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## Genocide as Social Practice

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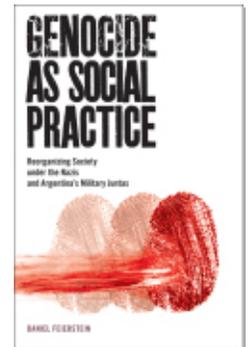
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## Defining the Concept of Genocide

What I am is not important,  
whether I live or die—It is the same for me,  
the same for you.  
What we do is important.  
This is what I have learnt.  
It is not what we are  
but what we do.

—James Fenton, “Children in Exile”<sup>1</sup>

The annihilation of population masses is an age-old phenomenon. The destruction of Troy by the Greeks, the razing of Carthage by the Romans, and the atrocities of the Mongols under Genghis Khan are just a few examples that can be found in any history book. Genocide, on the other hand, is a distinctly modern concept. The term “genocide” was first used by the Polish-Jewish legal scholar Raphael Lemkin at a conference in Madrid in 1933, but a legal definition of genocide was not incorporated into international law until 1948, following the programs of mass murder carried out by the Nazis during World War II. These programs included the extermination of such diverse groups as the Jewish and Gypsy populations of Europe, ethnic Poles and Russians, political opponents, children and adults with disabilities, homosexuals, and religious groups such as Jehovah’s Witnesses, among others.

The first question we need to address, then, is whether genocide is simply a new name for an old practice or whether it refers to something qualitatively different from earlier mass annihilation processes. The model of genocide presented in this book suggests a distinctly modern phenomenon, first appearing in the nineteenth century although rooted in the early modern period (circa A.D. 1500 to 1800). The forced exodus of large numbers of Jews and Muslims from Spain in 1492 and the subsequent persecution of those who converted to Catholicism in order to escape expulsion is perhaps the earliest precursor of

modern genocide, together with the European witch trials of the fifteenth and early sixteenth centuries. The distinguishing features of modern genocide are the ways in which it is legitimized as well as its consequences not only for the targeted groups but also for the perpetrators, the witnesses, and society as a whole.<sup>2</sup>

My contention is that modern genocides have been a deliberate attempt to change the identity of the survivors by modifying relationships within a given society. This is what sets modern genocide apart from earlier massacres of civilian populations, as well as from other processes of mass destruction. The fact that genocide has proved so effective in bringing about social changes—equaled only by revolutionary processes—suggests that it is not simply a spontaneous occurrence that reappears when historical circumstances are favorable. Rather, it is a process that starts long before and ends long after the actual physical annihilation of the victims, even though the exact moment at which any social practice commences or ceases to play a role in the “workings” of a society is always uncertain. It is important to bear this fact in mind if we are to develop effective early warning systems to prevent new instances of genocide.

### Problems of Definition

More than half a century separates the drafting of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted on December 9, 1948, and the complex sentences handed down by the international criminal tribunals for the former Yugoslavia and Rwanda in the second half of the 1990s. Before and during this time and afterward, debates have raged among sociologists and historians over definitions that would allow for empirical research. This suggests that the concept of genocide is essentially problematic.

The term “genocide”, as coined by Lemkin, is a hybrid between the Greek root *genos* (family, tribe, or race) and the Latin suffix *-cide* (killing), but its exact meaning and translation into other languages remain controversial. Does *genos* refer to a common tribal origin, to genetic characteristics transmitted from generation to generation, or simply to certain features shared by a group? All these meanings are present in the Greek word *genos* and its Latin derivative *gens* denoting a family clan.

Reviewing the various legal, sociological, and historical definitions of genocide, M. Bjørnlund et al. found that the fundamental point of agreement was “the systematic annihilation of a population group as such,” while the three main points of disagreement were the question of “intent,” the nature of the groups included in these definitions, and the importance of actual physical annihilation, whether total or partial, as an essential element of genocide.<sup>3</sup>

Significantly, nearly all of these scholarly definitions take Article II of the 1948 Genocide Convention as their starting point:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group

As Martin Shaw has pointed out, “The study of genocide has generally been framed by legal and historical, rather than sociological perspectives. Law provided the impetus to the definition of the crime, through the pioneering efforts of Raphael Lemkin and the drafters of the United Nations Convention; it has continued to provide much of the drive towards recognition of recent genocides, in the work of the international criminal tribunals for former Yugoslavia and Rwanda.”<sup>4</sup>

However, this predominantly legal approach is unfortunate in that legal definitions tend to be narrowly focused, rooted in specific historical contexts, and difficult to modify. Law requires unambiguous categories as well as clear and convincing evidence in order to reach a judgment of guilty or not guilty. The categories established by the 1948 Genocide Convention, in particular its list of protected groups, were the result of political compromise but also a consequence of the jurisprudence of the Nuremberg Tribunal set up in 1945 to punish Nazi war criminals. The Nuremberg Tribunal held that the crimes against humanity required a connection with aggressive war, although it is now generally accepted that these crimes—like genocide itself—can be committed in peacetime.

In fact, any new legal definition of genocide will need to include the principle of equality before the law—a principle currently violated by the 1948 Genocide Convention, which protects some groups and not others—as well as incorporating the customary law that has emerged from the history of relations among human communities. In other words, any legal definition of genocide—beyond what has been achieved so far in international law—needs to be based on the concept of genocide in its unbiased sense, namely, the implementation of a massive and systematic plan intended to destroy all or part of a human group as such. In legal terms, modern genocide would be no different from the annihilation of population masses by the Ancient Greeks, Romans, or Mongols, and I will presume the legal definition to be inclusive in this way.

### Genocide as a Social Practice

In contrast to the legal definition of genocide, the concept of genocide as a social practice allows historians and sociologists to adopt a broader and more flexible approach to the problems of causality and responsibility. It also helps to distinguish genocide from other social processes of mass destruction that have occurred at different periods of history, such as high death rates among certain segments of the population as the result of economic policies, or the more or less intentional destruction of the environment that has led to mass deaths.

Now, despite the obvious differences between law and the social sciences, we should point out that it is organization, training, practice, legitimation, and consensus that distinguish genocide as a social practice from other more spontaneous or less intentional acts of killing and mass destruction. Also, because a social practice is composed of shared beliefs and understandings as well as shared actions, a genocidal social practice may be one that *contributes* to genocide or attempted genocide, including symbolic representations and discourses promoting or justifying genocide.

In addition, it is clear from this definition that social practices are ongoing and under permanent construction. In many instances, the appropriateness of the term “genocide” has been questioned on the grounds that the process has not gone far enough to speak of full-blown genocide. But when does genocide actually begin? At what moment can we consider that the term is being correctly applied? Adopting the concept of genocidal social practices allows us to address a thorny methodological issue in history and the social sciences, namely, that of periodization. Moreover, because social practices are constructions that are open to deconstruction, academic studies should be able to contribute to policies to prevent and resist genocide.

Bearing all this in mind, I will define a genocidal social practice as a technology of power—a way of managing people as a group—that aims (1) to destroy social relationships based on autonomy and cooperation by annihilating a significant part of the population (significant in terms of either numbers or practices), and (2) to use the terror of annihilation to establish new models of identity and social relationships among the survivors. Unlike what happens in war, the disappearance of the victims forces the survivors to deny their own identity—an identity created out of a synthesis of being and doing—while a way of life that once defined a specific form of identity is suppressed. Accordingly, I will use the term “genocidal social practices” to distinguish these specific processes from the legal concept of genocide.<sup>5</sup>

### The Legal Definition of Genocide: Law as a Producer of Truth

As mentioned earlier, the most widely accepted legal definition of genocide today is that approved by the United Nations in the 1948 Genocide Convention.

