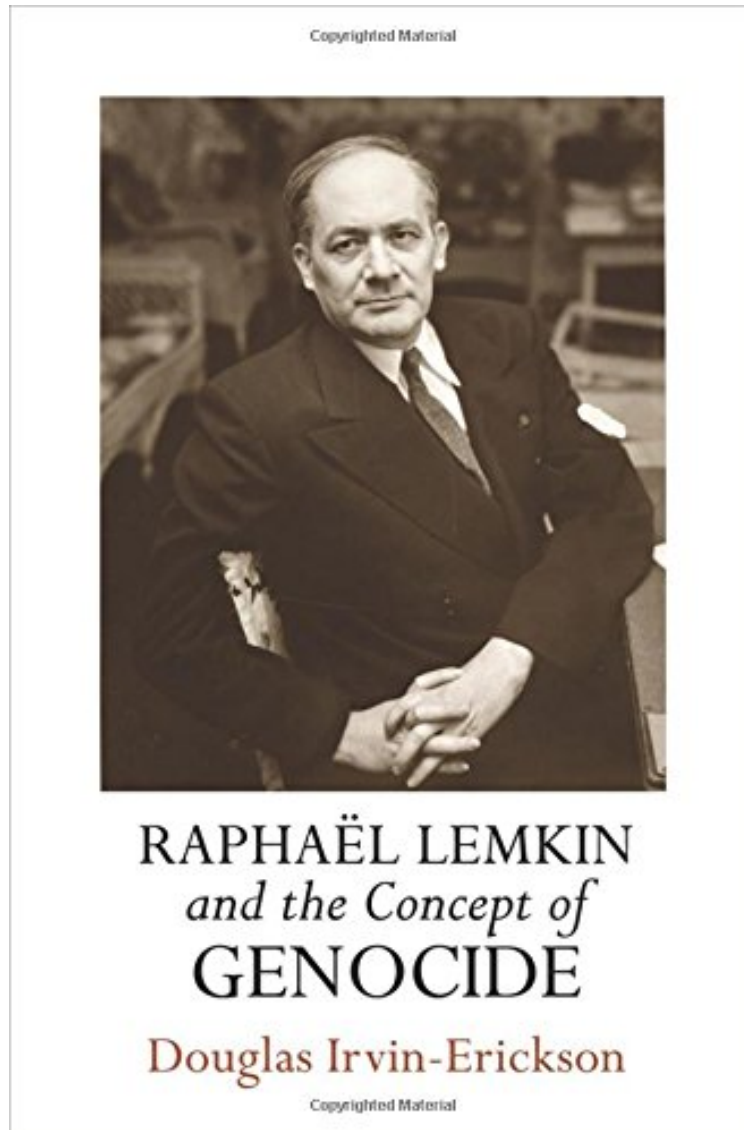


Raphael Lemkin and the Concept of Genocide (Pennsylvania Studies in Human Rights)

Douglas Irvin-Erickson
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Lemkin and the Concept of Genocide (Pennsylvania Studies in Human Rights):

Raphael Lemkin (1900-1959) coined the word "genocide" in the winter of 1942 and led a movement in the United Nations to outlaw the crime, setting his sights on reimagining human rights institutions and humanitarian law after World War II. After the UN adopted the Convention on the Prevention and Punishment of the Crime of Genocide in 1948, Lemkin slipped into obscurity, and within a few short years many of the same governments that had agreed to outlaw genocide and draft a Universal Declaration of Human Rights tried to undermine these principles. This intellectual biography of one of the twentieth century's most influential theorists and human rights figures sheds new light on the origins of the concept and word "genocide," contextualizing Lemkin's intellectual development in interwar Poland and exploring the evolving connection between his philosophical writings, juridical works, and politics over the following decades. The book presents Lemkin's childhood experience of anti-Jewish violence in imperial Russia; his youthful arguments to expand the laws of war to protect people from their own governments; his early scholarship on Soviet criminal law and nationalities violence; his work in the 1930s to advance a rights-based approach to international law; his efforts in the 1940s to outlaw genocide; and his forays in the 1950s into a social-scientific and historical study of genocide, which he left unfinished. Revealing what the word "genocide" meant to people in the wake of World War II as the USSR and Western powers sought to undermine the Genocide Convention at the UN, while delegations from small states and former colonies became the strongest supporters of Lemkin's law. Raphael Lemkin and the Concept of Genocide examines how the meaning of genocide changed over the decades and highlights the relevance of Lemkin's thought to our own time.

