

Natasha Collett

René Cassin 'Human Writes' Essay Competition 2020 – runner-up

Competition judge Danny Finkelstein commented:

“All three of these essays were really good. They were each compelling in different ways and some of the writing was very fine ... Natasha Collett makes a strong case that the bar for identifying genocide is set too high. It was a striking point, strikingly made.”

Why is genocide still happening, and what can we do to stop it?

That the sentiment of 'never again' has become 'time and again' would have come as no surprise to twentieth century political thinker Hannah Arendt. Indeed, after observing the horrifying moral collapse which led to the Holocaust, and reporting on the trial of Adolf Eichmann in Jerusalem in 1963, Arendt warned of an evil that could become 'banal' in the modern world. Despite the protestations of her critics, Arendt was not absolving Nazi perpetrators of their monstrousness or malevolence. Rather, she was illuminating the dangers of a world in which genocidal acts could become *commonplace*, and where the breakdown of a public sphere could result in a devastating collective failure to act.

Judith Butler interpreted Arendt's observations in the following way: "If a crime against humanity had become in some sense 'banal' it was precisely because it was committed systematically, without being adequately named and opposed"¹.

I argue that the same principles apply to genocide today. If genocide has become 'banal', in that it is happening 'time and again', it is because it is not adequately named and opposed, and the conditions for challenging genocide – both on the international and national scale – are being undermined. Rectifying those failings may help us respond to genocide when it occurs and stop it happening again.

¹ Butler, Judith. 2011. Hannah Arendt's Challenge to Adolf Eichmann. The *Guardian*, 29 August.
<http://www.theguardian.com/commentisfree/2011/aug/29/hannah-arendt-adolf-eichmann-banality-of-evil>

The explanations given here for why genocide is still happening are not exhaustive. Instead I look at two distinct explanations. First, I consider the limitations of the international legal definition of genocide, which restricts the possibilities for genocide to be adequately named (and shamed) when it does occur. Second, I look at how the democratic conditions required for opposing genocide are being undermined in national contexts, reaffirming the importance of protecting civil spaces and democratic institutions to prevent societies from descending into genocide in the first place.

Naming (and shaming) genocide

There is a crucial legal distinction between crimes against humanity and genocide. The former refers to atrocities committed against individuals, the latter to crimes committed with the intention of destroying a group. The terms emerged separately but simultaneously during the twentieth century, and while they were distinct from one another in philosophical and legal terms, both would have been considered equally abhorrent in the Nazi context. However, since the ratification of the UN Convention on Genocide in 1948, an unsettling hierarchy has emerged between the two which arguably has dangerous implications.

The term genocide rightly attracts international attention and demands a moral response from individuals and governments. Where genocide is legally identified, there is international consensus that a blind eye cannot be turned. However, where the legal threshold of genocide is not met, despite widespread evidence of genocidal acts, the crimes committed are somehow considered less worthy of moral or political outcry. Crimes against humanity are thus subordinated in an informal hierarchy which ranks the severity of international crimes. The international community may be alive to the directive of ‘never again’ where genocide is legally named but it is not living up to that command in cases of other egregious human rights abuses. That is deeply problematic, as Philippe Sands QC explains, because the original concept of genocide, formulated by the seminal international lawyer Raphael Lemkin, was far more expansive than the one subsequently adopted by the Convention. Naming genocide has therefore become a complex legal process with an extremely high bar².

To prove that a mass killing is an act of genocide, you must demonstrate that individuals were killed as part of an intention to destroy a group. However, given that states and armies

² Sands, Philippe. 2020. Genocide or not, the Uighurs need urgent international support. *The Financial Times*. 27 July. <https://www.ft.com/content/8b712431-8c39-40a3-9390-c4d53624139f>

are unlikely to explicitly set out their intentions in writing, this must often be done by inference, which is an extremely difficult legal exercise.

A recent exchange in the Commons Foreign Affairs Committee is illustrative of the problem. When pressed by Chair Tom Tugendhat on why, given the evidence of forced sterilisation of Uighur women, cultural destruction and the use of ‘re-education’ camps in Xinjiang, China, the Foreign Secretary was not willing to label this as genocide, he responded: “We will obviously look at this very carefully, but the trigger of genocide not only requires a very particular set of evidential burdens; it also triggers a whole range of consequences”³.

