

CULTURAL GENOCIDE;

A “Conceptual History” Approach to a Wayward Concept

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Abstract

Baseret på hans egne erfaringer skrev den velkendte jødiske advokat Raphael Lemkin i 1944 en bog, hvori han udtænkte et nyt begreb; ”Genocide”, eller massebord som det hyppigt kaldes i det danske sprog. Lemkins originale intention ved at opfinde dette nye begreb, var at skabe en ny måde at klassificere overgreb påført af besættende magter, hvilket blev eksempelgjort af de tyske Nazister i Anden Verdenskrig. ”Genocide” var originalt ment som et overskyggende begreb der bestod af flere former for skade, hvoraf en af disse var den kulturelle effekt. Lemkin lagde så stor vægt på det kulturelle massebord, ”Cultural Genocide”, at det var en af de endelige tre former for ”Genocide” præsenteret ved Folkedrabskonventionen i 1948. Desværre fandt flere ”Cultural Genocide” forvirrende og kritiserede begrebet, et fænomen der fortsatte i årene efter og kan observeres i 1970’erne og frem. Eftersom de juridiske debatter omhandlende ”Cultural Genocide” begyndte at dø ud, var der dog et andet videnskabeligt område der genoptog begrebet. Efter årtusindeskiftet begyndte sociologer at interessere sig for begrebet, som de påførte historiske hændelser uden for Anden Verdenskrig, deriblandt med et Australsk fokus. Ved at påføre ”Begrebsteori” til begrebet ”Cultural Genocide” skabes der en kronologisk undersøgelse af begrebets betydning og definition gennem årene, mens en diskussion af begrebets fremtidige brug også muliggøres. Specialets mål er derfor at opnå en større forståelse for begrebet ”Cultural Genocide”.

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Introduction

In 1944 the Polish lawyer Raphael Lemkin wrote a book wherein he introduced the concept “Genocide”. “Genocide”, when first presented, was meant to describe the destruction of a particular group of people in varying forms, to which Lemkin created different ‘phases’ of “Genocide”. The varying phases could then be accordingly applied and observed in any given genocidal situation. “Genocide” is however today mostly defined by only one of these phases, thanks to the discussions held during the Genocide Convention, namely the physical aspect. “Physical Genocide” was originally only a part of the understanding which surrounded the overall concept of “Genocide”. As such, “Physical Genocide” covered all physical enforcements and the systematic physical destruction of a people, commonly referred to as mass murder. Today, the general understanding of “Genocide” is limited to the physical form hereof, which “Genocide” has become synonymous with; this will be discussed in detail later in this thesis. The original concept of “Genocide” was therefore broader, holding several different patterns under the umbrella of “Genocide”, one being the cultural aspect, or “Cultural Genocide”. Lemkin was extremely conscious of the cultural aspect within the broader “Genocide” concept, and devoted much thought upon the expansion;

”The draft of the resolution consisted of two parts: the preamble referred the destruction of racial, religious or national, groups in the past and stressed the losses to humanity in the form of cultural and other contributions.”¹.

While the concept “Cultural Genocide” has sparked some discussions within the scientific community since Raphael Lemkin’s introduction to the subject in 1944, these have been mostly centred in the legal, and lately social, scholarly fields. In order to gain further insight in the concept “Cultural Genocide”, there seem to be a need for an analysis throughout time, in order to understand the concept better, and how it changes scholarly grounds after several prominent years within legal and International Law debates. Following this belief, one could apply the historical methodological approach of “Conceptual History”. This means studying the discussions revolving “Cultural Genocide” in a historiographical and chronological context, which I have chosen to split up into four different stages: The birth of the concept in 1944, the debates during the Genocide Convention, the shifting legal and Human rights discussions budding in the 1970’s and finally the shift into the Sociologic field, with a special

¹ Lemkin, *Genocide as a Crime under International Law*, p. 6

focus on the research conducted upon Australia and its aboriginals. Concerning the first analytical section, it seems important to also point out that the concept of “Cultural Genocide” was not finalised at this time; instead the concept of “Genocide” is presented with its many different phases, one being the cultural aspect. While the focus here is not “Cultural Genocide”, it is necessary to discuss this early work, as it laid the groundwork for later finalising of “Cultural Genocide”, alongside other genocidal forms. The section will describe Lemkin’s situation and understanding of his time, describe his new conceptual thinking, and what importance he placed herein. It is an important part of the history of “Cultural Genocide”, and vital to fully understanding the concept, since it was finalised and derived from the early musings presented in Lemkin’s book from 1944. It is the starting point for a chronological study of “Cultural Genocide”, and the concept will also return to focus in the following section of analysis. This will enable a greater understanding of “Cultural Genocide” while also enabling a discussion as to the potential of the concept in regards to contemporary scholarly work and discussions. To achieve this, this thesis will lean upon the theoretical methodology of “Conceptual History”, a theory meant to specifically analyse the meaning of concepts.