It is therefore important to understand the debates surrounding Article II of the Convention and, in particular, the question of protected groups.

In 1946 the United Nations had called upon member states to define a new criminal category, stating that

[g]enocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these groups, and is contrary to moral law and to the spirit and aims of the United Nations. Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part. The punishment of the crime of genocide is a matter of international concern. (UN General Assembly Resolution 96 [I])

This resolution contained two significant elements. First, it contemplated the genocide of political groups; and second, it defined genocide through an analogy with homicide. The definition established the characteristics of the event through the type of crime committed (collective killing against individual killing) and not through the characteristics of the victims: “racial, religious and political” are simply examples, and the term “other” completes the categorization. For the same reason, the resolution did not define any criminal type, either.

At the drafting stage of the Convention, however, it was clear that the inclusion of social and political groups would jeopardize the acceptance of the Convention by a large number of states that did not want the international community to become involved in their internal political struggles.<sup>6</sup> The Soviet Union, Poland, Great Britain, and South Africa (among other states) were worried that enforcement of the Convention might violate principles of state sovereignty and nonintervention if such groups were to be included as targets of genocide.<sup>7</sup> As Ward Churchill notes, these countries sought to “narrow the Convention’s definitional parameters of genocide in such ways as were necessary to exclude many of their own past, present and anticipated policies and practices from being formally codified as *crimen laesae humanitatis* (crimes against humanity) in international law.”<sup>8</sup>

On the other hand, France, Yugoslavia, Bolivia, Haiti, and Cuba (among other states) insisted that the exclusion of political and social groups would allow most crimes of genocide to go unpunished. Donnedieu de Vabres, the primary French judge during the Nuremberg trials after World War II, argued that the express exclusion of political groups might be interpreted as legitimizing crimes against them.

At the drafting stage of the Convention, then, three key issues were raised: (1) whether the definition of genocide should be universal (like any other criminal categorization) or limited to certain groups; (2) whether the limitation was an aid to facilitate the approval of the Convention by the largest possible

number of states; and (3) whether leaving certain groups explicitly out of the categorization might not represent a way of legitimating their annihilation.

Raphael Lemkin, who had played an important part in drafting the Convention, overcame the deadlock in the negotiations by arguing that political groups should be excluded because they lacked the cohesion or permanence of other groups. After arduous negotiations, it was finally decided that the protection of political and other excluded groups should be guaranteed by national legislations and by a Universal Declaration of Human Rights.

Thus, the United Nations defined genocide as a new legal typology, explicitly stated in Article II of the Convention. But by excluding political groups, the definition of genocide became arbitrarily restrictive. For example, religious belief systems were protected, whereas political belief systems were not. Worse still, the exclusion of political groups together with the “intent to destroy” requirement created an almost perfect catch-22.<sup>9</sup> In order to prove “intent,” the prosecution had to demonstrate the existence of a coordinated plan. But coordinated plans are made by politicians or military commanders with political power. So, if the prosecution succeeded in proving “intent,” the defense could argue that political leaders had targeted political opponents and so could not be tried under the Genocide Convention.

The question also arises how the intention to destroy a group *in part*—as opposed to *in whole*—can be anything but political. Lemkin himself recognized that genocide can pave the way for political domination: “Genocide has two phases: one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain or upon the territory alone, after removal of the population and the colonization by the oppressor’s own nationals.”<sup>10</sup>

As Donnedieu de Vabres predicted, it was political rivalries that would trigger most of the genocides committed during the Cold War period. But the wording of the Convention ensured that neither the hundreds of thousands murdered in Latin America by U.S.-backed military dictatorships between 1954 and 1990 nor the approximately two million people killed in Cambodia by the Khmer Rouge between 1975 and 1979 would count as victims of genocide. In fact, since the Genocide Convention came into effect in 1951 only two genocides have been recognized as such by international courts: the Rwandan Genocide of 1994 and the Srebrenica massacre of 1995.

### **The Principle of Equality before the Law: Inequality before Death?**

The French philosopher and sociologist Michel Foucault has shown the circular relationship between power, legal discourse, and “truth,” where law creates socially accepted “truths” that in turn perpetuate the status quo.<sup>11</sup>

It is unlikely that genocide would have become an everyday concept, much less a crime under international law, had it not been for the Holocaust. Europeans had always been less alarmed by mass atrocities in colonial Africa and in other parts of the world, that is, in places where victims were perceived as "others." After World War II, however, Europeans could not ignore the massacres that had taken place on European soil or treat them as mere accumulations of individual murders. The targeting of whole population groups was clearly different from repeated homicide or multiple murders. It was this understanding that drove the United Nations to codify a new type of international crime as "genocide."

Unfortunately, the form that this codification took shakes a body of individualistic criminal law to its very foundations. By focusing on the character of the victims, the 1948 Convention violates the principle of equality before the law, giving human life a relative rather than an absolute value. By restricting genocide to four groups (ethnic, national, racial, or religious), it creates a differentiated (that is, nonegalitarian) law. A planned and ruthless crime is only recognized for what it is if the victims share certain characteristics and not others.

In contrast, the laws of most countries define criminal acts in terms of behavior. Article 79 of the Argentine Criminal Code, for example, states that "whoever commits homicide will be condemned to prison for a period of 8 to 25 years." Aggravating circumstances, such as a family relationship between killer and victim, may increase the sentence, while mitigating circumstances, such as extreme provocation by the victim, may reduce it. But none of this alters the basic nature of the crime, and circumstances connected with the victim are established so that they do not alter the principle of equality before the law. In other words, a homicide is a homicide, regardless of who is killed. The same with any kind of crime in the Argentine Criminal Code.

On the other hand, by creating protected and unprotected groups of persons, the 1948 Convention actually legitimates the fundamental hypothesis underlying all acts of genocide, namely, that the lives of some are less significant than the lives of others. We might call this restrictive approach the dominant or "hegemonic" discourse since it has been incorporated by many states into their own legal codes. The political advantage of adopting this discourse is that once the perpetrators have been punished, events can be relegated to history without the need to confront uncomfortable questions such as which sectors of society benefited and continue to benefit from genocide.

Not surprisingly, not only historians and sociologists but also many leading jurists have challenged the definition of genocide enshrined in the Convention. Four cases are worth highlighting: the Whitaker Report, published by the United Nations Economic and Social Council Commission on Human Rights in 1985; the indictment of members of the Argentine military in 1999 by Spanish Judge Baltasar Garzón; the discussions and analyses of the International

Criminal Courts regarding events in the Balkans and Rwanda; and, finally, two Argentine sentences from 2006 and 2007 recognizing that genocide has been committed in Argentina.<sup>12</sup>

### **The Whitaker Report**

Benjamin Whitaker became a member of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities in 1975. In 1983, he was appointed Special Rapporteur<sup>13</sup> and was asked to undertake a new study on genocide for the subcommission after disagreements occurred over a report drawn up by his predecessor, Nicodeme Ruhashyankiko.<sup>14</sup> Whitaker sent a questionnaire to UN members, organizations, and agencies; regional bodies; academics; and Non-Governmental Organisations (NGOs) in 1984, and in 1985 he published his *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide*.