The Foreign Secretary was not wrong to exercise caution in declaring genocide given the legal framework, however, that the exchange centred on the application of this term is suggestive, again, of the unhelpful existence of a hierarchy in which genocide is deemed the ultimate crime. The Foreign Secretary’s answer also revealed that the legal identification of crimes as genocide triggers a range of international consequences, which otherwise may be unavailable.

In a lecture on Lemkin, Michael Ignatieff, the writer and former Canadian politician, said: “He would have been astonished and indignant at... how powerful states have eschewed the word lest it entrain an obligation to act”⁴.

There must therefore be a concerted attempt to rectify this. The treatment of the Yazidi community in Iraq or the Rohingya population in Myanmar must not be considered any less reprehensible if it doesn’t meet a narrow legal definition of genocide. Most recently, reports of the persecution of Uighur Muslims – the burning of books, the destruction of mosques, the erasure of cultural and linguistic identity – are all acts we recognise from historic incidences of genocide⁵⁶. Lemkin believed that genocide could be non-extermatory– he witnessed an attempt in Poland in his lifetime to crush language, culture and faith, and for him this constituted an attempt at genocide⁷.

³ Foreign Affairs Committee. 2020. Transcript of oral evidence. <https://committees.parliament.uk/oralevidence/1000/pdf/>

⁴ Ignatieff, Michael. 2013. *Raphael Lemkin and Genocide*. <http://www.michaelignatieff.ca/assets/pdfs/LemkinandGenocide2013.pdf>

⁵ The *Guardian*. 2020. Uighur Muslim teacher tells of forced sterilisation in Xinjiang. 4 September. <https://www.theguardian.com/world/2020/sep/04/muslim-minority-teacher-50-tells-of-forced-sterilisation-in-xinjiang-china>

⁶ The *Guardian*. 2020. Thousands of Xinjiang mosques destroyed or damaged, report finds. 25 September. <https://www.theguardian.com/world/2020/sep/25/thousands-of-xinjiang-mosques-destroyed-damaged-china-report-finds>

⁷ Ignatieff, Michael. 2013. *Raphael Lemkin and Genocide*. <http://www.michaelignatieff.ca/assets/pdfs/LemkinandGenocide2013.pdf>

Sands has suggested possible solutions. One is to revert to Lemkin’s wider definition so more crimes can be recognised as genocide. Another is to elevate crimes against humanity and ratify a free-standing convention to put those crimes on the same legal footing⁸. Legal scholars must find ways to deconstruct this hierarchy so there is an international obligation to act wherever such atrocities are committed, regardless of what they are called.

Opposing genocide

The limitations of naming genocide are one explanation for its continued existence. Another is located in the places where genocide emerges.

Ignatieff writes that “Lemkin did not live to see that the solution to genocide is not a convention in international law or a change in the dark hearts of men, but something simpler and easier to attain: democracy”⁹. Arendt would have agreed. She didn’t identify a “demonic or diabolical profundity”¹⁰ in Eichmann, akin to Ignatieff’s “dark heart”, but she disturbingly observed something more normal – it was the fact that Eichmann was a conformist who followed orders that made a banal evil so terrifying; that a collective failure to think and act could have genocidal consequences.

Robust civic spaces with a plurality of views safeguard against ‘non-thinking’. As Arendt warned, it is “the absolute” which “spells doom when it enters the political realm”¹¹. Political absolutes are routinely employed where a group feels vulnerable and scapegoats an ‘other’. History teaches how genocide begins with the smallest of things but as groups that feel threatened gain power and the rights of the ‘other’ are diminished – the possibility of horror increases. Genocide Watch’s classification of the *Ten Stages of Genocide* bring this into focus – moving from insidious forms of discrimination to persecution and ultimately extermination¹².