"An excellent intellectual biography that advances the young burgeoning field of Lemkin (and genocide) studies in significant ways." Dirk Moses, University of Sydney "Intriguing and innovative, Raphael Lemkin and the Concept of Genocide is a brilliant marriage of international law and philosophy. It will make a significant contribution to the still modest field of Lemkin studies." David Crowe, Elon University About the Author Douglas Irvin-Erickson is Director of the Genocide Prevention Program at George Mason University. Excerpt. Reprinted by permission. All rights reserved. Introduction Raphael Lemkin coined the word "genocide" in the winter of 1942 and inspired a movement in the United Nations to outlaw the crime. Together with figures such as René Cassin, John Humphrey, Hersch Lauterpacht, Jacob Robinson, Vespasian Pella, Henri Donnedieu de Vabres, and Eleanor Roosevelt, Lemkin set his sights on reimagining human rights institutions and humanitarian law after the Second World War. Lemkin described the UN Paris Assembly of 1948 as "the end of the golden age for humanitarian treaties at the U.N." After the UN adopted the Convention on the Prevention and Punishment of the Crime of Genocide in 1948, Lemkin slipped into obscurity. Within a few short years, many of the same governments that had agreed to outlaw genocide and draft a Universal Declaration of Human Rights tried to undermine these principles. By the last years of his life, Lemkin was living in poverty in a New York apartment. When he died of heart failure in 1959, it had been two years since he last taught at Rutgers University and his life work seemed for naught. The United States, Lemkin's adopted country, did not ratify the Genocide Convention during his lifetime. If they were familiar with the word "genocide" at all, leaders in governments around the world either thought genocide was inevitable or believed states had a right to commit genocide against people within their borders. In the context of the Cold War, during which real and existential danger lurked in the specter of nuclear annihilation and the struggle between capitalism and communism, genocide was seen as grave but not a threat to world peace. Except for a few scholars who took Lemkin seriously, decades passed before his accomplishments were recognized. In the 1960s, movements within Armenian and Jewish diasporas began to look to Lemkin's writing on Armenian and Jewish genocides to qualify the cases as international crimes. Lemkin would not be widely known until the 1990s, when international prosecutions of genocide began in response to atrocities in the former Yugoslavia and Rwanda. In 1998, the International Criminal Tribunal for Rwanda became the first international court to convict a defendant, Jean-Paul Akayesu, of genocide. These tribunals positioned Lemkin's ideas at the center of international law and sparked an effort to reexamine the life and works of the jurists and thinkers who created those laws and institutions after the Second World War. In the late 1990s, the word "genocide" began to be used as a type of moral category, taking on a symbolic quality as the crime of crimes, the darkest of humanity's inhumanity. Cassin, who along with Humphrey is considered the main author of the Universal Declaration of Human Rights, is now regarded as one of the century's most influential figures. The study of Lauterpacht, the jurist who gave crimes against humanity its juridical form and helped create an international legal regime based on individual rights and responsibilities, has also enjoyed a renaissance. Scholars in the 1990s began to realize that Lauterpacht had sparked a movement to revise the Grotian and Victorian traditions in international law, moving the law away from Hugo Grotius's model of viewing international relations as the relations between states and toward an understanding that international politics was shaped by individuals and social and political movements within states. For Lauterpacht, both states and individuals could be the subject of international law. Lauterpacht, nevertheless, upheld Grotius's vision

that it was always in one's self-interest to act morally and that the object of international law should point toward a law of love and charity. Lemkin, this book argues, shared Lauterpacht's views, believing that individuals and social movements within states drove international politics between states and that individuals should, therefore, be the subjects of international law. There were important differences between the two jurists, and Lauterpacht rejected the notion that his ideas were similar to Lemkin's. Lauterpacht who proposed that the Nuremberg war crimes tribunal use the term "crimes against humanity" to describe the killing of four million Jews and Poles in occupied Poland intended to use the concept of crimes against humanity to criminalize the act of killing individuals as part of a systematic plan, introducing protections for individuals into international law for the first time. Lemkin, by contrast, intended genocide to signify the destruction of national groups, to inscribe protections for national-cultural autonomy into international law. Lauterpacht believed that crimes against humanity introduced an individual rights-based approach to international law, and that the concept of genocide did not follow in this tradition because it did not explicitly protect individuals. Although Lemkin is often described as a group rights thinker, he considered genocide to be a crime against humanity, and he thought he was articulating an individual rights-based argument to justify preventing genocide. The goal of outlawing genocide, Lemkin argued, was not to make the right of groups to exist inviolate but to prohibit people from attempting to destroy entire ways of life and ethnic traditions, which caused real suffering for individuals. These atrocities, he argued, assaulted the very foundation of the entire human rights project: a respect for the right of individuals to practice their own traditions and express their own subjectivity. In such a way, Lemkin saw a law against genocide as embodying cosmopolitan sensibilities and safeguarding a world in which human rights could be possible. Lauterpacht and Lemkin, therefore, should be understood as working in tandem to advance a rights-based approach to international law, conceptualizing the two crimes that now rest at the foundation of the global international legal regime: crimes against humanity and genocide.