The Whitaker Report, as it is usually known, analyzed genocidal processes that had occurred between 1948 and 1984. It proposed radical changes to the Convention by means of an additional optional protocol.<sup>15</sup> Proposals included the protection of groups based on political and sexual orientation as well as the prohibition of ethnocide and ecocide.<sup>16</sup> Similarly, it recommended that “advertent omission,” calculated neglect, or negligence should become crimes and that the defense of “obeying superior orders” should be unacceptable. The report also recognized the difficulty of proving “intent” and advised that where documentary evidence was lacking, courts should be able to infer intent from the crimes committed. Finally, the report argued the need for an international criminal court, given the absurdity of expecting member states to put themselves on trial. “[I]n the case of ‘domestic’ genocides, these are generally committed by or with the complicity of Governments, with the bizarre consequence that the Governments would be required to prosecute themselves. In actual practice, mass murders are protected by their own Governments, save in exceptional cases, where these Governments have been overthrown” (Whitaker Report, paragraph 76). The Whitaker Report received a lukewarm response from the subcommission. International criminal courts were set up to deal with the Rwandan genocide and crimes in the former Yugoslavia, and Whitaker’s suggestion that destruction of a group “in part” might refer to “a significant section of a group such as its leadership” (Whitaker Report, paragraph 29) has been endorsed in subsequent judicial decisions. However, the Convention continues to exclude political, economic, social, and sexual groups.

### **The Indictment of Baltasar Garzón**

Under its domestic law, Spain has universal jurisdiction over serious crimes such as genocide even when these are committed outside Spain by foreign

citizens. An action may be brought in the public interest by any Spanish citizen, and an investigating judge then gathers evidence and interviews witnesses to determine whether there is sufficient basis for the claims alleged in the complaint.<sup>17</sup> After studying depositions by several human rights organizations in Madrid in 1997, Judge Baltasar Garzón, as prosecuting magistrate, started proceedings against ninety-eight Argentine military members for crimes of “terrorism and genocide.”

The legal arguments contained in his 156-page indictment of November 2, 1999, can be summarized as follows:

1. The requirement that victimized national groups be defined in terms of ethnicity in order to prove that genocide has taken place is unconstitutional under Spanish law (subsection one).
2. The extermination of “political groups” may be termed genocide (subsection two).
3. The term “national group” is appropriate to classify the victims in Argentina (subsection three).
4. The term “religious group” is also appropriate to classify the victims, bearing in mind the ideological nature of religious belief and also the Argentine military’s explicit aim of establishing a “Western and Christian” order (subsections three and four).
5. Racist thinking is essentially political in nature. “Racial groups” are imaginary constructions that always refer in fact to “political groups” (subsection five).
6. The term “ethnic group” is also appropriate to classify the victims given the specific nature of the “special treatment” given to the Judeo-Argentine population and its symbolic nature (subsection five).

We have already discussed the inconsistency in legal terms of excluding “political groups” from definitions of genocide. We will now examine Garzón’s arguments (3), (4), and (5) in more detail.

Argument (3) is based on the fact that the perpetrators sought to destroy structures of social relationships within the state, in order to substantially alter the life of the whole. This is in line with Article 2 of the 1948 Convention (cited above), which defines genocide as “intent to destroy, in whole or in part, a national . . . group.” The Argentine national group has been annihilated “in part,” substantially altering social relationships across the nation. The 1990s have provided tragic examples in countries such as the former Yugoslavia or Rwanda of the extent to which destruction of part of a national group affects postgenocide economic, social, and political development.

The case of Yugoslavia is particularly relevant to this discussion since it involved a series of overlapping genocide processes, and the International Criminal Tribunal for the Former Yugoslavia (ICTY) was faced with the problem

of determining which part of the population must be annihilated in order to qualify as genocide. Lemkin had already suggested that “in part” meant the destruction of a “substantial part” of the group; but how do we define “substantial”?

In a sentence published on 14 December 1999, ICTY stated that a “substantial part” could mean either (1) “a large majority of the group in question”; or (2) “political and administrative leaders, religious leaders, academics and intellectuals, business leaders and others . . . regardless of the actual numbers killed.” The tribunal also advised that “[t]he character of the attack on the leadership must be viewed in the context of the fate or what happened to the rest of the group.”<sup>18</sup> This clearly corroborates Garzón’s argument (3) about the appropriateness of the term “national group” to classify the victims in Argentina.

Garzón’s argument (4) highlights the “religious” and ideological purpose of the repression. As Garzón himself explains, the military government not only justified the repression as a defense of “Christian and Western” values, explicitly describing it as a “crusade,” but also enlisted members of the Catholic Church to run detention centers. This religious worldview of “us” and “them” was clearly political and ideological, and makes the Convention’s definition of genocide even more problematic by privileging religious beliefs over political ones.

Legal questions aside, Garzón’s analysis of Argentina’s state terrorism as an ideologically motivated genocide with religious characteristics provides a much more authentic and comprehensive account of events than the concepts of “politicide” or “political genocide” (see further discussion later in this chapter). This is because the aims of the repressors were not only political. Even the name the dictatorship gave to its campaign—Process of National Reorganization—clearly shows that it sought to radically transform morality, ideology, the family, and other institutions that regulate social relationships. To do so, the perpetrators eliminated anybody who embodied an alternative way of constructing social identity.

Garzón’s argument (5) about the political nature of racism could be applied not only to events in Argentina but to Article II of the Convention itself. For modern anthropologists and biologists, race is not a scientifically meaningful term for describing human groupings.<sup>19</sup> The geneticist and evolutionary biologist Richard Lewontin, for example, found that just over 85 percent of human variation occurs *within* populations, not *between* them.<sup>20</sup> Moreover, racial groups blend into one another, forming a continuum. Therefore, a Human Rights Convention that claims to protect “racial groups” can only mean that it rejects racial discrimination, where race is really a metaphor for otherness—an otherness constructed as dangerous, deep-seated, and inassimilable. In this sense, race is clearly a political concept, used for political ends.

It is worth remembering that although Garzón uses the terms “race” and “ethnicity” more or less interchangeably, “race” refers to supposedly shared

biological or genetic traits, while “ethnicity” is rooted more in cultural factors such as nationality, culture, ancestry, language, and beliefs. However, as S. Wallman has pointed out, English-speakers often confuse the two. “The term ‘ethnic’ popularly connotes ‘[race]’ in Britain, only less precisely, and with a lighter value load. In North America, by contrast, ‘[race]’ most commonly means color, and ‘ethnics’ are the descendents of relatively recent immigrants from non-English-speaking countries. ‘[Ethnic]’ is not a noun in Britain. In effect there are no ‘ethnics’; there are only ‘ethnic relations.’”<sup>21</sup>

Finally, Garzón’s argument (6) establishes an ideological continuity between the Nazi genocide and many later ones. Numerous eyewitness testimonies confirm that many of the Argentine officers involved in human rights abuses, torture, and murder in the 1970s identified with Nazi ideology and read or listened to speeches by Nazi leaders in their spare time. Detention centers and torture chambers were decorated with swastikas and pictures of Adolf Hitler. Jewish prisoners who happened to fall into this Latin American version of hell were treated with particular cruelty. However, it should be emphasized that most victims of Jewish origin were not selected because they were Jews but because of their political affiliations.

Even faced with the amount of evidence that Garzón gathered, which runs to thousands of pages, countries are often unwilling to recognize that genocide has taken place on their territory, and Argentina was no exception. Spain does not try individuals in absentia, and the Argentine government rejected all of Spain’s requests for extradition. So, until Lieutenant Commander Adolfo Scilingo traveled to Spain voluntarily to testify, it seemed unlikely that the case would ever be heard.