Problem statement

Which historiographical changes has the concept “Cultural Genocide” undergone since its inception, and what relevance does the concept have in regards to modern historical framework and usage?

“Conceptual History”

The theory of “Conceptual History” was developed by a German historian named Reinhart Koselleck. As a historian Koselleck held a widely acknowledged position as a worthy intellectual, and were most famed for his theoretical thinking concerning his coined concept of “Conceptual History”.² “Conceptual History” is presented in the book “*Begreber, tid og erfaring*”, a Danish translation of the original German version, but the first presentation of the concept was in a lexicon of theoretical thinking. The book is a collection of Koselleck’s articles, where many different ideas are discussed, and not only “Conceptual History”. The article concerning this concept, however, is methodological in its work, as Koselleck tries to explain how “Conceptual History” applies to the historical social sphere, without being a direct part of the social-historical theoretical approach.³ The methodology for “Conceptual History” is mainly a specialized critical reading aiming to study social or political instances of some significant relevance, and thereby also the relevant concepts used in regards to these instances, and what these concepts hold in terms of social or political content.⁴ This means one must look at the concept’s history, while still considering context and usage, since this is what will make it possible to study the semantics of the concept.⁵ The strong critical approach has been evident since the first notion of “Conceptual History”. This theoretical approach started as a critique of transferring concepts over periods of time or meaning, without reflecting upon the possible changes or how it might be wrongfully applied. The intention was furthermore to criticise “History of Ideas”, another historical theoretical field, since the observed “ideas” functioned within different historical periods, without changing their core content.⁶ Both of these approaches within “Conceptual History” helped to create a specification, wherein a study of a concept equals a need to establish the area of experience, or context, as well as the intention for the different historical periods and their use of the studied concept. By doing this, one might study the social and political sphere surrounding the studied concept.⁷ The meaning behind “Conceptual History” is therefore that a concept is never definitive, but instead the result of social struggles. For this, one needs also consider the context of the time a concept was used and with what intentions this was done.

² Koselleck, *Begreber, tid og erfaring*, p. 16-17

³ Koselleck, *Begreber, tid og erfaring*, p. 18

⁴ Koselleck, *Begreber, tid og erfaring*, p. 65

⁵ Koselleck, *Begreber, tid og erfaring*, p. 65-66

⁶ Koselleck, *Begreber, tid og erfaring*, p. 66

⁷ *Ibid.*

Context and intention are simplified ways of addressing two significant notions within historical studies, and as a tool in analysing concepts in general. The two notions are respectively “space of experience” and “horizon of expectation”. The reason for why these can be useful is that when using or analysing a concept, it is often wise to make out the differences in meaning, since it is possible to apply a concept on multiple historical events and concepts.⁸ “space of experience” (experience/context) and “horizon of expectation” (expectation/intention) can help determine these different meanings when using a concept in different contexts, which in turn is a big part of “Conceptual History”.

Koselleck explains what is defined by expectation and experience, while also explaining their use and how he believes the concepts to be used in future scientific work. He then claims that experience is meant to be understood as a

*“present past, whose events have been incorporated and can be remembered. Within experience a rational reworking is included, together with unconscious modes of conduct which does not have to be present in awareness”.*⁹

This means when applying “space of experience” throughout an analysis of a specific concept, one has to keep in mind what experience the analysed text functions within. These experiences can hold some importance regarding how the text unfolds, and what has led it to be written; as such, it is the context in which something is produced and based on prior experiences. As an example one can describe smoking; before doctors concluding smoking was hazardous, it was widespread and considered by many to be healthy. However, after it was discovered to be unhealthy, the experience coloured later medical and public opinions. There are therefore two meanings of smoking, based on two different experiences and contexts. Experience is however somewhat different than expectation, which is the other concept one must concern oneself with; “horizon of expectation”. As explained earlier, expectation can be boiled down to intention, but the concept also covers a wider definition, which according to Koselleck is;

“at once person-specific and interpersonal, expectation also takes place in the today; it is the future made present; it directs itself to the not-yet, to the nonexperienced, to that which is to be revealed. Hope and fear,