Raphael Lemkin in Lemkin Studies Intellectual biographies are inevitably built around a "double gaze" that looks back in time "in the direction of the practical field" of what the subject accomplished and did and forward "in the direction of the ethical field" to establish the importance of the subject's life and thought. Recognizing these limitations, this book is not intended to be a definitive biography of Lemkin. Instead, it aims to be a work of political theory and political history, sitting at the crossroads of the philosophy and history of international relations and international law, while providing an account of Lemkin's thought that connects the history of ideas to the social and political contexts of his milieu. Until 2007, only two books had been written about Lemkin. One, by William Korey, is still, in many ways, a standard text in the field. The second was authored by a Holocaust denier who accused Lemkin of spinning anti-Nazi propaganda. Lemkin would become known to the wider public in 2002, when Samantha Power included a short biographical sketch of him in her Pulitzer Prize-winning book, "A Problem from Hell": America and the Age of Genocide. Even though Power's book positioned Lemkin as a human rights hero, the book did not elucidate Lemkin's thinking, focusing instead on Lemkin within the context of US foreign policy. John Cooper's biography did, at first, work to establish a chronology of Lemkin's life and work. Cooper's book, however, collapses Lemkin's political theory into his biography and comes to the conclusion that it was Lemkin's experience of the Holocaust that led to his formulation of the idea of genocide in late 1942. Cooper argues that the conception of genocide could never have emerged in previous historical moments because the occurrence of the Holocaust marked a new epoch in human history when it was now possible to contemplate an intentional and state-organized effort to exterminate an entire people. Finally, Cooper rejects Lemkin's self-characterization as a cosmopolitan, writing that Lemkin used his autobiographical writings "to present himself as a universal man, an interpretation which has been followed by most historians. His roots, however, were in the quagmire of ethnic conflict in pre-War Eastern Europe and were authentically Jewish." I argue that Lemkin's thinking cannot be reduced to his experiences of any particular historical event or ethnicity. Within genocide studies, this claim is controversial. The Holocaust, the Armenian Genocide, the Ukrainian Great Famine, and European settler colonialism have all been offered up as the cases Lemkin intended the word "genocide" to signify. As Henry Theriault has argued, the claim that Lemkin "invented" the idea of genocide in reference to a specific historical case has allowed scholars to appeal "to Lemkin's authority" to claim "this or that is what he really meant by the concept of genocide." A more critical bibliography of Lemkin studies has developed through academic journal articles, book chapters, chapters in edited volumes, and editor's introductions to recently published volumes of Lemkin's writings. These scholars have used Lemkin to revitalize the study of genocide in the social sciences as a type of conflict, not a type of violence. Historians have turned to Lemkin to develop inclusive methodologies for studying genocide. Legal scholars have begun to use Lemkin's works to explore the importance of words and language in shaping the law and to ask whether reducing the reality of genocide to a fixed legal category undermines the moral progress that labeling an act "genocide" is supposed to achieve. In trying to sort out the intellectual history behind Lemkin's thinking on genocide, this book will inevitably fall prone to the "rhetorical illusions" inherent in any intellectual biography, in which the subject is contrived so as to give his or her life and mind a logical coherence, when his or her actual life and thought could never have been reduced to any such logic. I can only hope that my attempt to place Lemkin's works within their historical and intellectual contexts can mitigate these rhetorical illusions. I also hope this contextualization can show that the idea of genocide was neither immanent in history as if genocide were a natural phenomenon that Lemkin

happened to name or immanent in the writings of various thinkers in his milieu, as if others had identified the concept before him but failed to name it. The first two chapters present an overview of Lemkin's childhood, university education, and his early Polish-language works from the late 1920s and early 1930s on the penal codes of Poland, the Soviet Union, and Fascist Italy. Chapter 2 concludes with an analysis of Lemkin's foray into the field of international law and his 1933 proposal to outlaw acts he called "barbarity" and "vandalism" at the League of Nations. These proposed crimes, which were rejected by his colleagues, were the conceptual precursors to Lemkin's formulation of genocide. The chapter also discusses important developments in Lemkin's intellectual milieu, delving into the thought of his university professors. Especially important was Lemkin's turn to the political theory of Austro-Hungarian Marxists Otto Bauer and Karl Renner, which helps resolve a controversy that has consumed Lemkin studies: whether Lemkin was a group rights or individual rights thinker. As Mark Lewis has argued, the tendency for scholars to reduce the developments in international law after the First World War to a competition between liberal cosmopolitans and romantic nationalists is wholly inadequate. This dichotomy is too