Significantly, although its first ruling confirmed Garzón’s charge of genocide, Madrid’s Central Criminal Court finally sentenced Scilingo to 640 years for crimes against humanity. In its judgment of 19 April 2005, the court argued that under article 607 of the recently revised Spanish Penal Code, the crimes fitted the definition of crimes against humanity “better” than that of genocide.<sup>22</sup> We will return to this distinction in a moment. Nevertheless, if law is a creator of “truth,” Garzón’s great achievement in his indictment of the Argentine military was to include the voices of the victims alongside those of the perpetrators, including the victims’ need for these events to be recognized as crimes of genocide.

### **The Rwandan Genocide**

The subjective nature of race and ethnicity and the use of these concepts for political ends are particularly interesting in the Rwandan genocide, in which the International Criminal Tribunal for Rwanda (ICTR) noted that shared language, tradition, and legends made the Hutu and Tutsi groups almost

objectively indistinguishable. Timothy Longman has shown how Christian missionaries in the early 1900s and later the Belgian colonial administration turned a flexible ethnic structure into a rigid one, excluding the Hutu from power and opportunities for advancement even though they made up more than 80 percent of the population: "To the missionaries, the Tutsi seemed tall and elegant, with refined features and light skin, in some ways closer in appearance to Europeans than to their short, stocky, dark Hutu compatriots. . . . The Tutsi, not surprisingly, failed to challenge the missionaries' assertions of their superiority and instead participated in the development of a mythico-history that portrayed them as natural rulers, with superior intelligence and morals."<sup>23</sup>

However, in the late 1950s, as ethnic tensions increased, the Belgian administration rapidly replaced Tutsi chiefs and officials with Hutu. When Rwanda achieved independence in 1962, the government was almost entirely Hutu. This led to a series of cross-genocidal processes, first against the Hutus in Burundi in 1965 and 1972, then against Tutsis and moderate Hutus in Rwanda in 1994. Nevertheless, as Longman points out,

[a]lthough the Western media portrayed the 1994 genocide as a product of "centuries old" intractable divisions between Hutu and Tutsi "tribes," in fact genocide in Rwanda was never inevitable. Genocide was the final product of a strategy used by close supporters of President Habyarimana to preserve their power by appealing to ethnic arguments. Since Hutu and Tutsi continued to intermarry regularly and lived together in relative peace in most communities, the strategy required going well beyond reminding the Hutu of Tutsi dominance during the colonial period to create an atmosphere of fear and misunderstanding.<sup>24</sup>

Not surprisingly, the ICTR found problems in cataloging Rwandan Hutus and Tutsis as "ethnic" groups. As Eric Markusen says, "In many cases, the Tutsis were chosen and killed because of the identity documents introduced decades ago by the Belgian colonial regime, identifying them as such."<sup>25</sup> Did the judges of the UN not, therefore, reinforce the ideology of the murderers by identifying the Tutsis as a distinct group?"<sup>26</sup>

ICTR itself ended up recognizing that "for the purposes of applying the Genocide Convention, membership of a group is, in essence, a subjective rather than an objective concept. The victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction. In some instances, the victim may perceive himself . . . as belonging to the said group."<sup>27</sup>

### **The Rome Statute and the International Criminal Court**

In the event, ICTR and ICTY proved to be disappointing. Not only did many perpetrators manage to escape arrest or reduce their sentences with plea agreements,<sup>28</sup> but the 1948 Genocide Convention proved difficult to apply in

practice. International pressure was not enough to change the Convention, but it did give birth to a permanent international tribunal to punish genocide and other serious international crimes: the International Criminal Court (ICC).

The Rome Conference, sponsored by the United Nations, took place in Rome, Italy, from 15 June to 17 July 1998. One hundred and sixty countries participated and the discussions were monitored by over two hundred NGOs. After intense negotiations, one hundred and twenty nations voted to adopt the Rome Statute of the ICC. Seven countries—China, Iraq, Israel, Libya, Qatar, the United States, and Yemen—voted against the treaty, and twenty-one states abstained. The statute came into force on 1 July 2002 and can prosecute only crimes committed on or after that date.

However, despite the fact that many organizations and individuals worked long and hard to establish the ICC, its procedures and performance offer few guarantees against human rights abuses by member states.

Although many scholars and advisers advised against it at the discussion and drafting stages, the definition of genocide adopted in Article 6 of the Rome Statute is copied word for word from Article II of the 1948 Genocide Convention. This has made the concept of genocide unenforceable. Instead, the court has preferred to apply the much more flexible definition of “crimes against humanity” defined in Article 7 of the statute:

Article 7: Crimes against humanity

1. For the purpose of this Statute, “crimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
  - (a) Murder;
  - (b) Extermination;
  - (c) Enslavement;
  - (d) Deportation or forcible transfer of population;
  - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
  - (f) Torture;
  - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
  - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
  - (i) Enforced disappearance of persons;
  - (j) The crime of apartheid;
  - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

The Rome Statute's failure to produce a usable definition of genocide and the replacement to all intents and purposes of "genocide" by "crimes against humanity" is not just a semantic quibble. It means that the ICC can only act in cases where the perpetrators and/or territory involved belong to states that have accepted its jurisdiction. The United States is just one example of a state that is accused of committing crimes under the statute of the court and that has so far refused to ratify the statute. Widening the circle of impunity still further, the ICC has until now only examined cases presented by member states or, in one case, by the Security Council of the United Nations. The court's autonomy to investigate violations seems to exist only on paper.

One consequence is that so far the ICC has focused exclusively on African countries. In three of the four countries where it operates, its actions are directed against members of nonstate organizations reported by the state itself.<sup>29</sup> What is striking in all these cases—beyond the seriousness of the crimes themselves—is that the intervention of the ICC seems to serve no useful function. International criminal law exists to punish crimes committed by the state, not by forces opposing the state, which could equally well be tried under domestic law.

The ICC's involvement in Africa contrasts oddly with its failure to investigate other reported systematic violations of human rights in China, Colombia, Israel, Russia, and Sri Lanka, to name just a few, and alleged human rights violations by U.S. and British troops in Iraq. In some cases, the ICC has justified its failure to intervene on the grounds that the defendants (China, Israel, Russia, or the United States) or countries where violations occur (China, Iraq, and Afghanistan) are not members of the ICC. In other cases, like Colombia, the government claims to be taking action against violations without explaining why no trial proceedings have been started and why killings of political opponents and indigenous groups continue in Colombia to this day.<sup>30</sup>

Finally, the ICC has only confronted one national government—that of Sudan—for the atrocities committed in the western Sudanese region of Darfur and only because the UN Security Council urged it to do so. Of course, the large numbers of victims and refugees, the burning of villages, and destruction of ethnic and political groups are a humanitarian tragedy. But the international arrest warrant issued by the ICC against Sudanese president Omar Al-Bashir in March 2009 has not led to his arrest nor helped to prevent bloodshed in the Sudan. On the contrary, it has been used as an excuse by the Sudanese government to expel international observers and aid organizations assisting the victims. Again, we face the question of whose interests are served by the intervention of the ICC. How do we impose effective sanctions against human rights violators when they control the power and resources of the state?

The Rome Statute and the ICC have not helped to clarify the concept of genocide unless—as William Schabas says—we are willing to relegate the concept of genocide to the history books in favor of the more general and more

easily applicable concept of crimes against humanity.<sup>31</sup> However, this would reduce Lemkin's rich concept of genocide as the "destruction of population groups" to the annihilation of civilian populations in general.