The democratic institutions of a free press, free and fair elections and an independent judiciary can fend off these threats. However, democratic institutions and values are under threat across the globe. In places where genocidal acts are being committed, we have seen a crackdown on those institutions. While the imprisonment of Reuters journalists reporting on

⁸ Sands, Philippe. 2020. Genocide or not, the Uighurs need urgent international support. *The Financial Times*. 27 July. <https://www.ft.com/content/8b712431-8c39-40a3-9390-c4d53624139f>

⁹ Ignatieff, Michael. 2013. *Raphael Lemkin and Genocide*.

¹⁰ Arendt, Hannah. 1963. *Eichmann in Jerusalem; a Report on the Banality of Evil*. New York: Viking.

¹¹ Arendt, Hannah. 1963. *On Revolution*. New York: Viking.

¹² Holocaust Memorial Day Trust. The Ten Stages of Genocide. <https://www.hmd.org.uk/learn-about-the-holocaust-and-genocides/what-is-genocide/the-ten-stages-of-genocide/>

the Rohingya massacre in Myanmar prompted a strong international response, a 2018 report by the OHCHR described a prolonged “campaign against independent journalism” and a “failure of the judiciary to uphold the fair trial rights of those targeted”¹³. In China, a sustained crackdown on human rights activists and a state grip on the control of news and information¹⁴ signal the near total elimination of civil society.

In too many democratic states, we have also seen a growth in the use of inflammatory political rhetoric which pits people against each other.

Arendt didn’t provide many practical solutions to these challenges, but she demanded vigilance in protecting spaces for public deliberation and collective consciousness. For Arendt, the “political” comes into being in the shared world that we occupy together, and is eroded where we become inward-looking, cynical and sceptical of one another. She feared that societies could lose the ability to offer collective and definitive ethical judgment in moral crises. After all, it becomes impossible to stop genocide where democracy fails.

Conclusions

That historic instruction of ‘never again’ not only requires a strong moral response to genocide where it does exist, but an understanding of the political conditions that facilitate its insidious rise.

In order to stop genocide from happening, we must be alive to the current limitations of responding to genocide as an international community when it does occur, while we continue to look, think and act wherever the warning signs appear.

¹³ OHCHR 2018. *The Invisible Boundary – Criminal prosecutions of journalism in Myanmar*. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23531&LangID=E>

¹⁴ Reporters Without Borders. 2020 World Press Freedom Index. <https://rsf.org/en/china>

Bibliography

- Arendt, Hannah. 1963. *Eichmann in Jerusalem; a Report on the Banality of Evil*. New York: Viking
- Arendt, Hannah. 1963. *On Revolution*. New York: Viking
- Butler, Judith. 2011. Hannah Arendt's Challenge to Adolf Eichmann. *The Guardian*, 29 August. <http://www.theguardian.com/commentisfree/2011/aug/29/hannah-arendt-adolf-eichmann-banality-of-evil>
- Foreign Affairs Committee. 2020. Transcript of oral evidence. 6 October <https://committees.parliament.uk/oralevidence/1000/pdf/>
- *The Guardian*. 2020. Uighur Muslim teacher tells of forced sterilisation in Xinjiang. 4 September. <https://www.theguardian.com/world/2020/sep/04/muslim-minority-teacher-50-tells-of-forced-sterilisation-in-xinjiang-china>
- *The Guardian*. 2020. Thousands of Xinjiang mosques destroyed or damaged, report finds. 25 September. <https://www.theguardian.com/world/2020/sep/25/thousands-of-xinjiang-mosques-destroyed-damaged-china-report-finds>
- Holocaust Memorial Day Trust. The Ten Stages of Genocide. <https://www.hmd.org.uk/learn-about-the-holocaust-and-genocides/what-is-genocide/the-ten-stages-of-genocide/>
- Ignatieff, Michael. 2013. *Raphael Lemkin and Genocide*. <http://www.michaelignatieff.ca/assets/pdfs/LemkinandGenocide2013.pdf>
- OHCHR 2018. The Invisible Boundary – Criminal prosecutions of journalism in Myanmar. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23531&LangID=E>
- Reporters Without Borders. 2020 World Press Freedom Index. <https://rsf.org/en/china>
- Sands, Philippe. 2020. Genocide or not, the Uighurs need urgent international support. *The Financial Times*. 27 July. <https://www.ft.com/content/8b712431-8c39-40a3-9390-c4d53624139f>