously, the techniques of neutralisation underscore the definition of the victims and the situation and this facilitates violence in the killing moment. In the ledger metaphor the perpetrator reduces the magnitude of their transgression by arguing that they have done more good than harm in their life. Genocide denial may also be a form of neutralisation, as perpetrators reduce the magnitude of the violence in order to reduce their

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<sup>489</sup> Hatzfeld 48.

<sup>490</sup> For more information on the ledger metaphor see: Carl B. Klockars, *The Professional Fence*, (New York: Free Press, 1974).

<sup>491</sup> Maruna and Copes 271.

own perceived moral responsibility. In general, neutralisation and ideological justifications have the ability to restructure morality in order to render past transgressions justifiable. The self-delusions of perpetrators are more than just duplicitous – they are also a means of self-preservation.

### **ii. Other Coping Mechanisms**

In addition to justifications, perpetrators may cope with the impact of killing through other mechanisms. Psychological defence mechanisms (such as doubling and denial) may psychologically insulate perpetrators from the consequences of their acts. This ability of some people to psychologically compartmentalise is illustrated well by the diary of Dr. Johann Paul Kremer (a doctor in Auschwitz):

September 4, 1942...present at special action [selection] in the women's camp...the most horrible of horrors...September 6...today, Sunday, an excellent dinner! Tomato soup, half a chicken with potatoes and red cabbage...October 10...I took and preserved...material from quite fresh corpses, namely the liver, spleen, and pancreas...October 11...today, Sunday, we got for dinner quite a big piece of roast hare with dumplings and red cabbage.<sup>492</sup>

Finally, substance abuse may allow the perpetrators to enter a kind of stupor where the difficult emotional state (of some perpetrators) is alleviated.

### ***The Decreasing Cost Margin of Perpetration***

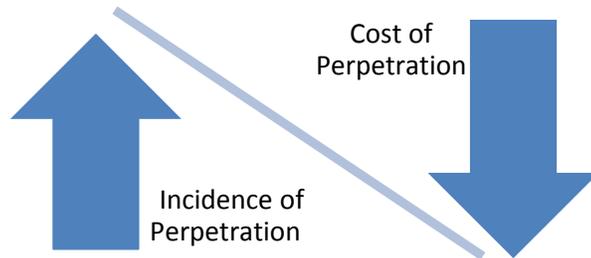
#### **i. Introduction**

The cost of participation in killing should decrease over time. This is because killing generally becomes easier as killers become habituated. Therefore, the marginal cost of killing also decreases, i.e. the additional “value” (moral) cost of killing is less for each victim killed. This process can be represented graphically:

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<sup>492</sup> Lifton 292.

**Figure 4.4 The Decreasing Cost Margin of Perpetration**



Dr. B. recalls that new doctors arriving at Auschwitz would “ask ‘how can these things be done here?’” but gradually these doctors would adjust to the “Auschwitz reality.” This decreasing cost margin of perpetration occurs in spite of the increasing punishment of the perpetrator for subsequent criminal acts (up to a point) in criminal law. Also, this decreasing cost margin may not be true in the long term in a psychological sense.<sup>493</sup> The decreasing cost margin of perpetration results from several processes including 1) killers’ euphoria, 2) learning by doing, 3) positive feedback, and 4) multiple transgression theory.

### **ii. Learning by Doing**

Learning by doing (habituation) is closely related to the concept of positive reinforcement. Killing becomes easier as killers become used to it – it becomes a part of routine (*routinization*). Perpetrators feel the need to justify their actions and these justifications will lead to an increasing radicalisation and isolation from regular norms. Thus, perpetrators may redefine their self-image in order to achieve consistency with their actions. The new self may be monstrous by ordinary standards: one German soldier involved in the racial war being waged on the Eastern Front wrote a plaintive letter to his wife saying “one has to be ruthless and unmerciful. Don’t you have the impression that it’s not me but a

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<sup>493</sup> Differences in susceptibility to conditions such as Post-Traumatic Stress Disorder (PTSD) also appear to be more of a product of individual differences in adaptability as opposed to the magnitude of the act of perpetration.

different person who is speaking to you?”<sup>494</sup> Thus, the very rationalisations that render perpetration justifiable will also lower the costs of re-perpetration (recidivism). Prior experience with killing will also make killing easier for perpetrators.

### **iii. Killer’s Euphoria and Empowerment**

Some perpetrators receive a neurophysiological “high” from killing. This is similar to the euphoria felt by some soldiers in war and some hunters through the process of hunting. It is produced by an increase in levels of endogenous opiates.<sup>495</sup> Such a high “rewards” and positively reinforces criminal behaviour. Killing can also provide perpetrators with a sense of empowerment, as killing is the ultimate expression of the omnipotence of the killer and the powerlessness of the victim. Control by dominants over subordinates may also have a physical pay-off through endocrinal and metabolic mechanisms.<sup>496</sup>

### **iv. Positive Reinforcement**

The killing act is buttressed by *post-facto* positive reinforcement. This reinforcement may take the form of peer (or authority) approval or rewards. Rewards may be direct such as the distribution of money, property, or alcohol or indirect such as career promotions. For example, one Rwandan perpetrator recounts that “people who were enthusiastic killers were embraced by the authorities” while another claims that “when you killed someone you were rewarded. If you were a civilian you would instantly become an army officer with rank the next day.”<sup>497</sup> Reinforcement has the effect of lessening the impact of the killing act as well as providing some impetus for re-perpetration. It may also contribute to the development of a

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<sup>494</sup> Hannes Heer and Klaus Nauman, War of Extermination: The German Military in World War II 1941-1944, (New York: Berghen Books, 2000), p. 332.

<sup>495</sup> Walter R. Gove and Charles Wilmoth, “The Neurophysiologic High That Would Appear to Positively Reinforce Criminal Behavior,” in Clifton D. Bryant, (ed.), Encyclopedia of Criminology and Deviant Behavior, (Philadelphia: Brunner-Routledge, 2001), p. 238.

<sup>496</sup> Herbert 63 in Groebel and Hinde.

<sup>497</sup> Rwandan Perpetrator Interview R39, farmer, Nyarusenge TIG Camp, August 31, 2009 and Rwandan Perpetrator Interview R75, sector counsellor, Kigali Central Prison, October 27, 2009.

conditioned response to certain stimulæ. The absence of serious consequences for perpetrators may also provide validation for their wrongful behaviour.

#### **v. Multiple Transgression Hypothesis**

Finally, the marginal cost of perpetration is lowered through what can be called the *multiple transgression hypothesis*. The multiple transgression hypothesis posits that once a rule has been transgressed and the perpetrator has crossed the boundary into being a rule violator there is little incentive for the perpetrator stop further violations of the rule and to return to “ordinary” values. In other words, with the first act of perpetration (particularly with very serious crimes such as genocidal killing and rape) an individual has been labelled as a “perpetrator” (or worse a “murderer”) and there is no going back. Therefore, the first act of perpetration is really the most costly and frequent perpetration involving many victims transforms perpetration from a personal act to an abstraction. A perpetrator who has already killed ten people has little to lose by killing an eleventh. Many perpetrators do re-perpetrate. One Cambodian perpetrator interviewed for this study is alleged to have killed as many as two thousand people by his own hands (executions with a blunt instrument), while there is evidence that Josef Klehr, an SS sergeant, killed 475 people personally.<sup>498</sup>

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<sup>498</sup> Mann 253.

#### **4.8 Conclusion – Individual Autonomy and Responsibility**

Individual participation in genocide results from a complex interaction between contextual factors, experiential factors, and individual personality. In spite of the intense situational factors present in genocidal cultures, the decision to participate in genocide remains a decision. This is evinced well by the differential response of individuals placed in the same social circumstances.

Individuals who do participate in genocide may do so in many different ways such as direct perpetration (killing), ordering, organising, encouraging, etc. These different forms of participation are all essential for the collective enterprise of genocide. We must consider whether different forms of participation and different personal circumstances of the participants dictate that moral and legal responsibility must also be differential. Who is more responsible – the leader who directs killing on a massive scale or the individuals who actualise such killing? A distinction is often made between aiding and abetting (secondary responsibility for those present at the scene of the crime) and procuring and counselling (tertiary responsibility for those not present) yet both roles are essential for the commission of the mass crime of genocide.<sup>499</sup> In “performance” cases, such as a situation where a crowd gathers to watch two men who appear about to fight, individuals in the crowd may be considered responsible on the basis that the mere presence of the crowd encourages violence.<sup>500</sup> However, people in the crowd must be aware of the effect of their presence. Much genocidal violence in cases such as Rwanda and Bosnia is public, is such violence then best characterised as performance violence? Is the presence of the crowd essential for the commission of genocide? The short answer would appear to be “yes” – the extensive discussion of the formation, constitution, and impact of killing groups in this work leads us to the inevitable conclusion that genocide is a social crime. Thus, bystanders also become perpetrators as their behaviour enables genocidal killing in all its forms.

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<sup>499</sup> May, Genocide, p. 161.

<sup>500</sup> May, Genocide, p. 161.

Individuals choose to perpetrate genocide but this choice is not made in isolation, but rather is influenced heavily by their social environment. Perpetrators voluntarily become objects of external forces or, in the case of vanguard perpetrators, work themselves to generate those forces. The next chapter of this work will address the implications of our genocide process model for the prevention of genocide.

## Chapter 5 – Prosecution as Prevention

### **5.1 Introduction: Genocide, Crime Prevention, and Societal Recidivism**

If there is any validity to notions of human connectedness, then genocide and other forms of mass killing are intolerable threats to our shared humanity. Yet, the discourse on genocide prevention is relatively scant when compared with what has been written on the causes and historiography of genocide. This chapter will attempt to make a modest contribution to the literature on genocide prevention by focussing on neglected aspects in the prevention of genocide as a crime, particularly the prevention of genocide at the micro, individual level.

In our discourse on prevention we can distinguish between what can be called *general prevention* (the prevention of genocide and other similar phenomenon before any apparent risk of genocide) and *specific prevention* (the prevention of genocide where there is an apparent and imminent high risk of genocide). The prevention of genocide, like the causes of participation in genocide, is complex and requires a multi-faceted approach. In this chapter specific measures are proposed to disrupt individual genocidal intent. Moreover, the utility of prosecution as a tool of genocide prevention will be critically assessed. Individuals are rational actors, thus the individual perpetration of the crime of genocide is best prevented by making genocide more difficult and costly to perpetrate.

### **5.2 Interrupting Genocidal Processes**

The cost-benefit and values analysis outlined in the prior chapter can be altered in ways to make the participation in genocide unappealing. Furthermore, victims can be made less vulnerable and bystanders may be mobilised to resist genocide and rescue victims.

These measures are summarised in the following chart:

**Figure 5.1 Genocide Disruption Tool Kit**

<b>Actor</b>	<b>Measures</b>
<b>Elite Perpetrators</b>	<ul style="list-style-type: none"> <li>• Remove incentives for genocide</li> <li>• Remove from power</li> </ul>
<b>Low-level Perpetrators</b>	<ul style="list-style-type: none"> <li>• Make it clear that genocide is wrongful</li> <li>• Make it clear that participation in genocide will result in adverse consequences for the perpetrator</li> <li>• Disrupt the means of participation</li> </ul>
<b>Victims</b>	<ul style="list-style-type: none"> <li>• Reduce victim vulnerability by supplying the means for victim resistance and making it clear that victims have external support.</li> </ul>
<b>Bystanders</b>	<ul style="list-style-type: none"> <li>• Mobilise internal and external bystanders</li> </ul>

The key is to remove the motivation of perpetrators to commit genocide and to empower potential victims. High-level perpetrators are the engine of genocide. It is difficult to conceive of any examples of truly populist genocides, without any high-level propaganda or coordination. Therefore, high-level perpetrators are the most likely to possess true genocidal intent. Such perpetrators are best dissuaded by increasing the costs of perpetration. Leaders must be aware that their participation in genocide will result in a loss of standing, economic losses (i.e. the freezing of bank accounts and seizure of assets), a loss of privilege (they will no longer be able to travel internationally), and criminal prosecution. In other words high-level perpetrators will be under virtual “house-arrest” within their own state until the point at which the international community can actually arrest them. Thus, genocide becomes an extremely risky proposition where the costs greatly outweigh the benefits. It is important that this risk is communicated clearly and repeatedly to the leaders themselves through private and public diplomatic channels. Alternatively, leaders may be offered incentives to not perpetrate genocide. These incentives may be direct or indirect (i.e. they are shown the benefits of international cooperation).

There are some genocidal leaders who will not be dissuaded by such measures - these ideologues may only be stopped if they are removed from power or if the motivation of their

agents is undermined. They may also have certain essential resources for genocide cut off through embargo (i.e. arms, finances). In other words, their capacity to do harm is substantially diminished.

Low-level perpetrators may be similar disincentivised. However, in order to accomplish this, a sort of information warfare is needed in order to reach a great number of potential perpetrators. The techniques of neutralisation must be countered by the message that genocide and similar atrocities are wrongful and that individuals who commit such acts will face punishment and international condemnation (shame). Moreover, perpetration itself must be made risky as victims become hard targets and perpetrators might also be forced to confront well-armed and well-trained external military forces. Finally, low-level perpetrators can be separated from the means of perpetration, such as the communications and transportation networks necessary for genocidal organisations and the weapons used for perpetration.

In terms of victims the key principle is target-hardening. Victim vulnerability must be reduced. This is consistent with the principles of routine activity theory. In order to harden targets victims must be mobilised to defend themselves. Moreover, they must have access to timely intelligence on the forces which threaten them and assurances from external actors that they will be supported. Target hardening may also include the provision of arms to potential victim groups. Of course this latter proposition is the most troubling. How do we know who is a potential victim? Moreover, will these potential victim groups be properly demobilised and disarmed once the risk of genocide has subsided? Needless to say arming potential victims has the prospect to contribute to increased proliferation and insecurity in the world.

Finally, bystanders, both within and outside the genocidal state, must be mobilised to resist genocide and refrain from participating in genocide. The mobilisation of external bystanders is a matter of international diplomacy, although the media and advocacy groups may have a role in mobilising domestic constituencies to pressure political leaders. The mobilisation of internal bystanders may once again be accomplished through information warfare as well as human rights/civics education programs that emphasize building pro-social values.

### **5.3 Prevention without Prediction?**

The occurrence of genocide, like other historical phenomena, requires the confluence of innumerable factors big and small. This makes predicting genocide difficult. Nonetheless, as this chapter seeks to demonstrate, genocide prevention can occur even without genocide prediction. The upstream prevention of genocide is essential and will result in the amelioration of myriad social problems. The increased risk of genocide is possible to predict with a degree of accuracy only when genocide is in the latter stages of planning and implementation. At this point indicators may be used to determine that genocide appears to be imminent.

One possible reason genocidal recidivism occurs is because groups are rarely, if ever, destroyed in their entirety – the genocidal culture that contributed to the first instance of genocide still exists and the continuing life of the group serves as a motive for recidivism. Thus, the rehabilitation of societies that have experienced genocide, and related mass atrocities, is crucial. The mechanistic approach to genocide prevention, which sees genocide as something that can be predicted months or years away on the basis of a set of largely-static indicators, must be rethought. Nonetheless, genocide prevention is not only possible but essential.

The best approach in terms of early warning is to prevent genocide before it can be predicted; i.e. to prevent genocide, and related crimes, by building general human rights capacity. The recognition of human rights will reduce the power of genocidal mobilisation by preventing the dehumanisation of potential victim groups.

Genocide early warning is a very difficult task. This is because the occurrence of genocide, as a complex and multi-causal social phenomenon, is very difficult to predict with any meaningful reliability. The use of structural indicators may give some indication of the overall risk of genocide but it would still produce far too many false positives to be of much practical use. In-depth contextual analysis done by regional experts is likely far more reliable in predicting the risk of genocide in a given country. Nonetheless, a systematic framework for predicting the risk of genocide in the near term may also be employed with some accuracy.

Such a system would make use of *imminent indicators* to identify situations where genocide, or similar violence, is fairly likely in the short term.

These indicators could include factors such as:<sup>501</sup>

1. Greatly increased centralisation of power and control (including media control)
2. Economic collapse
3. Political crises
4. Refugee or IDP flows
5. Repressive violence targeting the leaders of an identifiable group
6. Disarming of targeted group
7. Concentration of targeted group
8. Discriminatory legislation
9. Symbolic killings
10. Rhetoric of dehumanisation and imminent violence
11. Procuring means of violence
12. Reduction of diversity within the security sector
13. Heightened military activity
14. Civilian mobilisation
15. The imposition of emergency laws

Each of these factors must be considered in relation to the overall history and context of the state experiencing these conditions. In effect they act as accelerators, working to increase the severity of effect of underlying societal factors such as extreme poverty, polarisation, and a history of violence. Moreover, none of these factors alone is conclusive of a heightened risk of genocide. Nonetheless, factors such as repressive violence targeting leaders of identifiable groups, symbolic killings, and rhetoric of imminent violence are especially indicative of a heightened risk of imminent genocidal killing.

Increased centralisation of power and control may be one indicator of a heightened risk of genocide. Genocide requires a degree of central control in order to reduce goal variance by placing increasing pressure on perpetrators. Furthermore, control over the media is essential to achieve the reduced discursive space (narrowing of awareness) essential for genocide. Political and economic crises may also contribute to genocidal conditions by increasing

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<sup>501</sup> Several of these factors overlap with those described in Mendez 83.

uncertainty and providing space for extreme solutions to perceived threats. Rapid economic decline, ecological catastrophes, and an influx of refugees (“strangers”) may also increase competition for scarce resources (contributing to scapegoating). Refugee flows may disturb an ethnic balance of power in a given area and, in doing so contribute to the perceived insecurity of the perpetrator group (for example the influx of Hutus into the Eastern Congo following the Rwandan genocide). Outflows of refugees or internally displaced persons from an area may also be indicative that mass violence is already occurring.