### **The Legal Definition of Genocide: Future Possibilities**

Because political groups are not protected by the 1948 Genocide Convention or the 1998 Rome Statute, it is easy to confuse attempts to destroy political groups with the murder of individual politicians or activists. By reducing genocide to crimes against humanity, there is a real danger that we may lose sight of the ways in which the social practices of genocide systematically destroy identity. However, the Convention and the Rome Statute do not completely close the door on new interpretations of genocide. Garzón's perspective of the extermination of political groups in Argentina as the destruction of part of a national group (in this case, the Argentine national group) has proved to be particularly illuminating. In Argentina, the Federal Oral Criminal Tribunal No. 1 for La Plata convicted former police commissioner Miguel Etchecolatz in 2006 and former police chaplain Christian von Wernich in 2007 for crimes against humanity "committed in the frame of genocide." In this landmark ruling, the court considered the systematic nature of the crimes and their effect on society as a whole, urging other courts to use the concept of "destruction of part of the national group" to resolve a number of conceptual and legal issues surrounding Argentina's state terrorism.

According to Lemkin, the main purpose of genocidal practices is to destroy the oppressed group's identity. It makes little difference whether the group is oppressed by a colonial power—as was generally the case in Lemkin's time—or by members of the same national group, as has so often been the case since the 1948 Convention. In the second half of the twentieth century, national armies have repeatedly behaved like armies of occupation in their own countries.<sup>32</sup> The fact that all national genocide laws explicitly forbid the partial destruction of national groups should allow an increasing number of cases to be successfully prosecuted in national courts.

### **The Conceptual Discussion: Thinking beyond the Law**

As we have already argued, defining genocide in terms of the characteristics of the victims has no precedent in modern criminal law and clearly damages the principle of equality before the law. It is now time to consider the implications of such a definition for a historical and sociological understanding of genocide as a social practice.

In legal terms, a homicide is always, in principle, a homicide. For the social sciences, however, some homicides are so extraordinary that they justify the

development of a specific name to label them. Sociologists use the terms Holocaust, Shoah, Jurbn, or Judeocide to refer to the systematic annihilation of Europe's Jewish population under Nazism because of the unique characteristics of this historical tragedy. Nevertheless, just as the 1948 Convention's definition of genocide is insufficient to explain the nature of the Shoah, the specific characteristics of the Shoah do not in themselves define the limits of the term "genocide."

In the social sciences, the important element for constructing a concept such as genocide is what we might call the "structural similarities" of unique events. Each historical event is unique so we need to go beyond their specificities in order to categorize social phenomena that are analogous in terms of purpose, design, implementation, and consequences. One issue that tends to overlap with and influence legal definitions is whether different historical processes fit within the same category (e.g., genocide), and when is it necessary to create new terms in order to account for processes that are qualitatively different.

I will now review the main definitions of genocide used by different authors in the social sciences and compare their "structural similarities." I will also consider whether these definitions are useful for describing the systematic killings in Argentina between 1976 and 1983 or whether we need a new term to understand the process behind these specific events.

### **Historical and Sociological Definitions of Genocide**

Not everyone who writes about genocide defines the term explicitly. However, since the appearance of genocide studies as a separate discipline in Europe and the United States in the late 1980s, most authors who study genocidal processes systematically have struggled with the problem of definition.

The first important challenges to the definition in the Genocide Convention are to be found in Vahakn Dadrian, Irving Louis Horowitz, and Leo Kuper. Significantly, all three are authors of comparative genocide studies. In 1975, one of the world's leading authorities on the Turkish genocide of the Armenians,<sup>33</sup> Dadrian, defined genocide as "the successful attempt by a dominant group, vested with formal authority and/or with preponderant access to the overall resources of power, to reduce by coercion or lethal violence the number of a minority group whose ultimate extermination is held desirable and useful and whose respective vulnerability is a major factor contributing to the decision for genocide."<sup>34</sup>

The following year, American sociologist Horowitz defined genocide as "a structural and systematic destruction of innocent people by a state bureaucratic apparatus. . . . Genocide represents a systematic effort over time to liquidate a national population, usually a minority . . . [and] functions as a fundamental political policy to assure conformity and participation of the citizenry."<sup>35</sup>

The South African writer and philosopher Kuper began writing about genocide in the early 1970s. However, in his definitive work, *Genocide: Its Political Use in the Twentieth Century* (1981), Kuper shied away from offering a new definition, for fear of undermining the Convention. Instead, he stated, "I shall follow the definition of genocide given in the [UN] Convention. This is not to say that I agree with the definition. On the contrary, I believe a major omission to be in the exclusion of political groups from the list of groups protected. In the contemporary world, political differences are at the very least as significant a basis for massacre and annihilation as racial, national, ethnic or religious differences. Then too, the genocides against racial, national, ethnic or religious groups are generally a consequence of, or intimately related to, political conflict."<sup>36</sup> Kuper believed that even a limited Genocide Convention was better than none at all; but he also recognized that "it would vitiate the analysis to exclude political groups."<sup>37</sup>

Nearly ten years passed before historian Frank Chalk and sociologist Kurt Jonassohn, both Americans, complained in 1990 that the Convention excluded political and social groups while including nonlethal forms of group destruction. In their view, genocide should be seen as "a form of one-sided mass 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>38</sup>

In 1993, the American sociologist Helen Fein considered genocide to be "sustained purposeful action by a perpetrator to physically destroy a collectivity directly or indirectly, through interdiction of the biological and social reproduction of group members, sustained regardless of the surrender or lack of threat offered by the victim."<sup>39</sup>

In 1994, the Israeli scholar Israel W. Charny argued that "[g]enocide in the generic sense means 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 defencelessness of the victim."

Meanwhile, concerned about the exclusion of political groups from the Convention, American political scientists Barbara Harff and Ted Gurr had developed a new concept: politicide. For Harff and Gurr, "genocides and politicides are the promotion, execution, and/or implied consent of sustained policies by governing elites or their agents—or, in the case of civil war either of the contending authorities—that are intended to destroy, in whole or part, a communal, political, or politicized ethnic group."<sup>40</sup>

The difference between genocide and politicide is that victims of genocide are chosen primarily for their community characteristics (ethnicity, religion, or nationality), while victims of politicide are selected mainly for their position of leadership or political opposition to the regime or dominant groups. Harff and Gurr believe that the distinction is valid for the social sciences, but not for law, where the two processes should be considered as equivalent. I will return to the concept of politicide in a moment.

American Jewish philosopher Steven Katz goes further in claiming that only the Jewish Holocaust perpetrated by the Nazi regime counts as genocide. For Katz, the “concept of genocide applies *only* when there is an actualized intent, however successfully carried out, to physically destroy an *entire* group (as such a group is defined by the perpetrators).”<sup>41</sup>

Holocaust historian Henry Huttenbach believes in concise and simple formulations. Thus, he defines genocide as “*the destruction of a specific group within a national or even international population. The precise character of the group need not be spelled out*” (emphasis added).<sup>42</sup> Elsewhere he writes: “Genocide is any act that puts the very existence of a group in jeopardy.”<sup>43</sup>

More recently, British historian Mark Levene has warned that disagreements over definitions may make the concept of genocide either so narrow that it excludes virtually all cases or so broad that it includes any type of mass murder. Despite this warning, Levene affirms that “genocide occurs when a state, perceiving the integrity of its agenda to be threatened by an aggregate population—defined by the state as an organic collectivity, or series of collectivities—seeks to remedy the situation by the systematic en masse physical elimination of that aggregate, *in toto*, or until it is no longer perceived to represent a threat.”<sup>44</sup>