limited to explain the intellectual milieu, and it assumes the proponents of each camp had the same intentions or wanted to solve the same problems. Within Lemkin scholarship, the argument over whether Lemkin was a liberal or a romantic nationalist fails to explain his thought. Lemkin rose to prominence during the interwar years as part of what Lewis has termed the "new justice" movement. But Lemkin's unique interpretation of this "new justice" was shaped by Bauer's and Renner's political theories—especially Renner's liberal defense of protecting national-cultural autonomy. In such a way, I argue, the debate over whether Lemkin was a liberal individualist or a communitarian also fails to explain his thought. The ideas of Renner and Bauer were taken up by many in the Jewish socialist movement in Eastern Europe who sought to achieve a form of emancipation that would enable Jews to be incorporated into general society and enjoy equality without losing their independent national identity. This challenge gained a special relevance for Jews living in Eastern Europe where political movements expressed a commitment to the idea of the *Volksstaat*, a people's state, that was first articulated by Romantic thinkers such as Johann Gottfried Herder and Johann Gottlieb Fichte. These Romantic thinkers transformed national identity into a civic religion, considered self-fulfillment a criterion of individual freedom, and championed a homogeneous state where customs and convictions became the vehicle for achieving self-fulfillment and citizenship. Chapter 2 demonstrates that Lemkin rejected Herder and Fichte and the political movements their philosophies inspired. When Lemkin told the *Christian Century* in a 1956 interview that he did not consider himself to be only Polish or Jewish because he did "not belong exclusively to one race or one religion," he was rejecting this organic nationalist worldview without completely giving up his communitarian sentiments. Seeking a form of equality that allowed for difference, Lemkin was representative of a common Jewish experience in his milieu, which "straddles the interstices of universal identifications and particular attachments." The national cultural autonomy movements shaped by thinkers such as Bauer, Renner, and the Jewish historian Simon Dubnow, whom Lemkin greatly admired, did not see individuals as expressions of a single trans-historical nation. The national cultural autonomy theorists and Jewish socialists often spoke in idioms of "nations" and "cultures" having their own "spirits," but they did not believe these "spirits" had a fixed form that existed prior to society, trans-historically. They were also trying to offer individuals two things that the Romantic nationalists opposed: freedom from the arbitrary interference in their lives because of their subjective identities that included the right to freely practice one's ethno-cultural traditions; and equality under the law as individuals, not group rights. As Chapter 7 explains, it was intellectuals like Heinrich von Treitschke, Lemkin wrote, whose arguments that Jews were a drain on the German nation followed in the wake of Herder and Fichte and created the early foundations for Nazism. Chapters 3 and 4 cover the rise of the Nazi regime in Germany and present the first sustained scholarly reading of Lemkin's magnum opus, *Axis Rule in Occupied Europe*, the book in which the word "genocide" first appears in print. Chapter 3 argues that the typology of genocide Lemkin developed in *Axis Rule* was not intended to be a typology of all genocides, but rather the specific genocide as it was being committed in Axis-occupied Europe, especially in Poland. Lemkin was not trying to coin the word "genocide" to signify a particular type of violence. Rather, he was trying to create a new juridical and philosophical category of "different actions" that, "taken separately," constitute other crimes but, when taken together, constitute a type of atrocity that threatened the existence of social collectivities and threatened a peaceful and cosmopolitan social order of the world. As a consequence, Martin Shaw writes, "in contrast to subsequent interpreters who narrowed genocide . . . down to a specific crime, Lemkin saw it as including not only organized violence but also economic destruction and persecution." Genocide, in Lemkin's thought, was a social and political process of attempting to destroy human groups, not an act of mass killing. Chapter 4 traces the significance of *Axis Rule in Occupied Europe* within Holocaust historiography. The chapter positions Lemkin in dialogue with his immediate contemporaries who studied the rise of National Socialism, namely, Sigmund Neumann, Ernst Fraenkel, and Franz Neumann. Second, the chapter considers *Axis Rule*'s position alongside canonical works in Holocaust studies written after the war, such as Raul Hilberg's *The Destruction of the European Jews* and Leni Yahil's seminal 1969 account of the rescue of Danish Jews. The chapter also shows how Lemkin figured prominently in the works of Yehuda Bauer and Steven Katz and their debates on the uniqueness of the Holocaust. In addition to tracing Lemkin's influence on Bauer and Katz, and to a lesser degree Yahil, the chapter charts Lemkin's thinking on the destruction of the Jews in the German genocide, the role of labor and death