In the lead up to genocide the leaders (elites) of “enemy” groups may be killed as a means of increasing the vulnerability of the would-be victims. Gurr and Harff conclude that a rapid increase in killings and other “life integrity violations” is a strong indicator that genocide is likely.<sup>502</sup> Victims may be socially isolated through discriminatory legislation. Other means of increasing victim vulnerability prior to genocide include the disarming and geographical concentration of victims as well as the imposition of emergency laws. These measures make it easier to locate and kill victims. Moreover, symbolic killings, including extremely heinous and representative forms of violence such as crucifixions, forced incest, and the disembowelment of pregnant women may be used to attack the perceived security of the victim group. These symbolic killings may take the form of a massacre – the killing of a relatively small number of members of the victim group. Such massacres may act as “dress rehearsals” for a wider campaign of violence, habituating people to violence and gauging the societal response to such violence. For example, the March 1992 massacres in Bugesera Rwanda contained two major innovations: the use of militias (*Interahmwe*) and incitement through the radio.<sup>503</sup> The killing of elites, the disarming and concentration of potential victims, and symbolic killings were also all present in the run up to the Armenian genocide.

There are other indicators that genocide may be imminent. Perhaps foremost among these is a rhetoric of imminent violence. This includes leaders (or *de facto* leaders)

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<sup>502</sup> Ted Robert Gurr and Barbara Harff, “Early Warning of Communal Conflicts and Genocide: Linking Empirical Research to International Responses,” (Tokyo: United Nations University, 1996), p. 78.

<sup>503</sup> African Rights 53.

proclaiming not just that the victim group is problematic but that they must be eliminated (stage four in the dehumanisation dynamic model). In other words, direct and public incitement to genocide occurs. A classic example is the incitement which occurred in Rwanda on the *Radio-Television Milles Collines* before the genocide. Genocidal rhetoric often includes extreme dehumanisation of the victim group.

The preparations to mobilise violence will also include procuring the means of violence (i.e. the proliferation of weapons), heightened military activity (including forward deployment and training exercises), and civilian mobilisation (the recruitment, arming, indoctrination, and training of civilian paramilitary groups). Purges may also take place, ensuring that the military is more ethnically homogenous, thus more likely to carry out orders to exterminate the victim group. Civilian mobilisation is particularly important in genocide as the mass participation required for genocide often includes the use of civilian militias (i.e. reserve police battalions in the Holocaust, *Sans Echee* in Burundi, Arkan's Tigers in Bosnia, and *Interahamwe* in Rwanda). Factors such as civilian mobilisation, when combined with other factors such as incitement to genocide, help us to predict when genocide may be imminent. Once it is determined that genocide is imminent third party states (under the authorisation of the United Nations) may employ a range of diplomatic, economic, and military tools under the responsibility to protect doctrine.

#### **5.4 Prevention and the Limits of the Law**

It is accepted wisdom that the prosecution of international crimes contributes to the prevention of such crimes. Few scholars question this supposition and even fewer consider how this preventive effect might operate. Yet, any serious consideration of this assumption swiftly leads us to the limited power of the law as an instrument to resolve social problems. Martin Luther King Junior recognised these limitations but argued that “it may be true that morality cannot be legislated, but behaviour can be regulated. The law may not change the

heart, but it can restrain the heartless.”<sup>504</sup> This power to restrain the heartless, through deterrence, is hotly debated.

Even if prosecution does not deter the commission of crimes perhaps it has other effects. As the Polish delegate to the International Covenant on Civil and Political Rights (ICCPR) drafting conference said, the law also comprises “many aspects of an educative character.”<sup>505</sup> Perhaps the law can, gradually, help to create new social norms. Most institutions of justice depersonalise the relationship between victim and perpetrator; the state “reconstitutes the suffering of the victim as its own through forensically reworking the suffering as a ritualised truth contest.”<sup>506</sup> This legal recognition of the suffering of victims may also play an essential role in peace building.

This chapter will consider the role of criminal prosecutions in the prevention of genocide. Several questions will be considered including whether deterrence is a valid concept, and also, how to improve the effectiveness of the law as a tool of prevention. There will be a particular focus on the prosecution of inchoate forms of genocide such as conspiracy and incitement, as well as preparatory stages of genocide. Moreover, the findings of this study regarding motives for participation in genocide will be related to the mental and contextual elements of the crime of genocide. If the purpose of international criminal law is more than the mere punishment of individuals, then there must be a shift of emphasis towards the prosecution of the early stages of criminal endeavour.

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<sup>504</sup> Stephanie Fariior, *Molding the Matrix: The Historical and Theoretical Foundations of International Law Concerning Hate Speech*, *Berkeley Journal of International Law*, (1996), p. 56.

<sup>505</sup> Fariior 57.

<sup>506</sup> David Downes, Paul Rock, Christine Chinkin, and Conor Gearty (eds.), *Crime, Social Control and Human Rights*, (Portland, USA: Willan Publishing, 2007), p. 425.

### **5.5 Prosecution and the Prevention of Genocide**

Genocide is indisputably an international crime. It has become part of customary international law and is, arguably, subject to universal jurisdiction.<sup>507</sup> There are several rationales for the prosecution of international crimes such as genocide. These include: 1) vengeance - the punishment of perpetrators acts as a form of “justice” or compensation to the victims; 2) the historical record – the systematic prosecution of crimes establishes a historical record; 3) the individualization of guilt – prosecution, in its focus on specific individuals, separates the guilty from the innocent and counteracts notions of collective guilt; 4) general deterrence; 5) specific deterrence; and 6) the rule of law – the prosecution of crimes shows that laws matter. The rule of law argument is also a form of deterrence, and, because of its ostensibly preventive function, deterrence is addressed in greater detail in the following section. The individualisation of guilt could arguably also play a role in genocide prevention if it helps to break the cycles of vengeance occurring in countries such as Rwanda and Burundi. Furthermore, when genocide is not punished it may empower genocidal forces. It may add a degree of legitimacy to genocidal ideology and impunity may also lower the perceived costs of participation in genocide (see Chapter Four).

Citizens within a state cede a measure of sovereignty to the state in return for protection. The state has a monopoly over violence and, without the protection of the state, citizens are vulnerable. Thus, the state has the primary responsibility for ensuring the security of its citizens and for prosecuting those that commit acts which threaten that security; if the state fails in that responsibility then the international community must step in. This is also

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<sup>507</sup> The universal jurisdiction principle is not contained in the genocide convention, which states in Article 6 that genocide may be tried on the territory of the country in which it is committed (territorial jurisdiction), as well as by a competent international tribunal. Moreover, three state parties to the Genocide Convention (Burma, Algeria, and Morocco) have issued declarations indicating that their opposition to the application of universal jurisdiction to the convention. The case law on this matter is somewhat contradictory. See: William Schabas, *Genocide in International Law* (First Edition), (Cambridge, U.K.: Cambridge University Press, 2000), p. 363.

reflected in the complementary jurisdiction principle of the International Criminal Court – the court will prosecute international crimes where the state is unwilling or unable.

The victims of genocide and other crimes deserve justice, yet if vengeance is ever to be the goal in prosecuting genocide it must be grounded in the opprobrium of humankind rather than the personal vengeance of the victims. International criminal law is focussed on group-based, non-individualised harm (i.e. mass crimes,) and crimes such as genocide are prosecuted because they are harmful, as *erga omnes* obligations, to the international community as a whole.<sup>508</sup> Culpability for these mass harms, however, remains individualised.

As an international crime, genocide falls within the subject matter jurisdiction of several international courts including the International Criminal Tribunal for the Former Yugoslavia (Article 4), the International Criminal Tribunal for Rwanda (Article 2), the International Criminal Court (Article 6), and the Extraordinary Chambers in the Courts of Cambodia (Article 4). The ICTY and ICTR have jurisdiction over the Former Yugoslavian and Rwandan genocides, respectively, and the ECCC over acts of genocide occurring during the Khmer Rouge regime in Cambodia. In contrast the ICC has the right to exercise jurisdiction over all cases of genocide occurring within the territories and/or involving the citizens of the more than one hundred state parties from July 1, 2002. Therefore, between them these international tribunals have jurisdiction over more than one hundred countries from 2002, as well as several specific situations before 2002. Nonetheless, the ICC will only prosecute when it is determined to be in the “interests of justice” (under Article 53 of the Rome Statute) – this means that not all cases of genocide will necessarily be prosecuted at the court. However, given the perceived gravity of the crime of genocide, and its relative scarcity in comparison to war crimes or even crimes against humanity, clear cases of genocide falling within the jurisdiction of the court will almost certainly be prosecuted.

International courts are relatively small institutions, lacking the resources for large numbers of simultaneous prosecutions. Therefore, prosecutions by international courts

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<sup>508</sup> Larry May, Crimes Against Humanity: A Normative Account, (New York: Cambridge University Press, 2004).

necessarily only comprise a small component of larger post-genocide justice and peace-building mechanisms. In situations where criminal prosecution is not possible alternatives may be considered such as the documentation of evidence of crimes for the historical record or future prosecutions.

Genocide is distinct from ordinary crimes because it is a mass crime that is legitimised by the state. Yet, in spite of this state legitimisation, genocide remains deviant within the international system as a whole. Therefore, similar to other crimes, genocide perpetrators often attempt to conceal their actions. Génocidaires often carry out their genocidal acts away from public scrutiny and conceal burial and massacre sites. For example, during the Armenian genocide, when foreign media obtained photographs of roadside Armenian corpses Talaat ordered that the corpses be “buried at once,” or at least “hidden from view.”<sup>509</sup> Moreover, in Srebrenica bodies buried in mass graves were later exhumed, mutilated, and reburied in even more remote secondary mass graves.<sup>510</sup> These attempts at concealment imply that perpetrators understand that their acts *need* to be concealed. Thus, even if the act is endorsed within the society in which they live, the perpetrators understand that such killing is deviant within the world as a whole. This might also indicate that the perpetrators still feel somewhat tied to the mainstream moral system where such killing is deviant or they fear prosecution for their crimes.

## **5.6 General and Specific Deterrence**

If people are only good because they fear punishment, and hope for reward, then we are a sorry lot indeed. – Albert Einstein

The promise of deterrence theory is that criminal sanctions do more than just punish serious deviant acts - they also dissuade potential future offenders by increasing the risk and

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<sup>509</sup> Power 10.

<sup>510</sup> *Prosecutor v. Radislav Kestic* (Case No. IT-98-33-A 19), “Srebrenica,” Appeals Chamber Judgement, 19 April 2004, paragraph 590.

decreasing the rewards of criminal behaviour. This notion is frequently voiced by actors in international criminal justice, particularly in sentencing hearings. For example, in the Kambanda judgement at the ICTR the court argued that “it is clear that the penalties imposed on accused persons found guilty by the Tribunal must be directed, on the one hand, at retribution, and, over and above that, on the other hand at deterrence.”<sup>511</sup> Deterrence is the proverbial warning shot, but in order to be effective this shot must be heard by all potential offenders within a society.

Classical criminologist Césaire Beccaria argued that in order for deterrence to be effective there must be a certainty of swift and appropriate punishment.<sup>512</sup> Severe punishment will not offer a strong deterrent effect if the criminal believes that impunity is a significant possibility. Unfortunately, in the international criminal law context impunity still appears to be a real possibility. This is especially true when one considers the lack of true supranational authority in the international system (with the possible exception of the UN Security Council). Furthermore, genocide is generally a state crime – often the perpetrators of genocide are acting at the behest of the state, thus they are protected by the power of the state.

Former UN Advisor on the Prevention of Genocide Juan Mendez argues that amnesties in the case of mass atrocities contribute to this sense of impunity and that amnesties for genocide, war crimes, and crimes against humanity are illegal (although amnesties for domestic crimes such as treason are permissible).<sup>513</sup> As a principle this is logical: amnesties may be contemplated, or even encouraged, for political offences but not for international crimes, which are a matter of concern to the international community as a whole. Building the foundation of peace negotiations on the recognition of impunity for atrocities is not necessary and counter-productive in the long-term.

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<sup>511</sup> Prosecutor v. Jean Kambanda (Case No. ICTR-97-23-S), Trial Chamber Judgement, 4 September 1998, para. 28.

<sup>512</sup> Mark Lanier and Stuart Henry, *Essential Criminology*, (Boulder, USA: Westview Press, 2004), p. 76.

<sup>513</sup> Juan Mendez, “Transitional Justice and Prevention,” in *Genocide Prevention: Where are we now?* Politorbis, No. 47 (February 2009), p. 94.

This notion of general deterrence (to deter all potential criminals in society) can be contrasted with *specific deterrence*, which seeks to deter specific individual criminals. A central element of specific deterrence is incapacitation – making it impossible for criminals to commit crimes by imprisoning them. It is held that by isolating certain individuals, crime becomes less likely and society as a whole is safer.<sup>514</sup> Specific deterrence may also include such measures as restrictions and conditions on convicted perpetrators after their release.

Ordinary perpetrators may not be pathological, but rather are socialised killers so it is questionable how much safer society is by prosecuting such perpetrators (who might not kill unless placed in a social context demanding their killing behaviour). A society where genocide has taken place may have tens of thousands or even hundreds of thousands of perpetrators – how feasible is it to imprison all these people? Moreover, international tribunals such as the Yugoslav Tribunal currently have no programs to rehabilitate perpetrators so it is possible that released perpetrators have a heightened risk of recidivism, given the right context (although many of these perpetrators are leaders and their notoriety as perpetrators makes it unlikely they will be placed in positions of power again). The Rwandan government does run rehabilitation programs such as *Ingando* (indoctrination camps) and *Travaux d'Intérêt Générale* (TIG, community service camps) for those imprisoned in Rwanda for genocide. Even without rehabilitation, the mere imprisonment of demagogic leaders may have a preventive function as such leaders, if free, may incite and mobilise genocide.

General deterrence is predicated on three notions: that perpetrators are rational actors, that the rewards available to perpetrators are measureable in order to design punishments that counteract this gain, and, finally, that perpetrators understand and are aware of potential risks. Yet deterrence may not be effective after the *sadistic shift* occurs where perpetrator rationality is displaced; in such a state perpetrators may possess feelings of omnipotence that drive them to engage in sadistic behaviour without fear of consequences. Genocidal societies are often closed systems so within these societies there is an internal rationalising effect to genocidal

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<sup>514</sup> Lanier and Henry 86.

acts, even if these acts may be considered to be irrational in an “ordinary” context. Génocidaires are also likely less entrepreneurial than perpetrators of ordinary crimes – many are serving a particular role within a larger, legitimised (state-directed) joint criminal enterprise. Deterrence in the context of international crimes is also problematic because the perpetrators are usually sheltered within a state which is itself committing the crime of genocide. Furthermore, general deterrence theory does not account for individual differences in personality and motivation. Do all perpetrators share the same motive? This thesis has argued in its decision-making matrix (Chapter Four) that this is not the case. What implications might this finding have for deterrence?

Perhaps general deterrence may be the most effective against individuals (such as leaders) who deliberate before committing a crime. There is mixed evidence supporting the effectiveness of the general deterrence of international crimes, although the setting up of the ICTY did appear to have significant effects on political developments in Serbia (both Karadzic and Mladic were removed from the Dayton peace negotiations). This isolation of genocidal leaders may have a preventive effect in and of itself. According to intercept evidence, the Yugoslav Tribunal greatly concerned Bosnian Serb leaders when the idea of creating the tribunal was first discussed in August of 2002; this possibility may have also contributed to a momentary lull in the fighting.<sup>515</sup>

Furthermore, Juan Mendez argues that when he sent a note to the UN Security Council in November of 2004 (while he was still the UN Special Advisor on the Prevention of Genocide) indicating that ICC jurisdiction could be extended to cover instigation and incitement of all of the crimes in the Rome Statute, that this had the effect of calming the hate media firestorm then taking place in Côte D’Ivoire.<sup>516</sup> The Sudan researcher for Human Rights Watch also claimed that the referral of Sudan to the International Criminal Court was a “real deterrent in that the people in Khartoum were worried...that they might have to go to

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<sup>515</sup> Geoffrey Robertson, *Crimes Against Humanity*, (London: Penguin, 1999), p. 69.

<sup>516</sup> Mendez 94.

The Hague.”<sup>517</sup> However, during the Moscow Conference of October 1943 Roosevelt, Churchill, and Stalin issued a joint statement warning that German war criminals would be “brought back to the scene of their crimes to be judged on the spot by the peoples whom they have outraged,” and the genocide continued unabated.<sup>518</sup>

This illustrates one of the central problems with deterrence - the certainty of many genocidal elites that their hold on power is secure, thus that they will never have to face international justice or transitional justice mechanisms within their own state. In November of 1945 Nuremberg Prosecutor Robert Jackson wisely observed that “[w]ars are started only on the theory and in the confidence that they can be won. Personal punishment, to be suffered only in the event that the war is lost, will probably not be a sufficient deterrent to prevent a war where the war makers feel the chances of defeat are negligible.”<sup>519</sup> Similarly, one Rwandan génocidaire argued “we didn’t think we would be prosecuted because we thought we would win the war.”<sup>520</sup> Nonetheless, we are moving towards a global state of affairs where perpetrators of international crimes increasingly face international judgement and suffer negative sanctions for their acts. Even if it is not immediately apparent that leaders will be punished for genocide, it should be apparent that the incentives for genocide are few and the risks are great.

Martin Luther King Jr. might have been right in his contention that the law can restrain the heartless. Research shows that, in terms of domestic crimes, that deterrence effects are strongest among those with the highest criminal propensity.<sup>521</sup> Where individuals have strong moral restraints, deterrence is not decisive. In the context of genocide, the propensity of perpetrators to commit genocide may come from a general orientation towards violence as

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<sup>517</sup> Martin Mennecke, “Punishing Génocidaires: A Deterrent Effect or Not?” *Human Rights Review* (July 2007), p. 324

<sup>518</sup> Mennecke 321.

<sup>519</sup> Mennecke 325.

<sup>520</sup> Rwandan Perpetrator Interview R62, farmer, Mont Kigali TIG Camp, October 15, 2009.