French political scientist Jacques Semelin advises genocide researchers to distance themselves from the legal and normative definition of genocide. Semelin distinguishes between “destruction in order to subjugate” (where the victims are nearly always defined as political) and “destruction in order to eradicate” (where the victims tend to be ethnic or national). He reserves the concept of genocide for the latter and subsumes both practices under the term “massacre.”<sup>45</sup>

If these definitional debates seem tedious, the main features of the definitions can be summarized as follows:

1. Genocide is an action. Therefore, any systematic annihilation of a group because of its characteristics (whatever those characteristics may be) constitutes genocide (see, for example, the definitions by Chalk and Jonassohn, Henry Huttenbach, and Mark Levene).
2. Genocide is the intention to systematically destroy the entire group, and not only a part of it (Steven Katz).
3. Genocide is any systematic annihilation of significant numbers of the population as long as the population is in a situation of “defencelessness” or does not constitute a “real threat” to the perpetrator (see Israel Charny’s or Helen Fein’s definition).<sup>46</sup>
4. There is a qualitative difference between genocide and politicide because of the characteristics of the victims (see Barbara Harff and Ted Gurr).
5. There is a qualitative difference between destruction/subjugation processes of massacre (where victims are almost always political) and destruction/eradication processes of massacre (where victims are almost always ethnic or national) (see Jacques Semelin).<sup>47</sup>

As mentioned in the Introduction, this book aims to provide a comparative analysis of two genocidal social practices—the Nazi Holocaust and the military repression in Argentina between 1976 and 1983. The Holocaust inspired all the definitions given above and contains them all. But it is not so clear which definition or group of definitions best describes Argentina’s case. In the next section we will consider the usefulness of each of these definitions for obtaining a clear understanding of the Argentine repression. We will also consider the wider implications of each definition.

## **Applying Different Definitions of Genocide to Events in Argentina**

### ***1. Genocide as the Annihilation of a Group***

This definition is clear and inclusive. The Argentine state defined a group as “subversive.” This group was made up of different political organizations (including numerous Peronists and non-Peronist left-wing groups), and individuals (labor unionists, students, neighborhood activists, social workers, teachers, professionals, etc.) who are categorized socially, not politically. What made these people a group, according to the perpetrators, was that they posed a threat to Christian and Western values.

That is to say, although the definition is implicitly political and although, as I have suggested elsewhere in this book, the military government sought to destroy the very fabric of Argentine society (a society based on social autonomy and, particularly, “political autonomy”), the explicit definition of the group was both political (“Western” referred to political alignment with the Western alliance during the Cold War) and religious (“Christian” referred specifically to the official state religion of Roman Catholicism). The annihilation was clearly “one-sided,” taking into account that almost all of the armed left-wing groups had been completely defeated by the time Videla’s military junta seized power. The destruction was so effective that social autonomy, social criticism, and solidarity were to vanish from the Argentine society for at least two generations.<sup>48</sup>

### ***2. Genocide as the Intention to Systematically Destroy the Entire Group***

Steven Katz’s definition introduces an element that, to my mind, is too subjective. In relation to the total population of 25 million, the number of people actually murdered was obviously quite small—between 15,000 and 30,000. If, on the other hand, we focus on the consequences of their disappearance, we can argue that annihilation was “practically total,” since the behavior for which these people were persecuted (autonomy, political opposition, critical thinking) was eliminated almost entirely from Argentine society for two generations. Even Peronism, which was revived after the military dictatorship, has little to do in terms of policies either with early Peronism (1946–1955) and the Peronist resistance (1955–1973), or with late Peronism (1973–1976).

The word “total” is so subjective that Katz’s definition becomes unusable for sociological purposes. If applied literally, this definition might even exclude the Nazi genocide itself—as some Jewish victims did in fact survive. Moreover, assessing “intent” to destroy totally is also a complex task due to the different groups of perpetrators involved in a particular instance of genocide.

### ***3. Genocide as the Annihilation of the “Defenseless”***

The critical element in Fein’s and, to a certain extent, Charny’s definitions of genocide is the “defenselessness” of the victims. Although “defenselessness” is also a debatable category, the Argentine case, in principle, does not seem to fit this type of definition.

Again, the problem lies in how the victimized group is defined. Many of the political groups persecuted by the dictatorship were armed organizations. Their ability to defy state power was always limited, and armed struggle in Argentina cannot be compared with that in Cuba, Nicaragua, El Salvador, or Guatemala, where left-wing armed organizations successfully resisted state forces. Nevertheless, the category of “defenselessness” does not seem to apply to groups that have a philosophy of armed conflict and a military organization, however weak it may be. The process could be defined as one-sided, but that does not imply that the victims were defenseless.

To complicate matters still further, the victims in Argentina included individuals with no clear political affiliation as well as members of different political organizations. Some of these sympathized with various armed organizations to a greater or lesser extent while others repudiated them. The relationship of the victims with those who decided to engage in armed conflict was unclear, ranging from armed sympathizers with left-wing organizations to militants who were strongly opposed to violence.

Most of the murders, however, were carried out by kidnapping victims from their homes, on the street, or at work, and transporting them to concentration camps, subjecting them to torture, and subsequently executing them. This happened regardless of the victim’s affiliations and “in a situation of defenselessness,” even though many of the victims had, at various times and in various ways, supported the idea of armed conflict. This is what sets the Argentine repression apart from many civil wars fought in the Third World.

Therefore, if we accept this third type of definition, we might say that those victims who were not members of armed organizations qualify as victims of genocide, while those who were members of armed organizations but were kidnapped in a situation of defenselessness fall into an ambiguous category; and finally, a small percentage of the victims—those who died in armed confrontations—do not qualify as victims at all.

This approach, in my view, does more to expose the problems inherent in the concept of “defenselessness” than it does to clarify the Argentine case.

Furthermore, it raises awkward and undesirable questions about the degree of activism of the victims, which may even result in criminal charges against them. The need to prove “defenselessness” reverses the burden of proof, forcing an investigation as to how defenseless the victim actually was.

#### ***4. Qualitative Difference between Genocide and Politicide***

Harff and Gurr apply the term “politicide” not only to political groups but also to anyone who is targeted for opposing a regime. In their view, the Argentine case was one of politicide, not genocide, since “victim groups [were] defined primarily in terms of their hierarchical position or political opposition to the regime and dominant groups.”<sup>49</sup> The Argentine repressors clearly persecuted members of groups that engaged in “political opposition to the regime” even if some of these groups—a minority—had never said a word in protest.

We need to question the usefulness of this distinction. Harff and Gurr’s work is clearly a response to the exclusion of the “political groups” from Article 2 of the 1948 Convention. Their aim is to analyze different modalities of mass annihilation and a fundamental issue is whether genocide and politicide are different types of persecution or whether politicide is simply a subcategory of genocide. If the two concepts are qualitatively different, then genocide against a national, ethnic, or religious group—or any other specific group, such as a sexual or economic group—must be qualitatively different too.

#### ***5. Subjugation versus Eradication***

I believe that genocide perpetrated against political groups does have its own particular characteristics. If we accept Semelin’s distinction between destruction/subjugation processes and destruction/eradication processes as valid, then the Argentine repression conforms to the first type. However, in practice we generally find a mixture of both. In Argentina, the destruction/subjugation processes were mixed with the total “destruction/erradication” of some political movements from the Argentine political arena.

The problem with Semelin’s distinction is that only destruction processes, not subjugation processes, count as genocide. This ignores the wider historical context and creates a fragmented picture of genocidal and nongenocidal events, which tends to distort their true meaning. In Argentina, the eradication of political, social, and cultural groups was intended to subjugate society as a whole.