camps in destroying nations, the political and sociological function of ghettos, and the way genocide was rationalized and legitimized, developing contingently through discriminatory laws and repression into a program of mass killing. Chapter 5 transitions into Lemkin's efforts to outlaw genocide. Playing a limited role at the International Military Tribunal (IMT) at Nuremberg, Lemkin succeeded in bringing genocide into the charges of the tribunal and ushering the term into international discourse. Lemkin also played a surprising role in shaping the prosecution's strategy of exporting Anglo-American criminal conspiracy laws into international law to charge German defendants with war crimes and crimes against humanity by virtue of their participation in a vast criminal enterprise. The chapter further discusses Lemkin's behind-the-scenes plea to prosecute sexual violence as genocide, including forced marriages, forced abortions, and forced impregnation. Lemkin left the IMT before it concluded, setting his sights on lobbying to outlaw genocide in the UN. Chapter 6 presents this history by offering a new reading of the drafting process of the UN Genocide Convention that draws on Lemkin's personal correspondence. I use Lemkin's interpretation of the events outlined in his autobiography to reread the travaux préparatoires of the negotiations during the UN Genocide Convention drafting process. Throughout each stage of the drafting process, the definition of genocide changed, evolving from an expansive conception of group destruction to a narrower concept that emphasized destroying particular kinds of groups through physically violent acts. The drafting committee members also rejected universal jurisdiction for the crime of genocide, recognizing only territorial jurisdiction and the jurisdiction of international tribunals. What this history reveals is that the UN Genocide Convention was based less on the philosophy of law even less on the philosophy of Lemkin than on the interests of the governments negotiating the treaty. It also reveals that many of the delegations from the UN member states believed that a weak treaty against genocide, or no treaty at all, was in their best interest. Lemkin is often presented as growing increasingly paranoid in his single-minded devotion to outlaw genocide, seeing enemies of the Genocide Convention around every corner. Indeed, he often turned on longtime friends and allies, such as Vespasian Pella, wrongly believing that they were orchestrating the destruction of the convention. He tended to see people who disagreed with aspects of his ideas as enemies. Some of Lemkin's suspicions, nevertheless, can be supported by the travaux préparatoires and memoranda passed within the various delegations. There was real opposition to the Genocide Convention, spearheaded by the USSR, UK, France, Belgium, Canada, South Africa, and the United States. Against this opposition, Lemkin had two advantages. First, most of these states were democracies, and their leaders responded to lobbying efforts seeking to embarrass them into supporting international humanitarian laws after the horrors of the previous war. Second, Lemkin secured the support of a coalition of smaller states and former colonies whose governments, a few years later, would form a so-called Third World Movement. Without their support between 1946 and 1948, the Genocide Convention would never have been considered by the UN. Chapter 6 aims to show that delegations from Asia, Africa, the Middle East, and Latin America were significant political movers of the Genocide Convention in the UN between 1946 and 1948. Individual delegates from the United States and Canada also proved helpful, even though their governments opposed much of the convention. The Genocide Convention was, in the words of the South African delegate in 1948, dangerous "where primitive or backwards people were concerned" because it would be tantamount to acknowledging that the systems of government and beliefs of native peoples had an equal right to exist alongside the civilized European systems. Finally, the chapter attempts to make clear that Lemkin's supporters grew frustrated with him during the drafting processes, believing he was too willing to allow the United States, UK, USSR, and France to dictate the contents of the law. Lemkin believed the final Genocide Convention was the best compromise possible. In many ways, his critics were right, however. The major powers were able to write their own genocides out of the law, narrowly defining the acts that constitute genocide and restricting genocide only to an attempt to destroy a national, ethnic, racial, or religious group. The following year, in his courses at Yale Law School, Lemkin returned to his broad understanding of genocide, teaching his students that social groups were not primordial entities, and that all categorical distinctions between human beings were not predetermined. He settled on the term "genocide," he told his class, because the Greek and Sanskrit connotations of the root word "genos" signified a human group that was constituted through a shared way of thinking, not objective relations. The concept of the "genos" Lemkin said, "was originally conceived as an enlarged family unit having the conscience of a common ancestor first real, later imagined." It was here, in this imagined connection between people, where "the forces of cohesion and solidarity were born." The same forces for group cohesion, Lemkin taught, could also serve as "the nursery of group pride and group hate" that is "sometimes subconscious, sometimes conscious, but always dangerous, because it creates a pragmatism that justifies cold destruction of the other group when it appears necessary or useful." This meant two things for Lemkin, I argue in Chapter 6. First, he believed all social groups, including races and religions, were aspects of human consciousness that did not have trans-historical permanence. Second, he believed that genocide, as an attempt to destroy groups as such, was the product of "anthropological and sociological patterns" that could be changed. Lemkin and "New Justice" It was not until the 1990s that international humanitarian law (IHL), which is considered as part of the laws of war and armed conflict, began to be considered a part of the human rights movement. Certainly, the human rights and IHL movements drew on the same political and philosophical traditions, many of which can be found universally throughout human history. Yet, the two traditions developed distinctly. Human rights emerged most directly from the