<sup>521</sup> Bradley R.E. Wright, Avshalom Caspi, Terrie E. Moffitt, and Ray Paternoster, “Does the Perceived Risk of Punishment Deter Criminally Prone Individuals?” *Journal of Research in Crime and Delinquency*, vol. 41, no. 2 (May 2004), p. 205.

well as ideological justification, rather than recidivism (past acts of genocide). These ideologues and sadists (vanguard perpetrators) may be dissuaded through deterrence, while the many less-motivated perpetrators will be unlikely to participate in genocide without genocidal leadership and vanguard perpetrators. For instance Rwandan perpetrator R37 claims “we killed him [the victim] because we thought that there wouldn’t be any consequences. The leaders were doing the same thing...If one person who killed was prosecuted everyone else would have stopped killing.”<sup>522</sup> Moreover, the criminal prosecution of individuals for genocide may also have other preventive effects such as norm setting, and removing the means of genocidal mobilisation.

## **5.7 Prosecuting Inchoate Forms of Genocide**

### ***Incitement to Commit Genocide***

#### **i. Introduction**

Prosecuting inchoate crimes is essential to genocide prevention as such crimes, by their very nature, always occur before genocide. In some sense, all genocide is inchoate (incomplete), nonetheless the term “inchoate” is reserved for certain criminal acts occurring without, or before, the commission of the *actus reus* of genocide. These forms of genocide (conspiracy, attempt, and incitement) do not focus on the killing act itself but rather on the mobilisation of killing through genocidal preparation and provocation. Such offences do not require a link to the commission of genocide, thus they occur whether or not genocide itself occurs. Therefore, inchoate crimes are not modes of participation but crimes as such. Direct and public incitement was included in the Genocide Convention and made an inchoate crime in order to ensure the convention was a strong instrument for prevention.<sup>523</sup>

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<sup>522</sup> Rwandan Perpetrator Interview R37, farmer, Rwaza TIG Camp, August 30, 2009.

<sup>523</sup> UN ORGA, Sixth Committee, Third Session, 84th and 85th meetings, UN Doc. A/C.6/3/SR. 84 and UN Doc. A/C.6/3/SR. 85, 27 and 27 October 1948, p. 208 (Venezuela), 215 and 226 (Poland), 216 (Yugoslavia), 219 (Cuba), 219, 227 and 230 (USSR), 222 (Uruguay), 223 (Egypt). In contrast, the Draft Code of Crimes against the Peace and Security of Mankind by the International Law Commission in 1996 provides that direct and public

Simply put, incitement is directly and publicly encouraging others to commit the crime of genocide. This can be done through speeches and signs at public gatherings but often incitement takes place through the media. Like genocide itself, ‘incitement to genocide’ was first prosecuted at the Nuremberg Tribunal. The role of the media in the Holocaust was recognised and addressed by the court in the cases of Hans Fritzsche and Julius Streicher. The notion of incitement (or related forms of liability such as inducement, abetting, provocation) was derived from domestic jurisdictions. At the Nuremberg Tribunal incitement was subsumed (like genocide itself) under the crime against humanity of persecution. It is uncertain whether the Nuremberg conceptualisation of incitement was an inchoate crime or not because a nexus was required with the waging of an aggressive war.

Other international instruments dealing with the crime of genocide have mirrored the wording and scope of Article 3 of the Genocide Convention. The Rome Statute of the International Criminal Court (ICC) also uses the qualifiers “direct” and “public” in reference to incitement to commit genocide (Article 25 (3) (e)),<sup>524</sup> as does the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY, Article 3 (e)),<sup>525</sup> and the Statute of the International Criminal Tribunal for Rwanda (ICTR, Article 3 (c)).<sup>526</sup> In contrast, the statute of the Cambodia Tribunal (ECCC) includes attempted genocide, conspiracy to commit genocide, and “participation” in genocide but not incitement to genocide. However, it is possible that “participation” includes incitement. The development of the two *ad hoc* tribunals and, subsequently, the International Criminal Court has allowed the crime of incitement to commit genocide to be prosecuted as such for the first time.

## ii. The Elements of Incitement as Interpreted in Case Law

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incitement to commit genocide is not a true inchoate crime: see Articles 2(f) and 17 of the Draft Code of Crimes against the Peace and Security of Mankind and the related commentary. International Law Commission, “Report of the International Law Commission on the deliberations of its 48th meeting,” reproduced in the Yearbook of the International Law Commission, 1996, vol. II (Part Two).

<sup>524</sup> Rome Statute of the International Criminal Court, July 17, 1998.

<sup>525</sup> Statute of the International Criminal Tribunal for the Former Yugoslavia, May 25, 1993.

<sup>526</sup> Statute of the International Criminal Tribunal for Rwanda, November 8, 1994.

In order to properly interpret “direct and public incitement to commit genocide” one must derive the meaning of the words “direct” and “public.” The word “public,” according to the International Law Commission, “requires communicating the call for criminal action to a number of individuals in a public place or to members of the general public at large.”<sup>527</sup> Less clear is the definition of the word “direct.” This term is problematic because people inciting genocide ordinarily do so through euphemistic speech.<sup>528</sup> Therefore, the cultural context must be considered in each case in order to determine whether the actions of an individual constituted “direct” incitement to commit genocide. The *mens rea* standard required for incitement to commit genocide is quite high - the perpetrator must have both the intent to commit genocide and the intent to incite others to commit genocide.

A broad interpretation of inchoate modes of liability is consistent with the object and purpose of the Genocide Convention. Perhaps the first *de facto* cases relating to incitement were the trials of Hans Fritzsche and Julius Streicher at the Nuremberg Tribunal. Hans Fritzsche was a long-time member of the Nazi party who held several positions in the media before being appointed director of the Home Press Division in 1938 and eventually the director of the Radio Division of the Reich Ministry for Propaganda. Fritzsche was indicted under charges one (common plan), three (war crimes), and four (crimes against humanity) for his role in “deliberately falsifying news to arouse in the German people those passions which led them to the commission of atrocities.”<sup>529</sup> In its judgement the tribunal noted that Hans Fritzsche was not the supreme authority with regards to news propaganda, but had two superiors. Moreover, it found that “these speeches did not urge the persecution or extermination of Jews,” so it was held that incitement had not occurred – in effect, the

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<sup>527</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), p. 160.

<sup>528</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), pp. 158 and 161. For example, in the Mugesera deportation hearing before the Immigrant and Refugee Board of Canada the defendant claimed that a speech that he gave was “a harmless political diatribe” rather than incitement to commit genocide.

<sup>529</sup> *Prosecutor v. Hans Fritzsche*, Judgement, International Military Tribunal for the Trial of Major German War Criminals, 10 October 1946, (non-paginated).

language used by Fritzsche in the broadcasts was not direct enough.<sup>530</sup> Hans Fritzsche was one of only three defendants acquitted by the court.<sup>531</sup>

Julius Streicher was a true believer in Nazism, a true believer in the Führer. In 1919 he helped to establish an anti-Semitic organisation that was later incorporated into the Nazi Party. Four years later he became a close collaborator of Hitler (around the time of the Munich Putsch) and founded the newspaper *Der Stürmer* (*Stormtrooper*). By 1935 the circulation of the paper was around 600,000.<sup>532</sup> In 1929 Streicher was drawn ever closer to the regime when he was appointed *Gauleiter* in Franconia, a position that he held until 1945. He used his authority and influence to further his racist ideology, organising the Jewish boycott in 1933 and supporting the 1935 Nuremberg Decrees. Streicher was also accused of responsibility for the Nuremberg Synagogue fire on the 10<sup>th</sup> of August 1938 and he publicly supported the pogrom that occurred later that year. Moreover, he made frequent use of *Der Stürmer* to launch strident attacks against Jews, pronouncing (in one of his editorials): “Jews are the cause of misfortune...only their *complete destruction* could save the world from being completely poisoned.”<sup>533</sup>

At the Nuremberg Tribunal Streicher was indicted for charges one (taking part in the common plan/conspiracy for aggressive war, war crimes, and crimes against humanity) and four (crimes against humanity). His defence in his trial was that all he ever did was to express his opinion - he never directly perpetrated any crimes.<sup>534</sup> He was acquitted of the first charge (common plan) because of a lack of evidence, but was convicted of the fourth charge (crimes against humanity). According to the court “in his speeches and articles, week after week, month after month, he infected the German mind with the virus of anti-Semitism, and incited

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<sup>530</sup> *Fritzsche*, (non-paginated). See also Schabas 162.

<sup>531</sup> He was later convicted in German domestic courts (and sentenced to nine years imprisonment).

<sup>532</sup> Trial Watch, “Julius Streicher,” <http://www.trial-ch.org/trialwatch/profiles/en/facts/p22.html>, accessed June 15, 2005.

<sup>533</sup> Julius Streicher, “The Way to Action,” *Der Stürmer* (1943), translated by Randall Bytwerk, <http://www.calvin.edu/academic/cas/gpa/ds4.htm>, accessed June 28, 2005.

<sup>534</sup> Trial Watch, “Streicher,” <http://www.trial-ch.org/trialwatch/profiles/en/facts/p22.html>.

the German people to active persecution.”<sup>535</sup> Streicher must have been aware of the Holocaust – his paper had published death tolls and sent a photographer to visit the eastern ghettos.<sup>536</sup> The court concluded:

Streicher’s incitement to murder and extermination at the time when Jews in the East were being killed under the most horrible conditions clearly constitutes persecution on political and racial grounds in connection with war crimes as defined by the Charter, and constitutes a crime against humanity.<sup>537</sup>

He was sentenced to death by hanging.<sup>538</sup> Streicher remained virulent to the end and his last shouted words were “Heil Hitler!”

The Tribunal’s reasoning in the Streicher case is particularly interesting because it may have, in effect, held Streicher responsible for *incitement to persecution* (hate speech), a type of criminal responsibility that does not exist in the Rome Statute or the statutes of the *ad hoc* tribunals (incitement only applies to genocide). It is not clear from the judgement whether Streicher’s speech could be considered to be the modern equivalent of incitement to genocide or, rather, hate speech criminalised as the crime against humanity of persecution. However, at this time, genocide did not represent a separate crime but was subsumed under crimes against humanity, so the Streicher Judgement could also be easily interpreted as being a finding of responsibility for incitement to commit genocide.

The ICTR represented the first time that individuals were held criminally responsible for incitement to commit genocide in the post-Nuremberg period. Numerous people have been indicted for incitement to commit genocide and there are already several convictions (including former prime minister Jean Kambanda). Three of the most important of these cases

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<sup>535</sup> *Prosecutor v. Julius Streicher*, Judgement, International Military Tribunal for the Trial of Major German War Criminals, 10 October 1946, (non-paginated).

<sup>536</sup> IMT Judgement, “Julius Streicher.”

<sup>537</sup> IMT Judgement, “Julius Streicher.”

<sup>538</sup> His lawyer appealed the decision, against his wishes, but the Control Council rejected it. There has been much historical controversy over whether Streicher’s sentence was overly severe (especially considering that he was guilty “only” of incitement and not of directly ordering or perpetrating crimes against humanity). Moreover, the death penalty is now excluded from international criminal trials, as it is contrary to international human rights standards.

were the Jean Paul Akayesu case, the “Media” Trial (*Prosecutor v. Ferdinand Nahimana, Hassan Ngeze, and Jean-Bosco Barayagwiza*), and the trial of Simon Bikindi. Akayesu, the leading civilian in the Taba Commune, was found guilty of incitement for addressing a public meeting where he “called on the population to unite in order to eliminate the enemy, clearly referring to the Tutsi.”<sup>539</sup> During his speech he also publicly named and condemned particular individuals.

The Trial Chamber used Akayesu’s public statements to determine that he had the necessary genocidal intent. The Chamber found that the *mens rea* for incitement “implies a desire on the part of the perpetrator to create by his actions a particular state of mind necessary to commit such a crime in the minds of the person(s) he is so engaging...the person who is inciting to commit genocide must have himself the specific intent to commit genocide...”<sup>540</sup> In its judgement the ICTR defined incitement to commit genocide as:

Directly provoking the perpetrator(s) to commit genocide, whether through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public gatherings, or through the public display of placards or posters, or through any other means of audio-visual communication.<sup>541</sup>

The Court also emphasised that the “direct” element involved in incitement to commit genocide:

Should be viewed in the light of its cultural and linguistic context. Indeed, a particular speech may be perceived as ‘direct’ in one country, and not so in another, depending on

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<sup>539</sup> Matthew Lippman, “Genocide: the crime of the century; the jurisprudence of death at the dawn of the new millennium,” *Houston Journal of International Law*, February 22, 2001, p. 18.

<sup>540</sup> *Prosecutor v. Jean Paul Akayesu* (Case No. ICTR-96-4-T), Trial Chamber Judgement, 2 September 1998, paragraph 560. See also Lippman 17. In another important early case, former Rwanda Prime Minister Jean Kambanda entered a guilty plea (the first guilty plea in history for genocide). The Court determined that the “scale, character, and systematic nature of the acts” could provide evidence of the existence of a genocidal *mens rea*.

<sup>541</sup> *Akayesu* (Case No. ICTR-96-4-T), Judgement, para. 557.

the audience. The Chamber further recalls that incitement may be direct, and nonetheless implicit...<sup>542</sup>

Therefore, in all cases of hate speech and incitement, *context determines content* – the meaning of hate propaganda is culturally-specific. The tribunal found that Akayesu had committed incitement and, as the underlying crime (genocide) had actually occurred, he was also guilty of complicity (abetting). Incitement can become complicity if the underlying crime (genocide) occurs. Moreover, private (non-public) incitement may also constitute complicity.

Another important case was the Media Trial (*Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze*) where journalists were accused of inciting genocide for the first time since Julius Streicher at Nuremberg. Nahimana and Barayagwiza were leading figures in the RTLM while Ngeze was the editor of *Kangura*. The three defendants were charged with genocide, conspiracy to commit genocide, complicity in genocide, and incitement to commit genocide.<sup>543</sup>

In the Trial Chamber judgment the judges made a distinction between “historical information, political analysis, or the advocacy of an ethnic consciousness,” and “speech constituting ethnic hatred” (between protected free speech and incitement/discrimination).<sup>544</sup> The Tribunal also noted that it is a general principle of law that editors and publishers are held responsible for the media they control.<sup>545</sup> The direct role of the RTLM and *Kangura* in inciting genocide was recognised by the chamber, which stated that the RTLM “called explicitly for the extermination of the Tutsi ethnic group,” and that “*Kangura* paved the way for genocide in Rwanda.”<sup>546</sup> One RTLM broadcast (June 4<sup>th</sup>, 1994) explained: “The reason

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<sup>542</sup> *Akayesu* (Case No. ICTR-96-4-T), *Judgement*, para. 557.

<sup>543</sup> Additionally, individual defendants were also charged with certain crimes against humanity, as well as war crimes.

<sup>544</sup> Catharine A. MacKinnon, “*Prosecutor v. Nahimana, Barayagwiza, and Ngeze*,” *American Journal of International Law*, Vol. 98, No.2 (April 2004): 325.

<sup>545</sup> *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Brayagwiza and Hassan Ngeze* (Case No. ICTR-99-52), “Media Trial,” Trial Chamber Judgement, 3 December 2003, paragraph 1001.

<sup>546</sup> *Nahimana et al.* (Case No. ICTR-99-52), *Judgement*, paras. 949-950.

we will exterminate them is that they belong to one ethnic group. Look at the person's height and his physical appearance. Just look at his small nose and then break it!"<sup>547</sup>

Perhaps the most direct incitement of all was the cover of *Kangura* No. 26 which featured the headline: "What Weapons Shall We Use to Conquer the Inyenzi Once And For All?" with an accompanying picture of a machete.<sup>548</sup> Additionally both Barayagwiza and Ngeze were senior members of the CDR (*Coalition pour la Défense de la République*). At the meetings of the extremist Hutu CDR the slogan "*tubatsembatsembe*" ("let's exterminate them") was chanted over and over again.

The actions of the defendants went beyond incitement as Barayagwiza and Ngeze both distributed weapons and supervised roadblocks.<sup>549</sup> The defendants were each found guilty of genocide, conspiracy to commit genocide, and incitement to commit genocide (as well as the crimes against humanity of extermination and persecution) and sentenced to life in prison, except for Barayagwiza, who was sentenced to 35 years (his term was reduced from life because his procedural rights were violated).<sup>550</sup> In the judgement, the chamber also noted that in cases of incitement, proof of a causal link between the communication and the genocide is not required.<sup>551</sup>

The trial was quite controversial because of its 'media' aspect. Many commentators (including some journalists) acknowledged that the RTLM broadcasts and *Kangura* articles 'crossed the line.' Joel Simon (the Deputy Director of the Committee to Protect Journalists) concludes, "to me this was essentially a form of military communication to coordinate these attacks."<sup>552</sup> John Floyd (the defence attorney for Ngeze) disagreed, remarking that "this is

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<sup>547</sup> *Nahimana et al.* (Case No. ICTR-99-52), *Judgement*, para. 959.

<sup>548</sup> *Nahimana et al.* (Case No. ICTR-99-52), *Judgement*, para. 962.

<sup>549</sup> *Nahimana et al.* (Case No. ICTR-99-52), *Judgement*, paras. 954-955.

<sup>550</sup> Barayagwiza was found guilty on the basis of superior responsibility (the failure to prevent and punish pursuant to Article 6 (3) ICTR Statute). Ngeze and Nahimana were charged on the basis of Article 6 (1).

<sup>551</sup> *Nahimana et al.* (Case No. ICTR-99-52), *Judgement*, para. 1015.

<sup>552</sup> Dina Temple-Raston, "Journalism and genocide: a landmark case in Rwanda raises the issue: can words kill? How much press freedom is too much?" *Columbia Journalism Review*, September 1, 2002.

dangerous stuff...this isn't just a question of press freedom. This is an issue of intellectual freedom.”<sup>553</sup>

Aspects of the Media Trial were reconsidered by the Appeals Chamber. The chamber upheld the notion that incitement does not require a causal nexus with the crime. Nonetheless, the court determined that the trial chamber had been in error when it attributed (in several examples) a direct link between individuals named on the RTLM and the subsequent killing of these individuals.<sup>554</sup> The Appeals Chamber argued that the longer the time lapse between incitement and genocidal killing “the greater the possibility that other events might be the real cause of such killing.”<sup>555</sup> It also took issue with the Trial Chamber’s determination that incitement to commit genocide is a continuous crime. Judge Shahabuddeen issued a thoughtful separate opinion which argued that incitement is the intention to influence the behaviour of others and that influence is a “function of the processes of time.”<sup>556</sup> The influence of incitement continues to function long after the act (even though the act itself is a crime as soon as the perpetrator utters their words). This is not a case of continuing effect (such as the injuries sustained in an assault) but rather continuing cause.