In conclusion, the military repression in Argentina between 1974 and 1983 seems to be best described by the genocide processes Harff and Gurr call “politicide” and by the massacre processes Semelin calls “destruction/subjugation.” These different varieties of genocide, however, are often interwoven and difficult to differentiate.

Moreover, as we have already seen, the “Western and Christian” ideology of the Argentine perpetrators was religious as well as political. Now, genocidal

processes driven by politics and religion differ in some ways from those driven by national or ethnic conflict. Nevertheless, their “structural elements”—the polarization into “us” and “them,” the absolutizing and demonizing of the enemy, the concentration camp system, the dehumanizing of the Other, the destruction of social relationships and other symbolic processes—are very similar.

The concept of “politicide” may be useful for describing a specific type of genocide. However, it could also be used to block reforms—now long overdue—to the 1948 Genocide Convention or to reject national laws seeking to protect political groups. Worse still, it might encourage people to misjudge or even trivialize genocide against political groups, thus granting impunity to the perpetrators.

### **A Philosophical Discussion about “Being” and “Doing”**

It is not only lawyers, sociologists, and historians who have struggled with the problem of defining genocide. Philosophers, too, have made important contributions, particularly to the question of whether different genocide phenomena are comparable and whether the same concept (genocide) can be used to refer to different historical events.

In this chapter we began by examining the question of “structural similarities” from a legal point of view, and we saw that equality before the law is a fundamental concept in modern legal thinking. There is no legal basis or justification for distinguishing between those who are killed because of their ethnic identity or because of their political beliefs. Equality before the law means that all victims are “equal in death.”

Moving on to historical and sociological definitions of genocide, I argued that genocide is a technology of power—in other words, a way of managing people as a group—and it is this that makes different instances of mass annihilation similar.

However, these ideas have been challenged by a number of philosophers from different traditions. These philosophers question whether such *structural* “similarities” or “differences” exist or not, and their work has opened up the possibility of exploring new relationships.<sup>50</sup>

All this is linked to a deeper distinction between the annihilation of “being” (the prototypical case being the extermination of the European Jewish population by the Nazis) and the eradication of “doing” (for example, political-ideological annihilation under the military dictatorship in Argentina). The question is whether and in what ways the physical annihilation of “lesser races” is fundamentally different from the eradication of political ideologies and practices. Here, the distinction between being and doing is used in a philosophical sense within the broader question of how identities, in particular collective identities, are formed.

### **Is There Being without Doing, or Must One Do Something in Order to Be?**

The German philosopher Hegel (1770–1831) makes a distinction between non-conscious being (being-in-itself) and conscious being (being-for-itself). Objects such as rocks have only nonconscious being; but human beings have both. For Hegel, “being-in-itself” also refers to the potential abilities a person has not yet manifested. In contrast, “being-for-itself” refers to a person’s actual behavior that he or she can incorporate into his or her identity.<sup>51</sup> To take a simple example: no matter how many good ideas I may have for a novel, I can only begin to see myself as a writer once I have written my first book.

Hegel’s distinction was adopted by Marx, who argued that under capitalism, workers no longer existed “for themselves” but were alienated by a system of production that took away the fruits of their labor. To continue the previous analogy, workers were like authors whose manuscripts disappeared each day and who never saw their finished work in print. According to Marx, workers could only overcome alienation by collective struggling against the existing social order.<sup>52</sup>

The same distinction between nonconscious and conscious being could also be applied to different types of group identity. In this sense, the main difference between an identity based on ethnicity and one based on a political ideology would seem to depend on how much “choice” the individual has in the matter. Ethnic identity (e.g., being Jewish) is not always voluntary. Although we now know that the concept of race is unscientific, the Nazis defined Jewishness by ancestry whether or not the people concerned thought of themselves as Jewish. Following Hegel’s distinction, people could be Jews “in themselves” even if they were not Jews “for themselves.”<sup>53</sup> But political and ideological affiliation seems to form part of a consciously constructed identity: political activists “choose” militancy; they accept the risks such activism may bring, actively assuming their identity. They create themselves by “doing” and so they exist as political activists “for themselves.”

The Nazis claimed that all Jews were selfish, materialistic, parasitic, and treacherous as a consequence of inborn “degenerative impulses.” This sort of “trait theory” suggests a static identity (being-in-itself) unrelated to any particular historical period or way of life. Yet it is doubtful that intelligent Nazis could have believed this.<sup>54</sup> The right-wing historian Oswald Spengler, who was popular among National Socialists until 1934, took pains to explain how Jewish world-views were the result of a history of exile rather than a product of Darwinian natural selection.<sup>55</sup> Spengler rejected Nazi biological doctrines as unscientific and argued that Western anti-Semitism had grown out of a cultural conflict. In any case, the only way a Nazi could recognize Jewish identity was by observing what Jews actually did. This is apart from the question of whether Jewish

identity was more or less conscious, more or less voluntary, and associated or not with a particular social practice.

An obvious question is why the Nazis chose the Jews as their prototypical victims if the Jews were not *doing* something “degenerate” that the Nazis wished to eradicate? Jews were treated much worse than any other prisoner group, including Gypsies, homosexuals, political dissidents, common criminals, and the disabled. The Nazi belief that Jews were a biologically as well as culturally inferior race might explain why the Nazis made no attempt to “reeducate” Jews as they occasionally did with political prisoners, homosexuals, and Gypsies; but it does not explain why they singled out the Jews for persecution in the first place.

In Argentina, the military also believed that “subversive criminals” transmitted ideas and behaviors to their children. However, despite attempts elsewhere to link an extra Y chromosome and aggressive male criminal behavior in the 1960s, the military do not seem to have believed in biological transmission of “subversiveness.”<sup>56</sup> This is the only rational explanation for the fact that children born to prisoners in Argentine detention centers were allowed to live. The mothers were killed after giving birth and the newborn babies were “adopted” by families sympathetic to the armed forces. On the other hand, older children were often tortured in front of their parents. Presumably, these children had already been “infected” with subversive ideas and were incurable.

However, just as the Nazis did not persecute Jews simply for “being” Jews, the Argentine military did not only kill people who were fully aware of what they were “doing.” Did the French nuns, Alice Domon and Léonie Duquet, who worked helping Argentina’s poor and became involved with the Mothers of the Plaza de Mayo, set out to create an identity for themselves at the risk of their own lives? And if so, how conscious were they of this?<sup>57</sup> What about neighborhood representatives or student activists? Even if people made a conscious choice to join a political movement, it is doubtful that many of them knew exactly which day-to-day activities they would be persecuted for.

The question then is to what extent the identity of different victim groups is based on “being” or on “doing,” and to what extent identities based on “doing” are consciously chosen. Members of left-wing political-military organizations in Argentina would have known the consequences of armed rebellion if they were caught;<sup>58</sup> however, it is questionable whether other so-called militants were aware of placing themselves in harm’s way. Similarly, although middle-class, liberal Jews like Anne Frank’s family could not comprehend Nazi prejudice and cruelty, members of the General Jewish Labor Bund in Poland, left- and right-wing Zionists, and even Jewish religious groups did understand that their social practices threatened the Nazi social order.<sup>59</sup> In truth, both the victims of Argentine genocide and the victims of the Jewish Holocaust occupy a continuum between “being” and “doing.”

### Can the Ideological Ways in Which the Victims Are Constructed by the Perpetrators Constitute a Structural Difference?