traditions of the Rights of Man and civil rights movements that sought to uphold individual rights through a relationship of duties and obligations between the state and the citizen. In the eighteenth century, liberal revolutions in the United States, France, and Haiti, among others, deployed this conception of rights to try and limit the reach of church and state, to mitigate their arbitrary exercise of power and their use of prejudice and traditions to justify social misery. Rights took their form in the concept of citizenship, which invigorated the concept of democracy and demanded a vision of equality and tolerance that would allow public life to be shaped by the will of people, while safeguarding the private sphere to allow individuals to freely exercise their subjectivity. The nineteenth century saw the rise of the abolition of slavery and universal suffrage movements. This was followed by socialist movements in industrializing societies that argued that economic inequality was making the promise of democracy hollow and that sought to expand the principles of democracy by means of free public education, women's legal and economic empowerment, workplace labor laws, child labor laws, free and clean public parks, and food purity laws. All of these movements held that the state had a duty to extend citizenship rights to more and more of its population, to protect the well-being of citizens, and to ensure that all citizens could reasonably expect to be treated equally and enjoy equal representation and participation in the political, social, and economic spheres. In contrast to the emerging tradition of human rights broadly defined, international law in the eighteenth century took shape as a system of treaties between the governments of sovereign states concerning matters that ranged from which side of channels ships could sail on to the protocols for establishing foreign embassies and the conduct of armies in war. The categories of actors at the heart of international law—the war criminal and the terrorist—originated from the concept of the pirate, a category of actor who was presented as a violator of the laws of nations, an apolitical and antisocial figure who threatened the welfare of states but acted without the sanction of a sovereign state and was, therefore, susceptible to prosecution by any state in the world. By the nineteenth century, IHL emerged within the laws of war, and articulated an assumption first outlined by Jean-Jacques Rousseau in *The Social Contract*, that war was a relationship between states, not peoples. The people who tried to kill each other on the battlefield were not seen as engaging in hostilities toward each other as individuals. The Hague Regulations of 1899 codified the Rousseau-Portalis Doctrine of 1801, which sought to protect civilians and society from the excesses of warfare between the armies of states. Humanitarian protections entered into the law in the form of provisions protecting populations and societies from conflicts between states. These provisions included treaties to ensure armed combatants did not torture each other after being captured, that gruesome weaponry should be outlawed, and that civilians should be protected during armed conflict. Legal protections for individuals did not enter into IHL as a way to protect individuals' rights but as a way for protecting society and populations. Wartime rape, for example, was outlawed under the laws of war, not because it violated the rights of a woman as an individual but because it violated a woman's dignity and "family honor," which threatened the well-being of a society; likewise, young women were not to be killed, not because they had a right to life but because they could be nursing mothers whose death would harm the long-term welfare of a population. The point when the human rights, the humanitarian intervention, and the IHL movements eventually overlapped was when they claimed that states had a responsibility to provide for the safety and welfare of their own populations as a criteria of individual rights. International law is not a neutral undertaking, but enmeshed in international politics and developed through ideological debates. Governments seek to use international law for political gains or to establish the legitimacy of favorable regimes. International courts are effective tools for shaping interpretations of history to further these ends. That international law and justice are political endeavors does not rule out the possibility that they can play a normative or pedagogical role in societies. Nor does it negate the fact that the creation of international laws and the application of international justice were honest attempts to deal with historical crises by repairing the fabric of societies and altering political systems to prevent the recurrence of atrocities. The "new justice" that European jurists pursued after the Paris Peace Conference until the 1950s, Mark Lewis writes, coalesced around a cluster of interrelated