Finally, let us briefly examine the Bikindi trial at the ICTR. This trial was of particular interest because a musician was charged for incitement to commit genocide, based, in part, on the content of his lyrics. Bikindi was the director of the Irindiro ballet and a popular composer and singer. He also worked in the Ministry of Youth and Sport and was a member of the MRND political movement. The accusations against Bikindi encompassed the crimes against humanity of murder (both directly and under command responsibility) and persecution (hate speech) as well as genocide, complicity in genocide, conspiracy to commit genocide and incitement to genocide.

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<sup>553</sup> Temple-Raston (non-paginated).

<sup>554</sup> *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Brayagwiza and Hassan Ngeze* (Case No. ICTR-99-52-A), “Media Trial,” Appeals Chamber Judgement, Separate Opinion of Judge Mohammed Shahabuddeen, 28 November 2007, paragraph 507.

<sup>555</sup> *Nahimana et al.* (Case No. ICTR-99-52-A), Appeals Judgement, para. 587.

<sup>556</sup> *Nahimana et al.* (Case No. ICTR-99-52-A), Appeals Judgement, para. 25.

The incitement allegations against Bikindi are particularly interesting. They fall into two general categories: Bikindi was accused of inciting genocide, in collaboration with extremist Hutu forces, through the dissemination of his racially-charged compositions on the radio (and at party rallies), as well as by directly exhorting his audience to kill Tutsis while travelling down the Kiyove-Kivumu road in a truck outfitted with a public address system.<sup>557</sup> The prosecution alleged that Simon Bikindi’s songs “were a crucial part of the genocidal plan because they incited ethnic hatred of Tutsis and further incited people to attack and to kill Tutsi.” John Floyd (the Defence attorney for Ngeze in the Media Trial) disagreed and compared the charges against Bikindi to “putting Bob Dylan on trial for protest songs.”

The Tribunal analysed the content of Bikindi’s songs such as *Nanga Abahutu* and *Bene Sebahinzi* and concluded that the songs constituted a form of anti-Tutsi propaganda.<sup>558</sup> They reiterated that cultural context is of crucial importance in determining the intention and impact of words, song lyrics, and other forms of expression. Given this cultural context, Bikindi’s lyrical references to historical events were not neutral.<sup>559</sup> In spite of this, the content of Bikindi’s songs did not constitute direct and public incitement to genocide, as the lyrics were not sufficiently direct.<sup>560</sup> Moreover, there is inconclusive evidence that any of the songs mentioned in the indictment were composed, performed, or recorded in 1994. Also, the Court decided, there is no evidence that Bikindi exercised any control over the broadcast of these songs on the RTLM or elsewhere. Rather the Prosecution alleged that Bikindi “acquiesced” to the performance of these songs. In the view of the court, it is not clear that mere acquiescence is sufficient to prove that the accused incited genocide or aided and abetted persecution as a crime against humanity.<sup>561</sup>

In effect in Bikindi the Trial Chamber determined that Bikindi’s songs were not sufficiently “direct” to constitute incitement to genocide. Furthermore, neither the intent to

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<sup>557</sup> *Prosecutor v. Simon Bikindi* (Case No. ICTR-2—1-72), Judgement, 2 December 2008, para. 281.

<sup>558</sup> *Bikindi*, (Case No. ICTR-2—1-72), Judgement, para. 264.

<sup>559</sup> *Bikindi*, (Case No. ICTR-2—1-72), Judgement, para. 248.

<sup>560</sup> *Bikindi*, (Case No. ICTR-2—1-72), Judgement, para. 241.

<sup>561</sup> *Bikindi*, (Case No. ICTR-2—1-72), Judgement, para. 439.

destroy required for genocide nor the persecutory intent required for the crime against humanity of persecution were proven, beyond a reasonable doubt, to be manifest in the actions of the Accused. Yet, the very act of the creation of songs promoting hate by a popular musician is surely done with some intention of dissemination. Also, the court did recognise that Bikindi performed these compositions at political rallies - a direct act of dissemination. The court did hold, in principle, that hate speech or incitement to genocide could be accomplished through the composition and performance of songs if it was done with the appropriate criminal intent.<sup>562</sup> Bikindi was found guilty of incitement to genocide for his speech-making (using the mobile public address system) but not his song writing.

One of the most important national cases relating to incitement to commit genocide was the Mugesera case at the Supreme Court of Canada. Léon Mugesera, a Hutu local leader in Gisenyi with the extremist MRND party, gave a notorious speech on November 22, 1992 where he said:

Recently, I told someone who came to brag to me that he belonged to the PL [an opposition party]... ‘The mistake we made in 1959, when I was still a child, is to let you leave.’ I asked him if he had not heard of the story of the Falashas, who returned home to Israel from Ethiopia? He replied that he knew nothing about it! I told him ‘so don’t you know how to listen or read? I am telling you that your home is in Ethiopia; that we will send you by the Nyabarongo so that you can get there quickly.’<sup>563</sup>

Later in the same speech Mugesera also spoke of parents whose children had joined the RPF: “why do they not arrest these parents who have sent away their children and why do they not exterminate them?”<sup>564</sup>

The meaning of Mugesera’s speech appears to be unclear, but like all incitement, it must be considered within the context in which it occurs. The important question is whether the intended audience understands the message as incitement to genocide. When he is

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<sup>562</sup> *Bikindi*, (Case No. ICTR-2—1-72), *Judgement*, para. 395.

<sup>563</sup> *Canada (Minister of Citizenship and Immigration) v. Léon Mugesera* (Case No. 30025), *Judgement*, 28 June 2005, paragraph 90.

<sup>564</sup> *Mugesera*, (Case No. 30025), *Judgement*, para. 49.

speaking of sending the Tutsis home to Ethiopia he is reiterating propaganda that the Tutsis are foreigners who do not belong in Rwanda. Moreover, Tutsi victims of genocidal massacres in the early 1990s were often dumped in rivers. Mugesera argued that his speech was a mere call for elections, justice, and self-defence and that it could not have been incitement because he used the conditional tense.<sup>565</sup> The Canadian Supreme Court disagreed, stating that “a speech that is given in the context of a genocidal environment will have a heightened impact, and for this reason the environment in which a statement is made can be an indicator of the speaker’s intent.”<sup>566</sup> An individual interviewed for this study who was present at Mugesera’s speech in 1992 concurred with the court that the speech was understood by its audience to encourage the destruction of the Tutsis.<sup>567</sup>

The court also reinforced the idea that incitement is an inchoate crime arguing that “incitement is punishable by virtue of the criminal act alone irrespective of the result.”<sup>568</sup> Moreover, the intent of legislation prohibiting incitement to genocide (and hate speech) is “to prevent the risk of serious harm and not merely to target the actual harm caused.”<sup>569</sup> There is no need for a causal nexus with the underlying crime in incitement to commit genocide. Whereas, in contrast, the instigation of other crimes (under complicity), requires a causal connection to the offence.<sup>570</sup> Moreover, there is no need to prove the *sine qua non* - that the offense wouldn’t have occurred without the instigation - but rather only to prove adequate causality.<sup>571</sup> This is in contrast to the statement made by the defence counsel in the Fritzsche case that “an attempt at instigation presupposes that the person to be incited is not already

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<sup>565</sup> *Mugesera*, (Case No. 30025), Judgement, para. 47.

<sup>566</sup> *Mugesera*, (Case No. 30025), Judgement, para. 89.

<sup>567</sup> Interview R1 (Rwandan perpetrator), MRND Official/Merchant, Kigali Central Prison, July 2009.

<sup>568</sup> *Mugesera*, (Case No. 30025), Judgement, para. 85.

<sup>569</sup> *Mugesera*, (Case No. 30025), Judgement, para. 102.

<sup>570</sup> *Prosecutor v. George Rutaganda* (Case No. ICTR-96-3), Trial Chamber Judgement, 6 December 1999, para. 38. See also *Akayesu*, (Case No. ICTR-96-4-T), Judgement, para. 482.

<sup>571</sup> *Prosecutor v. Dario Kordic and Mario Cerkez* (Case No. IT-95-14/2), “Lasva Valley,” Trial Chamber Judgement, 26 February 2001, paragraph 387.

determined to commit a crime of his own accord or under the influence of others.”<sup>572</sup> Incitement is only one ingredient which contributes to the commission of the crime of genocide so *sine qua non* is an unreasonably high test for proving incitement.

### iii. Incitement and Freedom of Speech

Proscriptions on hate speech and incitement do not exist in a legal vacuum but rather must always be balanced with other human rights. Freedom of expression is of particular importance here because free expression is directly limited by the prohibition of incitement. Freedom of expression is a fundamental principle of human rights that can be found in many international treaties including the Universal Declaration on Human Rights (UDHR, Article 19), the International Covenant on Civil and Political Rights (ICCPR, Article 19), European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, Article 10), the African Charter on Human Rights and Peoples’ Rights (Banjul Charter, Article 9), and the American Convention on Human Rights (ACHR, Article 13). For example, the European Convention stipulates that “everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”<sup>573</sup>

In spite of the value of free expression, many international (and national) laws recognise the right to limit certain types of speech that may target particular groups for discrimination or violence. Generally speaking, where there are allowances for restricting speech, prior censorship is impermissible but liability for dangerous speech may be imposed after the fact.<sup>574</sup> The protection of free speech must be weighed against the prevention of other human rights violations. For example Article 19 (3) of the ICCPR states that the right to

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<sup>572</sup> *Prosecutor v. Hans Fritzsche*, Judgement, International Military Tribunal for the Trial of Major German War Criminals, 10 October 1946, para. 346.

<sup>573</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950.

<sup>574</sup> Office of the Special Rapporteur for Freedom of Expression, Organization of American States – Inter-American Commission on Human Rights, “Chapter VII – Hate Speech and the American Convention on Human Rights,” <http://www.cidh.org/Relatoria/showarticle.asp?artID=443&IID=1>, accessed May 18, 2005.

freedom of expression is subject to restrictions: “a. for respect of the rights and reputations of others;” and “b. for the protection of national security or of public order (*ordre public*) or of public health or morals.”<sup>575</sup> Moreover, Article 20 prohibits incitement to discrimination or violence, and hate propaganda.

Article 13 (2-5) ACHR contains similar restrictions on the right to freedom of expression and prohibits “any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence...”<sup>576</sup> The ACHR is more libertarian in its approach to the restriction of hate speech/incitement than the ICCPR or ECHR. By way of illustration, the ACHR requires “incitement to lawless violence” before outlawing speech, while the ICCPR only requires “discrimination, hostility, or violence,” and the ECHR allows any speech to be restricted as long as it is “necessary in a democratic society” to do so (including such possible justifications as national security, territorial integrity and public safety).<sup>577</sup> The Banjul Charter is the most restrictive in its approach, limiting people to free expression “within the law.” This must be read within the context of Article 29, which stipulates that the law includes duties to “preserve and strengthen social and national solidarity” and “to contribute to the moral well-being of society.”<sup>578</sup>

There is also variation in the remedies required by international treaties with regards to incitement. For example, the ICCPR only mandates that incitement is punishable by law (which may include civil remedies), while the International Convention on the Elimination of all forms of Racial Discrimination (CERD) declares that it must be made a criminal offence. Neither the ICCPR nor CERD require a causal nexus as an element of incitement.<sup>579</sup>

International human rights law also generally prohibits propaganda. The United Nations Human Rights Committee has declared that Article 20 of the ICCPR applies to

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<sup>575</sup> International Covenant on Civil and Political Rights, 16 December 1966.

<sup>576</sup> American Convention on Human Rights, 22 November 1969.

<sup>577</sup> Office of the Special Rapporteur for Freedom of Expression (OAS)  
<http://www.cidh.org/Relatoria/showarticle.asp?artID=443&IID=1>.

<sup>578</sup> African Charter on Human Rights and Peoples’ Rights, 27 June 1981.

<sup>579</sup> Joshua Wallenstein, “Punishing words: an analysis of the necessity of the element of causation in prosecutions for incitement to genocide,” *Stanford Law Review*, November 1, 2001, (non-paginated).

“incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the state concerned.”<sup>580</sup> Propaganda may include “accurate facts accompanied by an inflammatory commentary; accurate but selective facts; mistakes made in good faith but which are not subsequently corrected; mistakes of fact broadcast in an inflammatory way; and downright lies.”<sup>581</sup> Moreover, a fact may be true but its transmission may lead to a distorted perception. The state may be directly responsible or responsible through its failure to prevent the propaganda from occurring.<sup>582</sup> The state’s responsibility to prevent unlawful propaganda depends on two variables: 1) the degree of state control, and 2) the seriousness of the threat.<sup>583</sup> Human rights law and state responsibility are two ways in which propaganda inciting ethnic hatred can be addressed. It must be recognised that genocidal regimes are unlikely to punish hate propaganda or incitement to genocide as such hateful expression is likely originating with the state.

### *Conspiracy to Commit Genocide*

Conspiracy, an agreement by two or more people to commit the crime of genocide, is a necessary element in any genocide. Genocide cannot exist without such a criminal plan, without mass mobilisation and coordination. The term “conspiracy” is derived from Latin and means literally “to breathe together.”<sup>584</sup> Conspiracy to commit genocide is a continuous crime: the crime continues for as long as two or more parties intend to carry out the design.

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<sup>580</sup> Francois Hampson, “Incitement and the Media,” (Essex, U.K.: Human Rights Centre – University of Essex, 1993) p. 9.

<sup>581</sup> Hampson 1.

<sup>582</sup> Hampson 13. There are three types of hostile propaganda (under the law of state responsibility): 1) defamatory propaganda – to degrade and insult foreign states, leaders and institutions; 2) subversive propaganda – propaganda intended to further the overthrow of the political order of a state; or 3) war-mongering propaganda – “calculated to implant in the minds of peoples a disposition or desire to engage in an international armed conflict.” War mongering propaganda functions “by means of communications that stir up bad blood, resentment, fear, hatred, perhaps a desire for revenge, or perhaps a hope of glory and loot. At times its object is to produce a conviction that a nation must fight in self-defence, or fight a preventive war.” All three types of propaganda are in breach of customary international law as a threat to international peace and security.

<sup>583</sup> Hampson 16.

<sup>584</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), p. 259.

The crime does not end with the agreement to commit a crime, rather the “violation is constantly renewed by the continuing maintenance of the original criminal purpose.”<sup>585</sup>

In common law jurisdictions conspiracy is a regular form of criminal participation but in civil law systems it is reserved only for very serious crimes such as treason. In civil law there are two different levels of conspiracy: firstly, *complot simple* (simple conspiracy) – a concerted agreement to act; and secondly, *le complot suivi d’actes materiels* (conspiracy followed by material acts). Only the first form of conspiracy is truly inchoate but in common law and international criminal law conspiracy is always inchoate. According to a commentary on an early draft of the Genocide Convention (the Secretariat Draft) conspiracy is punishable even if no “preparatory act” has taken place.<sup>586</sup> There was some debate (especially from civil law countries) but in the end the notion of conspiracy found in the Genocide Convention is undoubtedly an inchoate offence that conforms closely to the common law standard.

The drafters of the Nuremberg Charter also adopted this common law conception of conspiracy but the Tribunal misinterpreted the charter by determining that conspiracy was not an autonomous crime and that it only applied to crimes against peace and not crimes against humanity or war crimes.<sup>587</sup> The Nuremberg Tribunal also decided that the existence of a criminal plan and the accused’s participation in that plan must be proven – old statements and the party platform were not enough: “It must not be too far removed from the time of decision and action.”<sup>588</sup> The argument that a common plan cannot exist in a dictatorship was also rejected by the court.<sup>589</sup> Membership in a criminal organisation was not enough to prove a conspiracy without evidence that the accused was aware of the criminal purposes of that

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<sup>585</sup> *Nahimana et al.* (Case No. ICTR-99-52-A), Appeals Judgement, Separate Opinion of Judge Mohammed Shahabuddeen, para. 27

<sup>586</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), p. 260.

<sup>587</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), p. 262.

<sup>588</sup> *France et al v. Goering et al*, Judgement, International Military Tribunal for the Trial of Major German War Criminals, October 10, 1946, paragraph 469, quoted in Schabas, *Genocide in International Law*, p. 262.

<sup>589</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), p. 262.

organisation.<sup>590</sup> The same restrictive conception of conspiracy was enshrined in the Control Council Law Number Ten.

The Rome Statute has an even narrower view of conspiracy – the term conspiracy is never used in the provisions on criminal liability (Article 25), rather conspiracy is a form of complicity. Thus, it is uncertain if the conspiracy to commit genocide exists as an inchoate crime in the Rome Statute. In contrast, the *ad hoc* tribunals use the broader definition of conspiracy from the Genocide Convention. Many individuals have been convicted of conspiracy to commit genocide at the Rwanda Tribunal including Jean Kambanda, Ferdinand Nahimana, Alfred Musema, Obed Ruzindana, and Charles Sikubwabo; similarly, at the ICTY Vujadin Popovic, Zdravko Tolimir, and Ljubisa Beara have been charged with conspiracy to commit genocide. Genocide occurred in both Rwanda and the former Yugoslavia so, in practise, the prosecutions for conspiracy before the tribunals were not inchoate.

In civil law systems criminals cannot be punished for both conspiracy and the underlying crime whereas in common law conspiracy may be charged cumulatively (especially if the objective of the conspiracy extends beyond the offences actually committed). This is controversial, as the rationale for punishing conspiracy in the first place is preventive.

<sup>591</sup> In international criminal law conspiracy may possibly be charged cumulatively with genocide itself. There is conflicting case law on this matter with cumulative convictions being upheld in *Niyitegeka* but rejected in *Musema*.<sup>592</sup> As with incitement, conspirators must possess both the intent to commit conspiracy (general intent) and the intent to destroy (specific intent).

Conspiracy is a difficult crime to prove – in the absence of documentation of a criminal conspiracy an informer is needed. Nonetheless conspiracies can be implicit. In the Media Trial the Appeals Chamber found that the “concerted or coordinated action of a group

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<sup>590</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), p. 262.