Shifting our focus now to the ways in which group identities are constructed by the perpetrators of genocide, we find—at least in principle—two main processes at work. The Nazis essentialized Jews, Gypsies, homosexuals, and other groups as being “subhuman” and a biological threat to the human species.<sup>60</sup> These ideas ultimately derived from Count Arthur de Gobineau’s *Essay on the Inequality of the Human Races*, written between 1853 and 1855, although Gobineau himself saw Jews as strong, intelligent people who were very much a part of his “superior race.”<sup>61</sup> Once the Nazis had branded certain groups as a threat, it was a short step to identifying different races with different ideologies. For example, the Nazis used the term “Judeo-Bolshevism” to imply that the communist movement served Jewish interests and/or that all Jews were communists.

Argentina’s military dictatorship, however, constructed its enemies as “subversives”—an unequivocally political term. Strictly speaking, subversion is an attempt to overthrow structures of authority, including the state. However, the Argentine military’s use of the term, although ambiguous, frequently meant something more like “showing political autonomy.” Perhaps for this reason both the dictatorship’s ideological documents and the news media that supported the military regime regularly spoke of “subversive *criminals*.” The term “criminal” justified harsh measures against the social base of armed insurgents in a way that “subversive” did not.<sup>62</sup>

What similarities exist, then, between the Nazi Holocaust and Argentina’s National Reorganization Process? European colonialism had constructed the Asian and African Other as something inherently foreign and threatening to the civilized world. Nazism went further by constructing this Other within European societies themselves—an Other that had to be exterminated in order to protect the group as a whole. The same need to protect society as a whole was used to justify genocide in Latin America, when dictators frequently likened Marxism and populism to a social cancer. However, these dictators largely did away with biological metaphors and targeted political autonomy as such. This fact is often missed by those who equate genocide with the Holocaust without realizing that the Nazis’ concept of race was an essentialization of their political ideology.<sup>63</sup>

Under Argentina’s National Reorganization Process, the shift from “political opponents of the regime” to “subversive criminals” was accompanied symbolically by a shift in the editorial policy in important national dailies such as *La Nación* and *La Prensa*, gradually moving these stories from the political to the crime section of the newspaper. Nevertheless, it was clear that these crimes were different from those that readers had hitherto been accustomed to reading about. There was talk of “separating the sick from the healthy,” and restoring

“health” to the social body, as well as “harsh treatment of criminals” that would be secret, illegal, and all-embracing.

The voluntary nature of militancy thus became irreversible. Renouncing one’s political ideas and solidarity with former colleagues was no guarantee of survival. Once the victims fell into the hands of the genocidal apparatus, their fate was no longer in their own hands. The repressors in the Argentine concentration camps repeatedly said: “Now we are God and we decide over life and death.” So, although there was no attempt to legitimize persecution with racial metaphors, the Argentine perpetrators did not accept voluntary repentance, either. Nor were most of those who provided information under torture able to save their lives or those of their families, despite the fact that the few who “reappeared” were shunned as traitors by former friends, making them victims twice over.<sup>64</sup>

Raphael Lemkin broke the deadlock in the Genocide Convention negotiations by arguing that political groups lacked the cohesion or permanence of other groups. But differences in cohesion and permanence do not stand up to philosophical scrutiny. Anne Frank and her family probably had as much in common with the Jewish partisans of Eastern Europe as the French nuns, Alice Domon and Léonie Duquet, shared with members of the Montoneros guerrilla organization. And if “subversive criminals” were as permanently irredeemable for the Argentine perpetrators as the Jews were for the Nazis, it is difficult to believe in an essential and structural differentiation between victim groups.

### Conclusions

It is clear that problems of definition are central to any discussion of genocide and genocidal processes. Without claiming to have any definitive answers to these questions, I will now offer some provisional definitions to help with the work in hand.

From a legal point of view, any definition of genocide should respect the principle of equality before the law and the customary law that has emerged from the history of relations between human communities. In other words, genocide should be defined in broad and general terms as *the execution of a large-scale and systematic plan with the intention of destroying a human group as such in whole or in part*. In this sense it would be identical to the systematic annihilations carried out by the Ancient Greeks and Romans or by the Mongols.

I will use the concept of “genocidal social practices” to clarify differences between modern genocide and earlier processes of destruction. By “genocidal social practices” I mean a technology of power that is intended to destroy social relations based on autonomy and cooperation by killing a significant portion of society (significant in numbers or influence) and that then attempts to create new social relations and identity models through terror.

Genocide is not the only way to transform societies, but it has been a very successful method during the twentieth century, along with revolution. However, although revolutions have also destroyed and reorganized social relations, they have not necessarily done so through mass annihilation. This is the main difference between revolution and genocide.

In the following chapters I will examine the precise nature of the social relations and identity models destroyed and the new social relations and patterns of identity brought into being by two historical instances of genocidal social practices: the prototypical genocide committed by the Nazis, and the genocidal social practices occurring in Argentina between 1974 and 1983.

If we look at victims' subjective experiences of the Nazi Holocaust or of Argentina's systematic killings—in other words, if we take what philosophers call a “phenomenological approach” to these events—we end up in both cases with a similar catalog of horrors: concentration camps, deportations, torture, and human perversity. I have argued that it is this “equality before death” which makes it impossible to legally limit the crime of genocide to certain groups.

Another danger of viewing the Nazis' genocide as irrational—a persecution based on blind racial hatred—while seeing Argentina's genocide as rational—a confrontation of ideologies—is that the supposed rationality of one case defines the irrationality of the other, and vice versa. The Jews had done *nothing* to justify their fate, so the Argentine “subversives” *must* have done something to justify theirs. If all this sounds a bit far-fetched, it is because plenty of nonsense has been written in the past: “the Nazis only killed Jews”; “the Nazis did not kill for political or ideological reasons”; “Jews did not take part in politics”; “Jewish identity is genetic”; and “there is no explanation for the Holocaust.”

The sanctification of the Holocaust in contemporary Jewish thinking as “incomprehensible” diminishes processes of disappearance and annihilation viewed as “understandable”—especially political murders—by blaming the victims. It is almost as if an unconscious and therefore innocent “being-in-itself” is accusing a conscious and clearly political “being-for-itself.” If we accept that logic, then the historian's job—like that of the sociologist, the philosopher, or the political scientist—becomes primarily one of deciding in which direction to tip the scales: innocent or guilty.

On the other hand, using the term “genocide” to refer to two different historical processes does not mean that the two processes are the same. It does not mean ignoring the enormous socioeconomic and ideological differences between the Germany of the 1940s and the Argentina of the 1970s. The same is true of the Armenian genocide of 1915 to 1923, the repressive policies against political and ethnic groups in the Soviet Union under Stalin, counterinsurgency wars in Indochina and Algeria, the annihilation of the communist opposition in Indonesia and East Timor, the annihilation of “class” enemies by the Khmer Rouge in Cambodia between 1975 and 1979, “ethnic cleansing” in the former

Yugoslavia, or the extermination of nearly one million people in Rwanda in 1994.

I do not deny in any way the difference between the factory-scale murder and incineration of millions of people under the Nazis and the extermination of tens of thousands of people on an almost cottage-industry scale under the Argentine military juntas. What these two cases have in common is that the perpetrators sought to annihilate their enemies both materially and symbolically. Not just their bodies but also the memory of their existence was supposed to disappear, forcing the survivors to deny their own identity, as a synthesis of *being* and *doing* defined like any other identity by a particular way of life. In this sense, the disappearances outlast the destruction of war: the effects of genocide do not end but only begin with the deaths of the victims. In short, the main objective of genocidal destruction is the transformation of the victims into “nothing” and the survivors into “nobodies.”