ideas that sought lasting social and political change in world society by amending the tradition of IHL to secure peace in an era with historical conditions that were fundamentally different from the previous century. This "new justice" included the idea that individual criminal liability for violations of international law was valid; that prosecuting a head of state, government official, or military officer was legitimate; that a state should extradite certain perpetrators of international crimes if it wanted to return to a community of nations; that international tribunals offered distinct advantages over national tribunals, in terms of greater legitimacy and greater ability to shape normative beliefs throughout the world against certain types of offenses that no single state was capable of handling on its own; and that international law could be altered according to new social and political contexts that revealed deficiencies within previous laws and legal systems, without any prior positive basis to do so. Lemkin was very much part of this "new justice" movement during the interwar years. He arrived at the conclusion that war in the twentieth century was not only being waged by armies against armies to gain control of territories but by states against populations to shape the identities of people living within state borders for material or political interests, both perceived and real. For Lemkin, if IHL was to be a source of peace in the new century, it had to evolve along with these changing historical realities to recognize the changing nature of conflict, while embracing individual rights. Lemkin's goal was not to use the law to create a world that would give groups a right to exist. He wanted, instead, to use the law to try and create a world in which people did not attempt to destroy

entire groups. In his social scientific writings, Lemkin railed against organic nationalism because it denied that nations and cultures were always changing, and it denied that an individual could belong to more than one nation or culture. Genocide had existed throughout history, Lemkin wrote, but it found an extreme articulation in the twentieth century's organic nationalist movements, which applied military force against entire populations for no other reason than to destroy entire social groups as organic entities. Even if these movements did not manifest in genocides, Lemkin argued, allowing them to flourish would lead to a world in which diversity and pluralism were not seen as positive forces that allowed individuals to enrich their lives through new subjective experiences. The purpose of outlawing genocide was not to protect groups as organic entities, Lemkin felt. The purpose of outlawing genocide was to prevent people from justifying misery and oppression on the grounds of the victims' subjective identity, or any other arbitrary criterion such as race or religion. In such a way, the law against genocide, for Lemkin, belonged to this new category of crimes against humanity, safeguarding an individual's right to belong to whichever (and however many) nations she wanted to belong to and express the national identities she wished to express. Lemkin's argument was very much a communitarian argument, but one that he defended on individualist grounds while insisting that no individual could be reduced to any one group.

Lemkin's Late Works On 9 December 1948, the Convention on the Prevention and Punishment of the Crime of Genocide was signed. The first humanitarian law of the UN, the Genocide Convention along with the Universal Declaration of Human Rights would form the basis of the international human rights regime after 1948. For his efforts, in 1950 Lemkin was awarded the Cuban Grand Cross of Carlos Manuel de Céspedes, and he was many times nominated for the Nobel Peace Prize. After 1948, Lemkin attempted to settle into an academic career in the United States. Devoting most of his energy to lobbying national governments to ratify the Genocide Convention, he was unable to achieve the academic success he had known in Poland. When he died in 1959, he left thousands of pages of manuscripts and essays unfinished. Chapter 7 presents the first systematic reading and analysis of these unpublished works, which Lemkin researched and wrote while serving on the faculties of Yale University in New Haven, Connecticut and Rutgers University in Newark, New Jersey. Even though a significant, and unknown, percentage of his output was lost in a house fire, nearly twenty thousand pages of Lemkin's writings, manuscripts, papers, and letters survive and are now housed in three primary archives in the United States. These texts include an autobiography recently published, a book-length indictment of Nazi war criminals at the Nuremberg tribunal, several chapters of a three-volume world history of genocide, and fragments of a book titled *An Introduction to the Study of Genocide in the Social Sciences*. The landmark books on genocide studies that appeared in the early 1980s engaged Lemkin's ideas in various ways but, by and large, they avoided discussing Lemkin's Polish-, French-, and German-language publications from the 1930s and did not consult his unfinished English-language manuscripts. These early studies avoided Lemkin's writings mainly because their objective was to correct or improve his thinking on genocide, not to understand his ideas. Although Lemkin's writings are far from systematic, they elucidate his system of thinking. As Steven Jacobs has argued, Lemkin's late works reflect a carefully thought out conceptualization that was already at work in the early 1930s when he unsuccessfully