<sup>591</sup> *Prosecutor v. Alfred Musema* (Case No. ICTR-96-13-T), Judgement, 27 January 2000, para. 197.

<sup>592</sup> *Musema*, (Case No. ICTR-96-13-T), Judgement, para. 197. See also: *Prosecutor v. Niyitegeka* (Case No. ICTR-96-14-T), Judgement and Sentence, May 16, 2003, para. 502.

of individuals can constitute evidence of an agreement.”<sup>593</sup> There is no need to prove that all the conspirators conspire with each other only that each conspirator collaborated with one other person involved in the conspiracy.<sup>594</sup> Moreover, a criminal conspiracy to commit genocide between individuals controlling institutions may be inferred from the interactions between these institutions.<sup>595</sup> Even if conspiracies are implicit or informal the prosecutor must still prove that the existence of such a conspiracy is the only reasonable inference.<sup>596</sup> In the case of Rwanda the prosecution at the Rwanda Tribunal argued that the conspiracy to commit genocide only existed for several months before the genocide and that the period from 1990-1994 was one of “developing preparedness” and a trend towards conspiracy.<sup>597</sup> It must be remembered that mere negotiation between conspirators is not enough; there must also be an agreement to commit the crime of genocide.<sup>598</sup>

### *Attempted Genocide*

In addition to genocides that are planned and incited there are also “attempted genocides” where the perpetrator “commences its [the crime’s] execution by means of a substantial step.”<sup>599</sup> It is uncertain what this “substantial step” is, but it is likely that a substantial step must surpass simple preparation and constitute the beginning of the offence itself.<sup>600</sup> Such a substantial step might include things such as lying in wait for the victims or

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<sup>593</sup> *Nahimana* (Case No. ICTR-99-52), Appeals Judgment, 28 November 2007, para. 897. In contrast, the defence argued that such coordinated action may be mere “conscious parallelism” and not evidence of a conspiracy.

<sup>594</sup> *Prosecutor v. Théoneste Bagasora et al*, (Case No. ICTR-98-41-T), Judgement, 18 December 2008, paragraph 2096

<sup>595</sup> *Nahimana*, (Case No. ICTR-99-52), *Appeals Judgement*, para. 907.

<sup>596</sup> *Nahimana*, (Case No. ICTR-99-52), Appeals Judgment, para. 898.

<sup>597</sup> *Bagasora*, (Case No. ICTR-98-41-T), Judgement, para. 2094.

<sup>598</sup> *Prosecutor v. Juvénal Kajelijeli* (Case no. ICTR-98-44A-T), Judgement, 1 December 2003, para. 787.

<sup>599</sup> Rome Statute of the International Criminal Court. July 17, 1998.

<sup>600</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), p. 283.

enticing victims to the place of the crime.<sup>601</sup> Attempted genocide is an offence in the Rome Statute as well as the Genocide Convention and the *ad hoc* tribunals.

The Rome Statute (Article 25(f)) precludes responsibility for attempted crimes in cases where the individual in question voluntarily and completely abandons their criminal purpose.<sup>602</sup> The defence of voluntary abandonment exists in many domestic judicial systems including the United States. It is often only available as a defence if the abandonment of the criminal purpose is *completely* voluntary.<sup>603</sup> There are several arguments for recognising the voluntary abandonment defence including: firstly, the Accused lacks criminal culpability and intent; secondly, abandoned efforts are not attempts to violate substantive rules; thirdly, abandonment negates the dangerousness of the offence; and fourthly, it encourages attempters to abandon their criminal purpose.<sup>604</sup> The first argument, that the accused lacks criminal culpability presumes that the accused knew that their conduct was harmful, thus that rehabilitation is not needed, or that the accused lacked criminal intent because they did not complete their criminal act.

The second argument in favour of voluntary abandonment – that abandoned efforts are not attempts to violate substantive rules – considers abandoned attempts as only indicative of “provisional” rather than “full” criminal intent. Some commentators argue that an individual should not be punished for attempt “until he has gone far enough to show he has broken through the psychological barrier to crime.”<sup>605</sup> This is a sort of reformulation of the “substantial step” requirement for attempt. Studies show that many crimes are unsuccessful because of the “internal controls” of perpetrators; perpetrators actually intentionally fail as another form of abandonment.<sup>606</sup> This can encompass the avoidance behaviour outlined in

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<sup>601</sup> Paolo Gaeta (ed.), The UN Genocide Convention – A Commentary. New York, Oxford University Press, 2009.

<sup>602</sup> Rome Statute of the International Criminal Court. July 17, 1998.

<sup>603</sup> Michael A. Crew, “Should Voluntary Abandonment be a Defense to Attempted Crimes?” American Criminal Law Review, Vol. 26, no. 2 (Fall 1988), p. 445.

<sup>604</sup> Crew 447.

<sup>605</sup> G. Williams quoted in Crew 453.

<sup>606</sup> Crew 453.

Chapter Three such as intentionally “shooting past” intended victims or evading full participation in criminal endeavours. This may be due to ineffective functioning of the techniques of neutralisation as the perpetrators encounter cognitive dissonance in the course of their criminal act. Confusingly, abandoned attempts are not considered to be attempts at all as they are incomplete. Yet this militates against the core concept of attempted genocide as an inchoate crime.

The third rationale for voluntary abandonment as a defence for international crimes is that abandonment negates the dangerousness of the offence. Yet, in the case of genocide, there is little doubt that even abandoned attempts can be extremely dangerous and detrimental to the society in which they occur. It does not take much imagination to understand how genocide, as a mass crime based partly on racial enmity, can be brought to fruition due in part to publicised abandoned attempts. Such abandoned attempts (if they are not punished) may serve to illustrate the vulnerability of victims and the low costs of perpetration. Moreover, they may further isolate targeted groups.

Presumably voluntary abandonment was included to strengthen the preventive function of the law – it provides a measure of positive inducement to potential perpetrators to abandon their criminal efforts before the actual commission of genocide. Voluntary abandonment operates in concert with deterrence: perpetrators have no risk of punishment if they abandon their attempt at genocide, yet they face criminal sanction if they do not. Like the deterrent effect, it is uncertain whether voluntary abandonment will actually motivate perpetrators to forgo their criminality. It is reliant on the assumption that potential attempters are sufficiently apprised of the defence (highly unlikely) and that they would not abandon their attempted genocide otherwise.<sup>607</sup> One could also hypothesize that even if voluntary abandonment reduces completed attempts it may provide incentives to initiate attempts. Moreover, individuals who attempt genocide are likely dangerous persons (there may be a correlation between attempted crimes and further criminal behaviour), who intend to violate the

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<sup>607</sup> Crew 450.

substantive rules of society. This is why the punishment of attempted genocide is so important

### **5.8 The Genocide Convention and the Neglect of Prevention**

#### ***Hate Speech, Persecution, and Genocide***

The Convention on the Prevention and Punishment of the Crime of Genocide pays scant attention to its prevention mission. Precursors to genocide such as hate speech and other preparatory acts were largely left out of the convention. Regardless of the relative lack of prevention in the text of the document, the prevention of genocide is certainly the object and purpose of the treaty. In fact, prevention is named in Article One of the convention. This obligation to prevent was substantially fleshed out in the Genocide Case at the International Court of Justice.

Hate speech is much broader than incitement to genocide (direct and public calls for genocide) – it encompasses any expression intended to denigrate an ethnic, racial, or other group. The UN secretariat argued that hate speech might have the effect that those exposed would “contemplate the commission of genocide in a favourable light.”<sup>608</sup> The gravest forms of hate speech (not including incitement to genocide) may still be included in international criminal law under the crime against humanity of persecution. A proposed article (Article 3) of the Genocide Convention was to deal with hate propaganda but it was eventually rejected by the delegates. Manfred Lachs of Poland argued in favour of the article saying “preaching hate could not be considered as information...since laws protected the individual against libel and slander, the group was also entitled to the same protection.”<sup>609</sup>

The Soviets were in favour of both the inclusion of hate speech and of preparatory acts but the Americans were opposed.<sup>610</sup> Alternatively, the Soviets favoured strengthening the

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<sup>608</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), p. 480.

<sup>609</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), p. 163.

<sup>610</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), pp. 57, 63.

incitement provisions in the convention to include “all forms of public propaganda (press, radio, cinema, etc.) aimed at inciting racial, national, or religious enmities or hatreds or at provoking the commission of acts of genocide.”<sup>611</sup> The Soviets also wanted to take the prohibition of hate speech a step further by proposing to revise Article IX to oblige states to disband and prohibit organisations inciting racial hatred or genocidal acts.<sup>612</sup> In spite of its omission hate propaganda is prohibited by many international instruments (some of which are cited above). The most comprehensive definition and restriction of hate propaganda can be found in Article 4 of the CERD which also obliges states to “declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law.”<sup>613</sup> Genocide prevention must take a human rights-based approach and extend far beyond the bounds of the Genocide Convention.

Case law indicates that certain forms of hate speech may be criminalised as the crime against humanity of persecution. Persecution is a crime against humanity that encompasses all the other crimes against humanity, when committed with persecutory intent. This also includes the crime against humanity of “other inhumane acts,” a sort of residual clause. In *Kupreskic* the Yugoslav Tribunal found that persecution must constitute “a gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other acts prohibited.”<sup>614</sup>

The key question is whether incitement to persecution (or hate speech) can be considered to have sufficient gravity to be a crime against humanity. The ICTY found, in the case of *Kordic and Cerkez*, that hate speech is not an enumerated crime in the Statute and it “does not rise to the same level as gravity” as the other crimes against humanity, therefore to

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<sup>611</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), p. 73.

<sup>612</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), p. 76.

<sup>613</sup> International Convention on the Elimination of All Forms of Racial Discrimination, December 21, 1965.

<sup>614</sup> *Prosecutor v. Kupreskic et al* (Case No. IT-95-16), “Lasva Valley,” Judgement, 14 January 2000, para.

621.

find the defendant liable would violate the principle of *nullum crimen sine lege*.<sup>615</sup> Similarly, many years before, in the *Einsatzgruppen* case a US military tribunal determined that crimes against humanity are “acts committed in the course of a wholesale and systematic violation of life and liberty” and hate speech does not necessary violate life or liberty.<sup>616</sup>

Somewhat contrarily to *Kordic and Cerkez*, the Chamber in the Media Trial concluded that, in a certain context, hate speech could constitute persecution. In forming these conclusions the court cited *Ruggiu* (ICTR), where hate speech was held to be pursuant to a fundamental deprivation of rights on discriminatory grounds and thus, the crime of persecution.<sup>617</sup> The court reasoned that the RTLM and *Kangura* were “conditioning the Hutu population and creating a climate of harm.”<sup>618</sup> This “climate of harm” itself was of sufficient gravity (both in terms of the fundamental denial of human rights and relative to other crimes against humanity) to constitute a crime against humanity.<sup>619</sup> Hate speech may also be strongly indicative of the presence of a persecutory campaign targeting a group.

Similarly, in *Canada (Minister of Immigration) v. Léon Mugesera* the Supreme Court of Canada concluded that “hate speech, particularly when it advocates egregious acts of violence, may constitute persecution, even if it does not result in the commission of acts of violence” and “a persecutory speech which encourages hatred against a targeted group furthers an attack against that group.”<sup>620</sup> Hans Fritsche was acquitted at Nuremberg because the court

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<sup>615</sup> *Prosecutor v. Dario Kordic and Mario Cerkez* (Case No. IT-95-14/2), “Lasva Valley,” Judgement, 26 February 2001, para. 209. The court was quite restrictive in its approach to persecution and examined the issue in the context of the “ordinary meaning” of the Statute in light of its “object and purpose” (see Article 31 of the Vienna Convention on the Law of Treaties).

<sup>616</sup> *United States of America v. Ohlendorf et al.*, “Einsatzgruppen Trial,” Judgement, 3 L.R.t.W.C. 470 (United States Military Tribunal), 1948.

<sup>617</sup> *Prosecutor v. Georges Ruggiu* (Case No. ICTR-97-31-I), Judgement, 1 June 2000, para. 22. The Canadian Supreme Court reached a similar conclusion in *Mugesera*: “hate speech, particularly when it advocates egregious acts of violence, may constitute persecution.” See *Mugesera*, (Case No. 30025), judgement, para. 67.

<sup>618</sup> *Nahimana*, (Case No. ICTR-99-52), Judgement, para. 1073. Instigation (a form of liability listed in Article 6 of the ICTR Statute) differs from incitement to commit genocide in that it *does* require a direct causal link between the communication and the principal physical perpetration.

<sup>619</sup> *Nahimana*, (Case No. ICTR-99-52), Judgement, para. 1073.

<sup>620</sup> *Mugesera*, (Case No. 30025), judgement, paras. 9 and 10. The use of the term “attack” by the Court is significant as crimes against humanity must occur as part of a “systematic or widespread attack.” This may take

argued that his speech was not “intended to incite the German people to commit atrocities” but the “aim was rather to arouse popular sentiment in support of Hitler and German war effort.”<sup>621</sup> Hate speech may not be persecution unless it impacts the ‘life and liberty’ of its victims.

In *Bikindi* the ICTY Trial Chamber reaffirmed that hate speech can constitute the crime against humanity of persecution if: 1) the hate speech undermines a fundamental right set down in customary international law, 2) it undermines this right on the basis of racial, religious, or political identity, and 3) the underlying acts are of similar gravity to the other crimes against humanity.<sup>622</sup> In considering gravity the “cumulative effect” of the hate speech must be assessed. The Chamber does not fully address the issue of whether isolated hate speech (i.e. inchoate hate speech without any subsequent acts of persecution) may constitute a crime against humanity, only stating the occurrence of such hate speech in isolation is highly unlikely.<sup>623</sup>

Persecution also differs from genocide in that it is broader than genocide as it includes a wider potential range of protected groups (for example, political groups). The same hateful expression may have different meaning for different people, so some victims may face crimes such as extermination while others will face rape.<sup>624</sup> It is also important to remember that when persecution takes the form of other crimes against humanity it may constitute a lesser-included offence. In international criminal law cumulative convictions are permissible if the crimes comprise materially distinct elements (for example, incitement to commit genocide requires a direct and public call to violence while the crime against humanity of persecution

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the form of a single crime as long as it occurs in the context of a systematic or widespread attack and the perpetrator has knowledge of this context.

<sup>621</sup> Quoted in *Nahimana*, (Case No. ICTR-99-52), Appeals Judgment, para. 10.

<sup>622</sup> *Bikindi*, (Case No. ICTR-01-72-T), Judgment, para. 393.

<sup>623</sup> *Bikindi*, (Case No. ICTR-01-72-T), Judgment, para. 394.

<sup>624</sup> *Nahimana et al.* (Case No. ICTR-99-52), Judgment, para 1080.

does not).<sup>625</sup> Yet, even without criminalisation, the prohibition on hate speech is embodied in many international human rights treaties.

### ***Preparatory Acts***

The Genocide Convention excluded other preparatory acts. A Soviet proposal (included in the first draft of the convention) criminalised genocidal research, procuring the material means for genocide, and also issuing orders in preparation for genocide. This included:

- (a) studies and research for the purpose of developing the technique of genocide;
- (b) setting up of installations, manufacturing, obtaining, possessing or supplying of articles or substances with the knowledge that they are intended for genocide;
- (c) issuing instructions or orders, and distributing tasks with a view to committing genocide.<sup>626</sup>

The first two aspects of this proposal seem largely designed as a response to specific circumstances of industrialized genocide as it occurred in the Holocaust. In the Holocaust there was research conducted on such matters as the improvement of gas vans and on the preferred means to dispose of human remains. The enforcement of subparagraph (b) of this article may have implicated many German corporations involved in providing the infrastructure and technology for the Holocaust such as IG Farben.

Although there are evidentiary difficulties (for example, how do you prove research on chemicals is for the purpose of gassing humans and not gassing insects – zyklon B was also a commonly used pesticide) there is some legal precedent for criminalizing preparatory acts for international crimes. One example of this is Convention for the Suppression of Counterfeit Currency.<sup>627</sup> Yet all three of these articles are encompassed by existing modes of liability under the convention such as complicity and conspiracy. One could argue that if these

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<sup>625</sup> *Nahimana et al. (Case No. ICTR-99-52), Judgement*, paras. 1073 and 1080.

<sup>626</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Secretariat Draft, May 1947, UN Doc. E/447, Article 2.

<sup>627</sup> Schabas, *Genocide in International Law* (1<sup>st</sup> edition), p. 490.

preparatory acts occur without (or before) genocide taking place they are inchoate conspiracy or attempt, while if these acts occur in conjunction with genocide they are forms of complicity (for example procuring means). Thus, there is little to gain through the inclusion of such preparatory acts.

### *The ‘Other’ Acts of Genocide*

It is often overlooked that genocide includes more than just killing, it also includes other acts such as preventing births and forcibly transferring children. Such acts of biological genocide are often precursors to killings. Acts of biological genocide are somewhat more discrete and less gruesome than killing, thus they are often more socially acceptable. The perpetrators of biological genocide may also employ the claim of relative acceptability, arguing that sterilisation is preferable to murder. The inclusion of the ‘other acts’ of genocide in the Genocide Convention is somewhat preventive in nature, although such acts can still, over time, result in the destruction of the group.

## **5.9 Disempowering Genocidal Mobilisation**

### *The Prosecution of Inchoate Crimes and other Preparatory Acts*

The active prosecution of early phases of genocide such as incitement, genocidal conspiracies, and biological forms of genocide may increase the preventive power of international criminal law and disempower genocidal mobilisation. Genocide cannot occur without incitement and conspiracy. Incitement to genocide has the effect of mobilising genocidal forces – for instance, one Rwandan perpetrator recalls “there were some in our group who were promoters – it was they who told us to find and kill the cockroaches.”<sup>628</sup> Leaders use incitement to coalesce disparate individuals into a mass with the shared purpose of destroying the victim group – the formation of such collective intent does not occur

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<sup>628</sup> Interview R39 (Rwandan Perpetrator), farmer, Nyarusenge TIG Camp, August 31, 2009.

spontaneously. This purposeful destruction is only possible with the prior dehumanisation of the victim group through a discourse of hate speech and incitement to genocide.

Moreover, incitement/propaganda can provide perpetrators with “vocabularies of motive” as violence against victims is authorised through techniques of neutralisation such as portraying the victims as being perpetrators themselves and claiming that the destruction (killing) of such a group would not only be legitimate but imperative for the protection of the perpetrators’ families, nation, and highest ideals. Incitement also narrows the discursive space, reducing the perceived range of options available to the perpetrator. Incitement also fills “gaps” in the scope of formal criminal conspiracies by providing guidance for collective action.

In order to counteract the effect of inchoate incitement it must first be identified. This can be difficult because of the use of coded language. Moreover, incitement often works in an indirect manner as accusations are made of atrocities committed by the victim group as a means of providing authorisation for the perpetrator group to commit these same atrocities.<sup>629</sup>

Conspiracy, like incitement, is instrumental for the entire genocidal enterprise. Genocide is not an individual offense and the implementation of genocide requires many elements. Often leadership (in the form of a small clique of leaders) provides the necessary impetus for these elements to be put into place. This was the case with the Holocaust (undoubtedly led by Hitler and his inner circle), the Rwandan genocide (with its ruling clique, the *Akazu*), and other genocides. This does not mean that genocide does not enjoy mass support or participation, but rather that the criminal conspiracy and planning of a group of individuals is necessary to push the masses in the correct direction. Furthermore, many individuals may be aware of the existence of an implicit conspiracy (for example the collective goal of exterminating the Tutsis).

The prosecution of inchoate forms of genocide such as incitement, conspiracy, and attempt may greatly increase the preventive power of international criminal law. If

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<sup>629</sup> Roy Gutman, *A Witness to Genocide: Dispatches on the Ethnic Cleansing of Bosnia*, (New York: Macmillan, 1993), p. x.

incitement is stopped at an early stage by the prosecution of inciting individuals in vulnerable societies, perhaps these states can be pulled back from the brink of genocide. The ‘marketplace of ideas’ thesis, often espoused by the Americans (that all ideas should be heard because the best ideas will triumph), is unconvincing because in genocidal societies *there is no marketplace of ideas*.<sup>630</sup> As a state-directed crime the diversity of discourse is substantially reduced or non-existent – access to the mass media is disproportionately, or exclusively, held by those inciting genocide.

Historically, inchoate forms of genocide have only been prosecuted after the actual occurrence of genocide. Needless to say, this nullifies the preventive effects of the law (unless general deterrence theory is valid). It also reduces inchoate offenses to mere forms of complicity, only criminalised because genocide has already occurred.

There are some practical reasons for this prosecutorial conservatism. Firstly, gathering evidence of intended genocide is difficult in the absence of genocide itself. How can you prove the existence of a (explicit) conspiracy to commit genocide without locating direct evidence? Implicit conspiracies essentially cannot be proven without the occurrence of genocide itself. Secondly, indicting and arresting individuals before genocide has occurred would be difficult, requiring the full cooperation of the state in which they reside. This is often not possible, as that state is generally itself complicit or directing this preparation for genocide. Finally, indicting for “potential” crimes may appear to be overly speculative and interventionist. A court such as the International Criminal Court is in the process of building its legitimacy and the prosecutor will be wary of expending political capital on a seemingly quixotic quest to stop mass crimes before they occur.

These problems notwithstanding, there are ways of gathering evidence on the existence of inchoate offences (for example through the context of incitement, or through conspirators that have abandoned their criminal purpose). It also must be reiterated that inchoate crimes are themselves crimes whether or not genocide subsequently occurs. Genocide is a process

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<sup>630</sup> Susan Benesch, “Vile Crime or Inalienable Right: Defining Incitement to Genocide,” Virginia Journal of International Law, vol. 48, no. 3, p. 496.

and unsuccessful incitement or genocidal planning may have a pernicious effect – dehumanising victim groups and increasing the threat of future genocides. Moreover, the prosecution of preparatory acts (such as the creation of genocidal infrastructure) may reverse the course of genocide, dismantling the structures of perpetration. Perhaps, also the incarceration of genocidal leaders may have the specific deterrent effect of ensuring that these individuals are no longer able to endeavour to bring about genocide. Furthermore, it might also have some general deterrent effect of showing that crimes will be prosecuted. If the law is serious about prevention, inchoate forms of genocide must be prosecuted.

### *Génocidaires and Genocidal Intent*

The conclusion of this study that racial animus is only one factor among many influencing “ordinary” perpetrators also has implications for the use of prosecution as a tool of prevention. Many perpetrators who are directly responsible for the crime of genocide may have less true culpability than those who are responsible for acts of complicity in genocide such as instigation. Furthermore, as a matter of public policy, less emphasis should be placed on the *dolus specialis* of genocide. It is true that genocidal intent does have some relevance in distinguishing genocide from crimes against humanity yet many perpetrators may not possess clear genocidal intent. Motive and intent are often conflated and génocidaires frequently possess genocidal intent without racist motives (i.e. they intend to destroy the group but are motivated out of obedience to authority rather than racial hatred).

Therefore, it seems to be more logical that many of these perpetrators should be held responsible for genocide on the basis of knowledge of a genocidal context, rather than genocidal intent. After all, even if perpetrators do not participate in genocide out of “pure” genocidal intent, many acts of perpetration without genocidal intent are still necessary for the crime of genocide to be actualised; the perpetrators of such acts do so in full knowledge of their participation in a wider campaign directed at the extermination of an ethnic group. The intent-based approach makes sense for high-level perpetrators who direct genocide while the knowledge-based approach is more suitable for low-level perpetrators, who may not exhibit true genocidal intent but nonetheless participate in genocide. Amongst low-level perpetrators

one can also distinguish between state agents and others (knowledge cannot be inferred from non-state agent perpetrators as they are not part of the state).<sup>631</sup>

The Yugoslav Tribunal appears to be more focussed on the intent of the perpetrators while the International Criminal Court has gone beyond intent to consider the existence of a pattern or policy as a constitutive element of both genocide and crimes against humanity. In *Bashir* a pre-trial chamber of the ICC found that there is no inconsistency between the approach emphasized in the Rome Statute and that used by the international tribunals.<sup>632</sup> The jurisprudence illustrates this distinction between the intent-based theory used at the tribunals and the “knowledge-based” (policy/pattern contextual element) at the ICC. For example, the ICTY in *Brdanin* and the Québec Superior Court in *Munyaneza* determined that “the existence of a plan or policy for the destruction of the group is also not one of the elements essential to the offence.”<sup>633</sup>

In contrast, the policy element is found right in the Rome Statute for the International Criminal Court in the provision on crimes against humanity (Article 7 (2)). For genocide, the provision is not in the statute but rather in the Elements of Crimes. There is some question as to the legality of the genocide provision as it appears to add an entirely new element to the crime of genocide as articulated in Article 6 of the statute. This may be in contravention of Article 9 of the Statute (on the Elements of Crimes) which stipulates that the elements of crimes “shall be consistent with this statute.” However, the “pattern” element of genocide may be read in light of Article 1 of the statute which sets out that the court will only deal with the “most serious crimes of international concern.”<sup>634</sup>

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<sup>631</sup> Kai Ambos, “Criminologically Explained Reality of Genocide, Structure of the Offence and the ‘Intent to Destroy’ Requirement,” in Alette Smeulers (ed.), *Collective Violence and International Criminal Justice: An Interdisciplinary Approach*, (Antwerp: Intersentia, 2010), p. 168.

<sup>632</sup> *Prosecutor v. Omar Hassan Ahmad Al Bashir* (Case No. ICC-02/05-01/09), “Decision on the Prosecution’s Application for a Warrant of Arrest for Omar Hassan Ahmad Al Bashir,” Pre-Trial Chamber, 4 March 2009, para. 132.

<sup>633</sup> *Canada v. Désiré Munyaneza* (Case no. 500-73-002500-052), Judgement, Québec Superior Court, 22 May 2009, para. 99. See also: *Prosecutor v. Brdanin* (Case No. IT-99-36-T), Judgement, 1 September 2004.

<sup>634</sup> John B. Quigley, *The Genocide Convention: An International Law Analysis*, (Aldershot, U.K.: Ashgate Publishing, 2006), p. 172.

Moreover, the language used with regards to the “policy element” is different for crimes against humanity and genocide. For crimes against humanity Article 7 (2) stipulates that attacks must be “in furtherance of a state or organisational policy” while for genocide the Elements of Crimes require that “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.” Thus, it appears that the contextual element that must be met for crimes against humanity is more specific than that for genocide: a “state or organisational policy” versus a “pattern.”

The ICC jurisprudence in *Prosecutor v. Katanga and Ngodulo Chui*, and *Prosecutor v. Jean-Pierre Bemba Gombo* both argue that the policy requirement for crimes against humanity involves “an attack which is planned, directed or organized - as opposed to spontaneous or isolated acts of violence.”<sup>635</sup> Both decisions, as well as the “Decision pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya” consider that, for the purposes of the Rome Statute, the term “organisation” includes any organisation capable of planning a widespread or systematic attack. The Kenya authorisation of investigation decision concludes that the standard is simply a group which has “the capability to perform acts which infringe upon basic human values” and that such acts must be planned rather than opportunistic.<sup>636</sup> In contrast, the dissenting opinion of Judge Hans-Peter Kaul in the Kenya decision argues that organisations must be state-like to fulfill the state policy contextual element of crimes against humanity.<sup>637</sup> Judge Kaul also notes that the factor separating crimes against humanity from ordinary crimes is that the state, normally

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<sup>635</sup> *Prosecutor v. Katanga and Ngodulo Chui* (Case No. ICC-01/04-01/07-717), Pre-Trial Chamber I, Decision on the confirmation of charges, para. 396 (footnotes omitted) and *Prosecutor v. Jean-Pierre Bemba Gombo* (Case No. ICC-01/05-01/08-424), Pre-Trial Chamber II, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, , para. 81 (footnotes omitted).

<sup>636</sup> “Decision pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya,” International Criminal Court Pre-Trial Chamber, March 31, 2010, paras. 90 and 117.

<sup>637</sup> “Decision pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya,” dissenting opinion of Judge Kaul, para.52.

protector of the rights of its citizens, is acting as a perpetrator.<sup>638</sup> Kaul's formulation of the purpose of international crimes is very similar to the notions underlying the responsibility to protect doctrine.

Let us return now to the crime of genocide. If it is true that the contextual element for genocide is broader than that of crimes against humanity, perhaps in the case of genocide it is enough that genocidal acts occurred together with other genocidal acts, even if there was no genocidal policy *per se*. However it is difficult to imagine genocide occurring without any sort of official, or implicit, policy for the commission of the crime. For crimes such as the crime against humanity of rape or the war crime of pillage one could conceive of a scenario where the crimes occur in a context of lawlessness. But genocide involves not just attacks against individuals, or even attacks against a particular group, but attacks (killing, causing serious bodily and mental harm, etc.) with the intention of destroying a group. It is inconceivable that such attacks could occur without some form of unifying belief that shapes collective intent. Emphasizing a knowledge-based approach to the prosecution of genocide (i.e. that perpetrators are required to have knowledge of the genocidal policy and have perpetrated genocidal acts with this knowledge) is more logical than the constant search for genocidal intent that genocide prosecutions often entail. However, such a knowledge-based approach must acknowledge the often decentralised nature of genocide perpetration by recognising implicit policies directed at the destruction of the categories of groups protected in the Genocide Convention.

The *Jelisić* Case at the Yugoslav Tribunal provides an interesting case study of genocidal intent and the context of genocide. Goran Jelisić, a guard at the Luka camp in Brčko, Bosnia, committed numerous acts of gratuitous cruelty and was likely a sadist. He styled himself the "Serbian Adolf." He seemed to have held racist views against Bosnian Muslims, subjecting them to racial taunts and forcing them to sing Serbian songs in front of

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<sup>638</sup> "Decision pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya," dissenting opinion of Judge Kaul, para. 60.

the Serbian flag.<sup>639</sup> In spite of this hatred towards Bosnian Muslims he seems to have been somewhat arbitrary in his selection of victims. Assuming that Jelusic was motivated more by sadism than any sort of racial animus, perhaps he did not possess the specific intent to destroy a group (Bosnian Muslims) but rather just the general intent to kill. In this case, the killings he participated in are more accurately labelled as murder, or perhaps, as they were part of a widespread or systematic attack against a civilian population, the crime against humanity of murder. Jelusic might have just been committing opportunistic violence, a murderer given the opportunity to murder, like the perpetrators discussed on page 152. This is the problem of the intent-based approach – many perpetrators, sadists for example, might not possess the intent to destroy even as they contribute substantially to the genocidal enterprise. Consider, as argued in Chapter Three, that such sadistic perpetrators might even disproportionately contribute to genocide as they act as vanguard perpetrators, leading killings and spurring reluctant perpetrators into participation.

The Prosecutor in Jelusic argued that it is not necessary for the perpetrator to seek the destruction of the group but rather only to know that their acts will likely result in the destruction of the group.<sup>640</sup> This is a kind of foreseeability standard that is more based in knowledge than in the specific intent of the perpetrator. A similar foreseeability standard for genocide was set out by Judges Koroma and Weeramantry in their dissenting opinions to the International Court of Justice decision on the Legality of Nuclear Weapons.<sup>641</sup> Article 2 of the genocide convention, can and should be read as incorporating a “willfull blindness” form of liability.<sup>642</sup> The Trial Chamber rejected this “should have known” standard and misinterprets *Akayesu* to say that all genocidal acts (even complicity) require specific intent.<sup>643</sup>

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<sup>639</sup> *Prosecutor v. Goran Jelusic* (Case No. IT-95-10), “Brcko,” Trial Chamber Judgement, International Criminal Tribunal for the Former Yugoslavia, December 14, 1999, paras. 75-76.

<sup>640</sup> *Jelusic*, (Case No. IT-95-10), Judgement, para. 86.

<sup>641</sup> *Legality on the Threat or Use of Nuclear Weapons*, advisory Opinion, I.C.J. Reports 1996, pp. 502, 577 (dissenting opinion, Weeramantry and dissenting opinion Koroma).

<sup>642</sup> Quigley 119.

<sup>643</sup> *Jelusic*, (Case No. IT-95-10), Judgement, para. 89.

The Tribunal did reason that: “it is *a priori* possible to conceive that the accused harboured the plan to exterminate an entire group without this intent having been supported by any organisation in which other individuals participated,” and also that the presence of such an organisation or system was not set out as an element of the crime of genocide by the drafters of the genocide convention.<sup>644</sup> In its somewhat muddled conclusions it also noted that genocide had not been proven beyond a reasonable doubt to have occurred in Brcko (without explicitly saying that a policy or pattern of similar acts was required for a finding of genocide) and that “the behaviour of the accused appears to indicate that, although he obviously singled out Muslims, he killed arbitrarily rather than with the clear intention to destroy a group.”<sup>645</sup> The court posited that Jelusic had killed as a result of a “disturbed personality” and he was acquitted of genocide.<sup>646</sup>

The Appeals Chamber disputed the Trial Chamber’s reasoning with regards to Jelusic’s lack of genocidal intent. The court rightly found that “the existence of a personal motive does not preclude the perpetrator from also having the specific intent to commit genocide.”<sup>647</sup> As noted above, the Trial Chamber made repeated misleading references to Jelusic’s “disturbed personality,” “borderline, antisocial and narcissistic characteristics,” and his “concern to please superiors.” Jelusic was found psychologically fit to stand trial so the Trial Chamber’s quasi-psychoanalytical consideration of these factors seems to be a wrongful assessment of his motives for killing. The Trial Chamber also notes that “Goran Jelusic suddenly found himself in an apparent position of authority for which nothing had prepared him [...] this authority made it even easier for an opportunistic and inconsistent behaviour to express itself.”<sup>648</sup> The fact that Jelusic’s killing was opportunistic is indicative of his motives for killing but not necessarily his genocidal intent. The Appeals Chamber noted that Jelusic had spoken of an

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<sup>644</sup> *Jelusic*, (Case No. IT-95-10), Judgement, para. 100.

<sup>645</sup> *Jelusic*, (Case No. IT-95-10), Judgement, para. 108.

<sup>646</sup> *Jelusic*, (Case No. IT-95-10), Judgement, para. 105.

<sup>647</sup> *Prosecutor v. Goran Jelusic* (Case No. IT-95-10), “Brcko,” Appeal Chamber Judgement, International Criminal Tribunal for the Former Yugoslavia, 5 July 2001, para. 49.

<sup>648</sup> *Jelusic*, (Case No. IT-95-10), Judgement, para. 105.

“extermination plan” and that he said that he wanted to “cleanse [...] the extremist Muslims and balijas like one cleans the head of lice.”<sup>649</sup> The Appeals Chamber rightly concludes that Jelusic’s motives were not relevant to the presence of genocidal intent, nor were the inconsistency of his intent or the fact that he “took ‘pleasure’ from the killings”.<sup>650</sup>

Given the extreme social harm of genocide and the absence of an explicit motive requirement in the genocide convention, it is not adequate to acquit all génocidaires who kill due to sadism. Equally, genocide is a mass crime so it does not make sense to convict individuals, acting in isolation, of the crime of genocide (unless those individuals have the personal capability of killing large numbers of people). This is why a knowledge-based approach, whereby the crime of genocide can only occur in the context of some overarching pattern of genocide, makes sense. Appropriate prosecution for genocide may contribute to the overall genocide prevention framework.

### **5.10 Conclusion: The Price of Impunity**

History has shown that we ignore the commission of international crimes at our own peril. Even if prosecution alone is not enough to deter all potential offenders, non-prosecution sends a dangerous message that their actions will be absolutely without consequence. Hitler’s rhetorical question: “who, after all, speaks today of the annihilation of the Armenians” was an expression of the permissive power of impunity. Prosecutions for international crimes have a preventive effect and they also offer justice to victims and individualise guilt. This individualisation of guilt may also contribute to reconciliation in dangerously divided societies by placing the blame for past transgressions at individuals, thus, breaking the cycle of vengeance.