attempted to present his ideas to the League of Nations. Chapter 7 delves into some of the troubling aspects of Lemkin's ideas and biography. After 1948, Lemkin turned to exile groups from Eastern Europe to lobby the US Congress to ratify the Genocide Convention as a tool for combating communism. These diasporas played a crucial role in spreading anti-Communist propaganda in the United States during a period that gave birth to McCarthyism. At the same time, Lemkin wrote newspaper editorials publicly denouncing African American civil rights leaders who supported the Genocide Convention and employed the concept of genocide to describe the treatment of African slaves and black citizens by the US government. Lemkin's book manuscripts written during this time contain none of these racist sentiments and advance a different argument, that the treatment of African slaves and "negroes" throughout US history was consistent with his conception of genocide, especially the lynching and extrajudicial killings of blacks. Lemkin presented an argument in these papers that race was a fiction, propagated in the United States to justify placing people of African ancestry into an exploited economic class. Sadly, Lemkin betrayed his own universalist values when he tried to convince a white, racist establishment in the United States to ratify the Genocide Convention by arguing that the victims of communism in the Soviet Union suffered genocide while African Americans only suffered civil rights violations. By the 1950s, Lemkin can only be described as a "hostage of politics," as his fanatical efforts to force the United States to ratify the UN treaty against genocide caused him to abandon his principles of tolerance and inclusion during one of the darkest periods of American history. Chapter 7 also points to important weaknesses in Lemkin's writings and theory. Lemkin tried to make clear he was not a natural law theorist but a legal positivist. Yet, he never worked out a clear theory of power to answer the question of how genocide could be prevented using the law, if the law could not be enforced. What is more, he always fell back to a natural law argument about why genocide should be outlawed, arguing that human beings had a self-evident right to enjoy national-cultural diversity. This was a deficiency in Lemkin's thought that Sir Hartley Shawcross spotted during the drafting of the Genocide Convention at the UN, when he argued that Lemkin's Genocide Convention created a situation in which war was the only viable option to prevent and prosecute genocide. Issuing an arrest warrant for a single individual charged with genocide, Shawcross wrote, would be an act of war unless it was a genocide committed in a small state or the regime sanctioning genocide collapsed and left the perpetrators exposed to

prosecution by greater powers. In either case, the Genocide Convention would be seen as victor's justice. Shawcross also understood that a permanent law against genocide requiring all state leaders to be prosecuted would work against the goal of world peace. If every government in the world were obliged to prosecute genocides, no government committing genocide would peacefully resolve genocide because it would face a situation where the only way to escape prosecution was to win a war. It was far better for the UN to codify the Nuremberg principles, Shawcross contended. These criticisms of Lemkin's ideas are still valid, which makes it all the more unsatisfying when we find Lemkin in his late works arguing that military interventions to end genocide carried out under the authority of the Genocide Convention would undercut the normative value of the law. What did Lemkin think his law was intended to do? One of Lemkin's dearest friends, Nancy Ackerly, described him to me as a man who enjoyed keeping up with the latest openings of the art galleries in New York and recited Hindu sutras in Riverside Park. When she first met him outside the International House on Claremont Avenue by the Hudson River in New York, erudite and charming Lemkin introduced himself to her and her friend, saying, "I can say 'I love you' in twenty languages." She kept the books Lemkin was reading in the 1950s on cosmic consciousness movement that sought to locate a unified human consciousness that transcended particular expressions. Lemkin's volume of Rilke's poetry, which he gave to Nancy, contains annotations where he underlined examples of what he saw as Rilke's cosmic consciousness. Over and again, Lemkin said the Genocide Convention was only a first step, powerless without a movement to make the principles embodied by the law a lived experience in the world. Here was Lemkin's political romanticism. He believed the foundation for how people treated each other could fundamentally change, universally. The values necessary for creating a world without genocide, he believed, could be translated into practice through social institutions such as the law or through poetry, art, in college classrooms, in political movements, and in the stories parents told to their children. In this context, Lemkin saw international affairs, war, and peace not as the abstract relations between states but as social and political processes driven by individuals whose actions were determined by their values, sentiments, and ethics. Governments today could manage human life "like currency in a bank," Lemkin wrote, because people did not believe that it was wrong to do so. Lemkin's goal was to change this so that genocide would no longer be seen as inevitable or heroic or practical or good, but as something that threatened the foundation of the human cosmos.