There are strong linkages between genocide and other human rights violations. Genocide is often preceded by forms of persecution against the victim group. Moreover,

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<sup>649</sup> *Jelusic*, (Case No. IT-95-10), Appeals Judgement, para. 71.

<sup>650</sup> *Jelusic*, (Case No. IT-95-10), Appeals Judgement, para. 71.

genocide is always accompanied by other forms of violence such as rape, torture, and, often, war. If we are more proactive in prosecuting the early stages of genocide and other international crimes, then the potential to prevent genocide is exponentially increased. Genocide perpetrators must face the knowledge that, if their crimes are discovered, they will be prosecuted and denied their liberty. Yet such prosecutions must be accompanied by other social and diplomatic measures. Genocidal societies cannot be tamed by the law alone.

## Chapter 6 – Conclusion

### 6.1 Comprehending Genocide

Genocide *can* be understood. If we are to conceive of genocide as being evil, and there are surely strong reasons for doing so, then we must consider it a human evil rather than grounding our discussion in the language of mysticism. Genocide is wrought by ordinary men and women. This is apparent to most people who have examined the phenomena of genocide, yet still this proposition remains deeply troubling. If we condemn the act of genocide and condemn the *ordinary* individuals who commit this act are we also condemning ourselves? What, if anything, separates us from them? Hannah Arendt famously spoke of the banality of evil; perhaps it is more useful to speak of the humanity of evil. Evil is *not* banal, it is extraordinarily savage, but it is also unmistakably human. With this in mind we can ask whether génocidaires are beasts in the shape of men or men in the shape of beasts?<sup>651</sup> Is evil located in their selves or in their actions? The evidence leads us towards a single conclusion, awesome in its terrible possibility: the potential for genocide rests within each and every one of us.

#### **Figure 6.1 Central Conclusions**

1. Genocide is driven by depersonalisation/objectification.
2. The self-objectification of perpetrators allows perpetrators to avoid cognitive dissonance and, in some sense, to avoid the decision to commit genocide entirely.
3. The objectification (dehumanisation) of victims also eases the perpetration of genocide.
4. Perpetrators utilise techniques of neutralisation in order to minimise cognitive dissonance and self-objectify.
5. Propaganda provides perpetrators with authorisation to kill.
6. Perpetrator decision making is socially-bounded.
7. Most perpetrators are rational, conformist, and not highly ideological, although hate ideology still plays an important role.
8. Genocide may be prevented by making perpetration more difficult.

<sup>651</sup> In the Eichmann trial the prosecutor said of Eichmann that “he was born human but he lived like a beast in the jungle.” Sivan 20:56.

Genocide is at once universal (it is grounded in human potentialities) and contextual (it will only occur within a certain social context). However, our social context is never fully determinative. Moreover, social contexts have no organic life of their own – they are created through human volition. In the case of genocide leaders must decide to commit genocide, to build the structures and messages that inspire, authorise, and structure individual decision-making. Many low-level perpetrators seem to be motivated more by aversion to acting at variance with group norms than by profound hatred of the other. Yet, hatred cannot be discounted. This is where the contextuality of genocide is crucial: genocidal messages will not be equally persuasive and comprehensible in differing contexts. In Canada “destroy the cockroaches once and for all” means very little but in Rwanda such an exhortation is determinative of life and death.

Structures of obedience (such as the modern state itself) shape individual behaviour – we are all situated within the machine, whether we like it or not. In many cases, obedience and conformity may be enough to ensure compliance with killing demands but the denigration of the victim is also hugely important in transforming ordinary people into killers. The conditioning underlying genocidal killing may occur through mass propaganda, in the case of civilian offenders, or through specific training, in the case of military offenders. It is important to remember that, even though they have received special training, members of the security apparatus are largely “ordinary” in their psychological makeup.<sup>652</sup>

The techniques of neutralisation are central to overriding and neutralising the moral prohibition on killing. The techniques of neutralisation, as disseminated through propaganda, cultural beliefs, and regulated norms of behaviour (including our tendency to minimise our own moral culpability) allow the individual to conform without threatening their cognitive integrity. Cognitive dissonance results when we do not feel as though our actions correspond with our beliefs but the techniques of neutralisation allow individuals to restructure their beliefs or to neutralise their dissonance through the use of strong justifications. The research

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<sup>652</sup> See, for example, George M. Kren and Leon Rappoport, The Holocaust and the Crisis of Human Behavior, (New York: Holmes & Meier, 1994).

conducted for this work in Rwanda, Burundi, Uganda, Bosnia, Cambodia, India, and Bangladesh illustrates well the presence of these justifications and the importance of these beliefs for structuring perpetrator action by reducing guilt both before and after the act of killing. The perpetrator is able to believe that they are not responsible because of the ideological and normative context present at the time and place of perpetration. Furthermore, perpetrators mitigate the moral (and legal) magnitude of their crimes by negating their agency, and seeking to maintain their self-image through the belief that their actions were justifiable, unavoidable, and more noble than those of other individuals placed in the same context.

The structures of the state, or state-like entity, hugely facilitate this process, which seeks to defend the self against external and internal judgement. The state demands obedience and most individuals will comply whatever the cost. State structures place individuals in a situation of omnipotence over their disempowered victims. In such circumstances, a sadistic shift may take place where individuals, who are not normally sadistic, begin to exhibit sadistic behaviour. This sadistic behaviour is often forward-looking, exceeding the immediate demands of genocidal leaders and organisations. Yet, the state itself functions as a criminogenic system: genocide becomes normative and the state seeks to produce the crime of genocide. This criminogenic state inculcates a sort of genocidal organisational culture which is personified in specialised killing organisations. The nature of genocide as a collective crime, often perpetrated in the presence of supportive (or passive) peers, also eases killing.

In the context of the criminogenic state individual decision-making becomes distorted. The individual's perceived range of choices is defined by the society in which they live (social margin of discretion) as well as their role within that society (role margin of discretion). Individual perpetrators generally do not possess unique qualities but they are placed in a unique context. The genocidal state substantially reduces the costs of participation in genocide and increases the costs of *non-participation*. Moreover, individual participation in killing is rewarded, and, once the taboo has been broken, the marginal costs of recidivism decrease substantially. In other words, killing becomes easier and easier.

Preventing genocide then requires raising the costs of perpetration so as to render it unpalatable. This applies equally to individual perpetrators and the collective dimension of

state perpetration. Unfortunately, it is the passivity of individual and state bystanders that renders genocide possible. Without the acquiescence of bystanders would-be génocidaires would have to overcome significant risks and costs in order to perpetrate genocide. In effect, genocide, defined by its grossly asymmetrical application of force, would no longer be genocide and would be more akin to armed conflict.

It is important to remember that genocide prediction is not a prerequisite for genocide prevention. By recognising some of the underlying contextual conditions facilitating genocide efforts can be made to counteract these conditions, thus preventing not only genocide, but a wide range of other human rights abuses. Platitudes are not enough. Platitudes do not stop the individuals who lie within the shadow of state power from killing. There seems to be an increasing willingness on the part of the international community to take concrete action to stop genocide and other gross human rights violations occurring in countries like Ivory Coast and Libya. This is a hopeful sign - for even if the “human race” is not yet a meaningful category, it is an absolutely necessary category. The remainder of this chapter will consider the implications of the findings presented in this thesis for responsibility for genocide, and altruism.

## **6.2 The Village Makes the Villain? Responsibility for Genocide**

The law, with its strict taxonomies and definitions, seeks to reduce complex social phenomena to binary judgements; either you are guilty or not guilty, either you did right or did wrong. Yet, as this work has attempted to show, genocide is infinitely more complex than that. If many génocidaires do not possess true genocidal intent what does this mean for criminal and moral responsibility?

Peter A. French distinguishes between the morally weak and the morally wicked – the wicked believe in the justness of their actions while the weak simply acquiesce.<sup>653</sup> Yet we see both categories in genocide. The morally weak obey authority and peer pressure knowing their actions are morally wrongful, while the morally wicked may be ideologues who subscribe to propaganda that the enemy group is a mortal threat to their survival. Under this typology low-level perpetrators are generally morally weak while high-level perpetrators are morally wicked. Keeping in mind that both of these categories of individuals may be criminally culpable for genocide, which of these categories is the most morally culpable?

Ultimately, genocide is perpetrated mostly by the morally weak. It is the morally weak that hold the machete that draws blood from their victims. It would be wrong to collapse the perpetrator-victim-bystander triangle and portray low-level perpetrators as a different brand of victims. Aristotle argues that “a person who acts in ignorance of particular circumstances acts involuntarily...especially if he is ignorant of the most important factors. The most important factors are the thing or person affected by the action and the result.”<sup>654</sup> However, ignorance of effect seems far-fetched for génocidaires, except in the most unusual circumstances. Even if a factual ignorance operates, no perpetrator can truly claim a *moral ignorance*, considering the universal prohibition on killing. Moreover, factual ignorance is often falsely claimed through the “denial of injury” technique of neutralisation. Aristotle also claims that there are some acts where “it is impossible ever to do right in performing them: to perform them is always wrong.”<sup>655</sup> Thus, a person who commits such acts is acting out of preference rather than a misperception of moral rightness.

However, as our decision-making model has shown, preferences may be determined by the society in which you live and your role within that society. Although there is a universal prohibition on killing, genocide is normative within the genocidal state. We might determine

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<sup>653</sup> Peter A. French, “Unchosen Evil and Moral Responsibility, in Aleksandar Jokic (ed.), War Crimes and Collective Wrongdoing (Oxford: Blackwell Publishers, 2001), p. 30.

<sup>654</sup> French 34.

<sup>655</sup> French 36.

that the state is ultimately responsible for genocide as genocide is a crime requiring central coordination. Yet the state possesses no organic life of its own (beyond an organizational culture). Perhaps then primary responsibility rests with those that steer the ship of state – the (“morally wicked”) senior leaders that direct the structures and messages of the state. In Ruggiu the Rwanda Tribunal decided that because “the Accused did not personally participate in the massacres and did use his pistol” his responsibility was lesser.<sup>656</sup> Such a finding is blind to the true nature of genocide as state crime with principles and agents and multiple levels of perpetration. It must be remembered that complicity and other forms of secondary responsibility are technical rather than normative categories.<sup>657</sup>

The concept of moral luck posits that the moral wrongfulness of individual acts may sometimes be entirely determined by circumstance. Consider the classic example of two equally responsible drunk drivers, both of whom swerve off the road: one of whom is lucky enough to do so without injuring anybody and the other who kills two pedestrians who happen to be walking at that point in the road.<sup>658</sup> They both performed the same wrongful act yet the individual whose actions resulted in death is likely to face greater moral and legal condemnation. In the case of genocide perhaps a form of moral luck can operate when two individuals are both born with similar characteristics yet one of these individuals is unlucky enough to be born into a genocidal culture where a criminogenic state will eventually place them under significant pressure to participate in killing. This conceptualisation is grounded in the oft-cited legal test of what an “average person” would do when facing a certain set of circumstances. We must consider the frightening possibility that the “average person” would commit genocide. How much can we reasonably demand from individuals?

Paradoxically genocide stands as the ultimate manifestation of collective evil, yet the individuals committing genocidal acts are often not enduringly and immutably evil. The need

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<sup>656</sup> *Prosecutor v. Georges Ruggiu* (Case No. ICTR-97-31-I), Trial Chamber Judgement, 1 June 2000, para. 78.

<sup>657</sup> Gaeta (ed.) 177.

<sup>658</sup> B.A.O. Williams and T. Nagel, “Moral Luck,” *Proceedings of the Aristotelian Society*, Supplementary Volumes, vol. 50 (1976), pp. 115-135 + 137-151.

to maintain a positive self-image can lead to great evils as perpetrators come to justify the unjustifiable. Egotism and the persistence of the self are remarkably strong social forces.

Even if the village makes the villain this does not preclude or justify the avoidance of moral and legal responsibility. The absolute relativists are messengers of a morally blind equivocation that would set us adrift in a normless world. Yet perpetration *does* become normalised during genocide and, in order to resist genocide, individuals must actually confront the moral and coercive power of the legitimate state, as well as their peers. It is difficult for perpetrators to perceive they have a choice in the absence of clear alternatives.

Yet, we know from genocide that people do not always behave the same way when facing the same circumstances. Some individuals will be rescuers while others are perpetrators. In all of the famous conformity and obedience studies there were many individuals who resisted conformity: one third in the Milgram Experiment, two thirds in the Asch Experiment, and one third (the “good guys”) in the Zimbardo Prison Experiment.<sup>659</sup> Some philosophers argue that there is a duty to disobey orders contrary to the will of God (as St. Augustine put it) or “any law that degrades human personality” (as Martin Luther King Jr. argued).<sup>660</sup> This capacity to follow moral values in the face of potential disapproval, discouragement, or ostracism is moral courage.<sup>661</sup> We must remember that even the “morally determinative” context of the morally unlucky was itself produced by wrongful individual acts.

In the punishment of genocide outrage over morally perverse acts must never be allowed to degenerate into righteous anger: such emotional drives only serve to encourage vengeance and the perpetuation of hate. Yet, the law may serve an important purpose in defining social norms and ensuring that genocide can never be considered normatively correct.

### **6.3 Prevention Personalised: Genocide and the Globalisation of Conscience**

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<sup>659</sup> Baum 88.

<sup>660</sup> Kelman and Hamilton 70.

<sup>661</sup> Staub, The Psychology of Good and Evil, p. 8.

*Bystanders and Altruism*

“There is no love between men” – Rwandan génocidaire<sup>662</sup>

Much of this work has been concerned with individual participation in the perpetration of genocide. Yet in order to fully understand perpetration it is informative to briefly consider the opposite side of the coin – why do some individuals resist genocide while others do not? Are there unique characteristics or factors that impel individuals to choose not to participate in genocide and instead to rescue the victims or to challenge the legitimacy of the genocidal state?

Identity is fundamentally a social phenomenon – a matter of the human imagination. It is natural to have identity, as it is natural for people to respond to each other and their environments in a creative way. Curiosity leads people to investigate their surroundings and to develop a knowledge system. It is a consequence of our status as sentient beings and of our knowledge that we develop a sense of self, a sense of identity. This sense of identity is both egoistic and relational. It is egoistic in that it seeks to locate itself in the world and it is relational because it exists in relation both to others who hold the same identity and others who hold different identities. Our sense of identity is complex and fluid.<sup>663</sup>

Yet there can be something exclusionary about the assertion of an identity; this exclusionary aspect of identity can also introduce notions of stratification. Through *pseudospeciation*, humankind divides itself into pseudo species (groups) each of which holds itself to be the centre of their own universe of conscience and valuation, while all other groups are not only outsiders but inhuman.<sup>664</sup> This triumph of socially-constructed speciation over genetic speciation is uniquely human and exceptionally destructive.

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<sup>662</sup> Perpetrator Interview R9 (Rwanda), farmer, Kigali Central Prison, July 24, 2009.

<sup>663</sup> It is important to note that different cultures have different conceptions of identity. For example, the idea of autonomous, competing individuals has historically been more of a characteristic of western societies than other societies.

<sup>664</sup> Kai Erikson, “On Pseudospeciation and Social Speciation,” in Strozier, Charles B. and Michael Flynn (eds.), *Genocide, War and Human Survival*, (Lanham, USA: Rowman and Littlefield, 1996), p. 51.

We can conceive of identity as being primarily vested in: 1) the individual, 2) the group, or 3) universally.<sup>665</sup> Similarly our ethics can be individual, group-centred, or universal. In genocide both identity and ethics become group-centred. The individual transforms themselves from an individual to a group component and extends their ethical obligations (moral community) only to other group members; as Michael Ignatieff has said: “ethics follows ethnicity.”<sup>666</sup> This contributes to self-objectification as well as the dehumanisation of victims that makes genocide possible.

The term “conscience” has its etymological roots in the Latin *con* (with) and *scientia* (knowledge). In other words, conscience represented a sort of self-awareness or consciousness. With the emergence of modern English and German in the sixteenth century, “conscience” ceased to be used interchangeably with “consciousness” and it came to mean a sort of inner virtue that could, and should guide our actions.<sup>667</sup> This idea of conscience is represented in the preamble of the UN Charter, which states that all human beings “are endowed with reason and conscience, and should towards one another in a spirit of brotherhood.” There are two aspects to this notion of conscience: the ‘inner voice’ that tells us what we *shall* or *shall not* do, and to whom we shall and shall not do what.<sup>668</sup> In this sense, our conscience is, like our identity, both egoistic and relational.

Our perceptions, as well as our actions, shape our moral identity – our image of the person that we want to be.<sup>669</sup> The character of Glaucon in Plato’s Republic argues that people’s self-interest is best served by *seeming* moral, their actual morality is irrelevant.<sup>670</sup> Can this theory also be extended to states: do states benefit from *seeming* moral (moral

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<sup>665</sup> An example of universalistic identity is found in the Buddhist concept of *Anatta* (no-self).

<sup>666</sup> Ignatieff, “The Danger...”, p. 1.

<sup>667</sup> Claudia Koonz, The Nazi Conscience, (London: The Belknap Press of Harvard University Press, 2003), p. 4. In some religious traditions, conscience derives from the inner “voice of God” while some philosophers argue that it represents our ability to apply reasoned decision-making to our environment.

<sup>668</sup> Koonz 1.

<sup>669</sup> Glover 26-27.

<sup>670</sup> Glover 20-21.

identity writ large)? This might offer a partial explanation for the empty promises of the international community in cases like Srebrenica.

Even universal moral principles such as “thou shalt not kill” are made fluid by the human imagination, subject to reinterpretation and dilution. Propaganda drives this process as does our tendency to reshape our world in deference to the maintenance of our positive self-image. Laws can also have a normative power that sanctions actions that might normally violate an individual’s moral identity. Some thinkers such as Malinowski argue that morality exists to meet the functional needs of society: i.e. genocidal killing is immoral because it threatens our survival as individuals, as social groups, and as a species.<sup>671</sup> Paradoxically, genocide may also be presented as being morally imperative for the survival of the in-group.

However, not all moral principles are equally fluid. A distinction may be drawn between *mala in se* (bad in and of themselves) and *mala prohibita* (bad because they are prohibited) acts of deviancy. Journalist Jeffrey Kluger uses the example of a school child knowing they cannot eat in class because the teacher has said it is wrong; in contrast, that same child will likely hesitate when their teacher tells them to push another child off of a chair.<sup>672</sup> This aversion to harming other people may be innate, yet, even if morality is consistent, moral behaviour is not – socialisation is needed to shape our decisions. Genocidal killing is, of course, a *mala in se* deviant act as it violates the universal prohibition on killing.

Yet altruistic behaviour within the genocidal culture is exceptional. In fact, altruistic behaviour in genocide may be considered to be anti-social behaviour in the context of the genocidal culture. Thus, such behaviour cannot be driven by rational choice (as often killing *is* the rational choice); rather, it is more a function of the sense of self.<sup>673</sup> A moderately positive self-worth is associated with empathy, whereas low self-esteem and extreme egotism are not.<sup>674</sup> Rescuers tend to have a more expansive moral community – those they feel

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<sup>671</sup> Bauman 171.

<sup>672</sup> Kluger 32.

<sup>673</sup> Monroe xi.

<sup>674</sup> Staub, The Psychology of Good and Evil, p. 358.

morally obligated towards.<sup>675</sup> The genocidal context is far removed from the ordinary context in which decisions are made. In fact, many decisions are extreme (your own life or the life of others are dependent on the decision which you take), thus extreme behaviour is engendered. As with the act of perpetration, the act of rescue often involves rapid, instinctual decision-making without the luxury of deep processing. Altruism is often contrary to rational choice, thus many decisions seem to be made on the basis of self-image. Our ability to live up to our ideals is a product of how deeply these ideals are integrated into our sense of self.<sup>676</sup>

Those with a “pro-social” value orientation (a positive view of humanity, concern about others’ welfare, and sense of personal responsibility) are more likely to help others.<sup>677</sup> The most extreme contrast with these pro-social traits can be found in sociopaths, who may display essentially the opposite characteristics (a negative view of humanity, a lack of empathy, and an absence of personal accountability).

During the narrowing of awareness that characterises genocide potential rescuers, like perpetrators, also differentially respond to the plight of victims depending on the saliency of certain cues such as the strength of the connection between the rescuer and the victim. Moreover, the well-known experiments of Latané and Darley found that the more bystanders are present the more responsibility is diffused and the less likely it is that any one of them will intervene.<sup>678</sup> Bystanders will also be less likely to intervene if others seem unconcerned, if values conflict (for example obedience to authority and the obligation to help those in need), or if the costs of intervention are high. Conflicting values are almost always present in genocide, as are high intervention costs, so the prospect of intervention is low.

In Chapter 2 the use of techniques of neutralisation by perpetrators was discussed. Bystanders also use techniques of neutralisation to render their inaction acceptable and to avoid cognitive dissonance. Such inaction often stands in stark contradiction to moral norms

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<sup>675</sup> Monroe 229.

<sup>676</sup> Monroe 223.

<sup>677</sup> Staub, *The Psychology of Good and Evil*, p. 16.

<sup>678</sup> Staub, *The Psychology of Good and Evil*, p. 74.

pertaining to our responsibility to alleviate the suffering of others and to confront wrongful acts.

These bystander justifications may equally be applied to individuals or to states.<sup>679</sup>

1. *Denial of the Victim*: bystanders often argue that victims are somehow 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 is also a means to avoid involvement.
2. *Denial of Responsibility*: Bystanders 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.<sup>680</sup> States may also deny their responsibility by failing to recognise a general responsibility to protect. 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.”<sup>681</sup>
3. *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 justification 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.

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<sup>679</sup> 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.

<sup>680</sup> The experiments of Latané and Darley found that with an increasing number of bystanders there was a decreasing willingness to help. Staub, *The Psychology...*, 74.

<sup>681</sup> Power xviii.

4. *Claim of Counter-Productivity*: bystanders argue that their intervention would only make matters worse and exacerbate the humanitarian situation.
5. *Claim of Jeopardy*: to intervene would be too risky and might expose the bystanders themselves to potential victimisation. This is often the argument made by Western countries against intervening in Africa. There is an unmistakably racist subtext to this argumentation: Africans are not worthy of any meaningful toil, Africa is a morass.
6. *Claim of Ignorance*: Passive bystanders often claim that the victimisation they are witnessing is not clear, that there is not enough information available for reasonable 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 group-think may take hold. A group of people (or perhaps even states) may also exhibit *pluralistic ignorance* where a subconscious decision is taken to ignore the victimisation at hand and to send cues to other bystanders that the apparent victimisation 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.'<sup>682</sup> Similarly, in the case of Bosnia, it was simply not true that bystanders did 'not know' or 'appreciate' the violence unfolding, rather they retreated to the "twilight between knowing and not knowing."<sup>683</sup>
7. *Denial of Humanity*: bystanders may 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 dehumanised but rather are condemned through the subtle discourse of exoticism: the victims are very different from "us" and therefore our moral obligations towards "them" are diminished.

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<sup>682</sup> Power 35.

<sup>683</sup> Power 506.

The greater the number of techniques of neutralisation effectively invoked, the weaker the moral obligation to intervene. According to Ervin Staub, bystanders are also more likely to help if they are in a good mood and if it is socially appropriate (we seek to behave in a manner consistent with other people's expectations).<sup>684</sup> 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 all want to avoid moral guilt for the suffering of others. This may be especially true for leaders who may utilise techniques of neutralisation both for political-instrumental reasons and also for the sake of their own cognitive integrity. However, the weight of responsibility on long-distance bystanders is undoubtedly far less than that of people who actually witness killing in their midst.

Observing other peoples' suffering is unpleasant so individuals will either help or seek to leave the scene.<sup>685</sup> Not helping others may also bear certain external costs (social sanctions) or internal costs (guilt). In the case of genocide external costs are not a factor during perpetration (as genocide is normative within its society), and internal costs may be minimised by neutralisation.

The rationalisations for killing contained in genocidal propaganda and structures only make the decision to act altruistically more difficult as they communicate to individual recipients that killing is fully justifiable or even essential. These techniques limit cognitive dissonance among perpetrators whose previously held beliefs preclude participation in killing. Perhaps rescuing behaviour is only possible among individuals whose sense of self is strong enough to persevere in the face of external influence; when such individuals participate in killing they likely experience strong cognitive dissonance in spite of the techniques of neutralisation. The altruistic do not allow group identity to overwhelm their personal identity in spite of the narrowing of awareness.

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<sup>684</sup> Staub, The Psychology of Good and Evil, pp. 125-130.

<sup>685</sup> Staub, The Psychology of Good and Evil, p. 82.

Helping others may actually reinforce our self-image and help to resolve moral inconsistencies. Perhaps this is also why some perpetrators choose to act as rescuers alongside their acts of murder. With globalisation the bystander sphere now encompasses the entire planet so we must also consider the passivity of distant bystanders.

### *The Globalisation of Conscience*

Genocide and other mass hate crimes are important crimes because they attack the very humanity of people. This attack on humanity requires a human response, a response of humanity as a collective. “The authors of a genocide would be pursued not only because they have killed hundreds of thousands of people, but, even more so, because they have violated the moral order of the human race by attempting to destroy one of its member parts.”<sup>686</sup> In spite of this compelling logic, our moral outrage when faced with such atrocities is often muted or, at least, not transformed into meaningful attempts to enact solutions. Why is this so?

The relational aspect of our identity is that we define some people as being “us,” while the remainder of humankind are labelled as “others” or “foreigners.” In constructing this dichotomy, those that are deemed to be others are disassociated from ourselves. This disassociation also contains aspects of devaluation. How can we reconcile the worth of “others” with our egoistic view of the world? Romeo Dallaire (the commander of the UN mission in Rwanda during the genocide) queried: “Are all humans human? Or are some more human particularly than others?”<sup>687</sup> Carl Schmitt, a political theorist favoured by the Nazis, might have responded to Dallaire (as he did to others) that “not every being with a human face is human.”<sup>688</sup>

This brings us back to the relational aspect of the human conscience: our moral architecture contains the idea of a moral community – those that are close to us and within our

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<sup>686</sup> Alain Destexhe, Rwanda and Genocide in the Twentieth Century, (New York: New York University Press, 1995), p. 64.

<sup>687</sup> United States House Committee on International Relations: Subcommittee on Africa, “Hearing on Rwanda’s Genocide,” Washington Transcript Service, April 22, 2004.

<sup>688</sup> Koonz 2.

sphere of concern. This moral community entails reciprocity and moral accountability to each other.<sup>689</sup> “The universe of moral obligation, far from being universal, is bounded by community.”<sup>690</sup> History is littered with atrocities committed against those groups that have been placed outside of the moral community and devalued. Greek moral philosophy excluded barbarians and slaves; colonial ideologies excluded peoples deemed to be ‘primitive.’ Nazism extended reciprocity only to those within the same racial community (so-called Aryans). Relativism, sometimes employed in the service of tolerance, can also be used to dictate that moral laws are relative, that moral obligations are determined by whether you are a member of the community or are outside of it.

In *Civilization and its Discontents* Sigmund Freud wrote:

If I love someone he must deserve it in some way...he deserves it if he is so like me in important ways that I can love myself in him; and he deserves it if he is so much more perfect than myself that I can love my idea of my own self in him. Again I have to love him if he is my friend's son, since the pain my friend would feel if any harm came to him would be my pain too – I should have to share it. But if he is a stranger to me and if he cannot attract me by any worth of his own or any significance that he may have acquired for my emotional life, it will be hard for me to love him. Indeed, I should be wrong to do so, for my love is valued by all my own people as a sign of my preferring them, and it is an injustice to them if I put a stranger on par with them. But if I am to love him (with this universal love) merely because he, too, is an inhabitant of this earth, like an insect, an earth-worm, or a grass snake, then I fear that only a small modicum of my love will fall to his share...<sup>691</sup>

There is some practical truth to what Freud is arguing here, the basis of compassion is relationships.<sup>692</sup> Can strangers be loved? This question stands as a fundamental challenge to

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<sup>689</sup> Koonz 277. This ethic of reciprocity is reflected in many religious traditions including the Christian “Golden Rule” (found in the *Bible* in Matthew 7:12 and Luke 6:31). It is also represented in Islam in the *Haddith* (sayings of the Prophet): “No one of you is a believer until he desires for his brother what he desires for himself;” Judaism, in the *Talmud*: “What is hateful to you, do not to your fellow men;” and Buddhism, the *Udana-Varga*: “Hurt not others with that which pains yourself.”

<sup>690</sup> Koonz 5.

<sup>691</sup> Fromm 495.

<sup>692</sup> Empathy itself is not the correct word, if we cannot hope comprehend the suffering of others. Pity is also inappropriate because it implies a hierarchical relationship between the sufferers and those who bear witness. Perhaps “compassion” is the term that best captures the phenomenon we are examining.

liberal notions of universalism. Freud's thesis on the limits of love also actualises the perpetrators' goal of placing victims beyond boundaries of the moral community. Before annihilation can occur the victims must be dehumanised and demonized, whereby "their layers of goodness must be peeled away to reveal the badness at the "core" of "their being."<sup>693</sup>

The notion of "strangers" itself hardens the boundaries of the moral community. Distant bystanders' perceptions of suffering, thus, their views of appropriate responses, are dictated by the information available to them and the manner in which it is presented. As Michael Ignatieff observes, "the media mediates between the suffering of strangers and the conscience of those in zones of safety."<sup>694</sup> Interestingly the magnitude of atrocities, and appropriate level of empathy, are dictated less by the number of people victimised and more by the nature of the victimisation itself (i.e. if the violence is especially gruesome).<sup>695</sup> Moreover, the greater the perceived magnitude of atrocities the more robust the solutions favoured.<sup>696</sup> Yet, in the moment, all suffering is absolute and therefore universal. Images of suffering demand action, otherwise, as Susan Sontag observed, we are just acting as voyeurs.<sup>697</sup> Unlike other senses, sight can be turned off (we have lids on our eyes, but we cannot close our ears).<sup>698</sup> We can change the channel.

In the modern age, our awareness of atrocity is greater than ever before. Yet humankind has perpetuated its emotional and moral distance. We cannot see beyond our own boundaries. The human species is still relatively young - perhaps our orientation towards tribal thinking is an evolutionary anachronism in the global age. Although there has been a kind of globalisation of awareness, there has not been an attendant globalisation of the moral

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<sup>693</sup> Edward Weisband and Courtney I. P. Thomas, "The Biocorporeality of Evil: A Taxonomy," *Inside & Outside of the Law: Perspectives on Evil, Law, and the State*, edited by Shubhankar Dam and Jonathan Hall, Inter-Disciplinary Press, 2009.

<sup>694</sup> Michael Ignatieff, *The Warrior's Honour*, (New York: Henry Holt & Company, 1997), p. 33.

<sup>695</sup> Barbara Harff, "Empathy for Victims of Massive Human Rights Violations and Support for Government Intervention: A Comparative Study of American and Australian Attitudes," *Political Psychology*, vol. 8, no. 1 (March 1987), p. 8.

<sup>696</sup> Harff 15.

<sup>697</sup> Susan Sontag, *Regarding the Pain of Others*, (New York: Picador, 2003), p. 71.

<sup>698</sup> Sontag 118.

community. Our moral identity, our moral community remains highly localised and internalised.<sup>699</sup> A citizen of Sarajevo recalls:

In October 1991 I was here in my nice apartment in peaceful Sarajevo when the Serbs invaded Croatia, and I remember when the evening news showed footage of the destruction of Vukovar just a couple of hundred miles away, and I thought to myself, ‘oh how horrible,’ and switched the channel. So how can I be indignant if someone in France or Italy or Germany sees the killing taking place here day after day on their evening news and says ‘oh how horrible, and looks for another program. It’s normal, it’s human.’<sup>700</sup>

Within their immediate moral community most people feel empathy, and with it a sense of moral obligation. The farther we venture from this community the more the obligation diminishes. There is a certain unreality to atrocity occurring on the other side of the world. Its victims are remote, and they are left diminished. We can be bystanders in the most distant sense, without the empathetic distress and sense of obligation that might accompany evil occurring in our midst.

Social and institutional reforms may be valuable in facing down the problems of human institutions but they cannot resolve the problems of human perceptions. Personal transformation is needed to effect political transformation. Individualistic identity, with its ability to resist conformity pressures must be married to universalistic ethics. In order to end genocide, a globalisation of *the human conscience* is required, an expansion of our moral horizons.<sup>701</sup> The suffering of others must be personalised in order to fully realise our human

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<sup>699</sup> Glover 28.

<sup>700</sup> Sontag 99-100.

<sup>701</sup> Various thinkers and religions have expressed similar views. For example, Buddhists uphold the concept of *anatta* (non-self) to show that the ego is impermanent and that *duality* (the perception of a self, separate from others) must be eliminated. This can be partly accomplished through *maitri* (loving-kindness) meditations that seek to expand the circle of compassion to all sentient beings. Similarly, Albert Einstein argued: “A human being is part of the whole called by us ‘the universe,’ a part limited in time and space. He experiences himself, his thoughts and feelings, as something separate from the rest—a kind of optical delusion of consciousness. This delusion is a kind of prison for us, restricting us to our personal desires and affection of a few persons nearest to us. Our task must be to free ourselves from this prison by widening our circle of understanding and compassion to embrace all living creatures and the whole of nature in its beauty.”

rights. Our circle of obligation, our moral community must encompass all of humanity. Only then, might all human beings be judged to be *equally human* and only then can the plague of genocide can be lifted from humankind.

#### **6.4 Conclusion: The Powerful and the Pitiful**

If genocide can be understood it can be stopped. Genocide is a recurring social phenomenon like theft or war. Yet, genocide differs from these phenomena because of its relative rarity. It needs to be reiterated that, although genocide is human it is not banal. The key to ending genocide rests in its nature as an extreme act. Such extreme acts rebel against thousands of years of accumulated moral norms. It is too easy to say that because genocide has happened many times it is inevitable. Cynicism is the last refuge of the apathetic.

Earlier in this work the state was identified as an instrument of human destruction. We might ask whether states can ever behave altruistically? States, like corporations, are centred on the advancement of internal interests. But the means for the control of the state still rest with its citizenry. It is up to citizens to retake the state and demand that their state act to protect the rights of others.

Furthermore, the self-objectification of perpetrators must be challenged: for the most part, perpetrators choose to participate in genocide. Even the surrender of free will is a willful act. Thus, free will is essential for the protection of human life from the tyranny of the genocidal state. “The person who did something really wrong was the person who told us to kill the Tutsi,” rationalised one Rwandan génocidaire; yet, it can be exceedingly difficult to find this person – you are left with the absurd impression of a leaderless genocide.<sup>702</sup> In fact, only four of the eighty Rwandan perpetrators interviewed for this study claimed to have been leaders of the violence in their area in spite of the fact that nine were government officials and many others were in leadership positions.

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<sup>702</sup> Rwandan Perpetrator Interview R26, money changer, Gisenyi Prison, August 26, 2009.

The perpetration of genocide requires the depersonalisation (objectification) and denigration of the self. As the self is essential to human identity this is a form of dehumanisation. Genocide is not possible where people maintain a strong connection to their individual selves and a strong awareness of the selves of others. In genocide self-objectification (obedience and conformity) is paired with the objectification of others (dehumanisation). Genocide cannot thrive where there is recognition of human dignity and shared humanity, nor can it thrive where the sinews that bind us to each other remain visible and strong. To borrow language used by Zygmunt Bauman, the personal Jew can never be a target, only the metaphysical Jew. Genocide only exists in the myopic, reductionist atmosphere of narrowed awareness where all valuation of others is based solely on the notion of belonging to the relevant category or not belonging, of being inside of the moral community, or outside of it. Individuals who retain a strong sense of self, of who they are as moral beings, will resist genocide.

Genocide is driven by state authority and individual conformity but it is also made possible by the degraded status of the victims. The dignity and humanity of victims is a barrier to genocidal killing. The realisation of human rights is fundamentally about the recognition of human dignity, thus the realisation of rights itself prevents genocide. However, in order to prevent genocide we must also recognise the humanity of the perpetrators; as difficult as this may seem, we must recognise something of ourselves in the perpetrators. The fact is that most genocide perpetrators like most human beings are at once powerful and pitiful.

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