⁸ Koselleck, *Futures Past*, p. 256

⁹ Koselleck, *Futures Past*, p. 259

wishes and desires, cares and rational analysis, receptive display and curiosity; all enter into expectation and constitute it"¹⁰

Expectation is thereby defined in a more fluid way than experience. It is the intentions, the hopes and cares of the author, which is then projected onto paper. It is then this paper's focus which holds the expectation of the author, but in most cases the expectation is not presented outright. A scientific paper always attempts to be neutral, as personal feelings of the scholar are frowned upon, since this will ultimately decrease the scientific value of the study. However, through critical and focused analysed reading, one can often still observe different wordings, or similar effects, which gives an indication as to what expectation the scholar held towards his/her work. Furthermore, experience and expectation are both results of different time periods. This is evident from Koselleck's quotes above; therefore experience is solely a product of the past, if immediate past, while expectation is a product of the future. This is because experience is based on realised events, while expectations are wishes for the future which are not yet realised. If expectation moves to the present, the result will then be discovered and the former expectation will instead become an experience. Koselleck describes it as;

*"Past and future never coincide, or just as little as an expectation in its entirety can be deduced from experience. Experience once made is as complete as its occasions are past; that which is to be done in the future, which is anticipated in concepts of an expectation, is scattered among an infinity of temporal extensions."*¹¹

Therefore, while expectation and experience may be applied to the same subject/event, they operate on two different planes, while still depending on each other. Koselleck muses that experience is a necessary component in regards to expectations, in concepts of temporal structure. Once fulfilled, expectations founded in experience no longer yields any surprises, as only the unexpected can surprise, which will then result in a new experience.¹² As such, it is the tension underlying the relationship between experience and expectation, which through its changes creates new resolutions and through this historical time is generated.¹³ None of this will however settle the question of whether this is objective history, or whether it is

¹⁰ Koselleck, *Futures Past*, p. 259

¹¹ Koselleck, *Futures Past*, p. 260

¹² Koselleck, *Futures Past*, p. 262

¹³ *Ibid.*

rather subjective reflection. The past will always be built upon objective conditions which in turn enter into their reworking, resulting in an effect upon past expectations.¹⁴ Another point to be considered is how experiences are a product of the past. “An experience might contain non-factual memories, or new experiences might open up other perspectives. [...] *Thus, experiences had once in the past can change in the course of time*”,¹⁵ meaning that on a personal level one might remember wrong, or new experiences might change the former experiences. On another historical level, an experience can be a formerly stated fact about an historic event, that will undergo changes as new research or materials turn up. All of this needs to be considered when discussing “space of experience”.

Following the methods intended when applying “Conceptual History”, one must make it a chronological study. As has been explained above, it is the changing meaning of a concept over time, together with the meaning, intention and social/political use, which holds any interest. Therefore it is necessary to follow the studied concept through the time in a chronological form, as not to misinterpret the changes in the concept’s meaning. When regarding the concept “Cultural Genocide”, the study must cover the biggest discussion points throughout the years. This means we must observe how the concept was first introduced in 1944, and how the political discussion of the concept changes during the debates of the Genocide Convention. Only then will it be possible to discuss modern writing concerning “Cultural Genocide”. Following this will be the next big discussion phase of “Cultural Genocide” which began in the 1970’s and led to the contemporary research concerning the concept. As a result this thesis will follow the intended methodological approach of “Conceptual History”. As a result of this, one also has to ponder what type of concept that is studied, since Koselleck says that there normally is three types of concepts¹⁶;

- A) Traditional concepts which meaning remains virtually disturbed over time
- B) Concepts that has undergone so dramatic a change that it barely can be compared over time
- C) And finally neologisms, concepts that react when applied politically or socially to conditions, in an effort to provoke or create attention

A concept can however function within all three types, based on the different intention and application of the concept.

¹⁴ Koselleck, *Futures Past*, p. 263

¹⁵ Koselleck, *Futures Past*, p. 262

¹⁶ Koselleck, *Begreber, tid og erfaring*, p. 69

While it may have sounded like "Conceptual History" only revolves around a concept, while disregarding any content not connecting to the context, this is however not so. Instead, the idea is that the scholar has to decide how the concept is presented and how it is applied, before discussing things such as social/political structures or conflicts, relevant to the studied concept.¹⁷ However, when one has decided which meaning the relevant author applies to the studied concept, and how this is backed up through the science, one can discuss the concept within a broader understanding of context. In regards to "Cultural Genocide" it would mean "*deconceptining*" the definition of the concept and what events the author uses to prove the instance is an example of "Cultural Genocide", while keeping in mind the context, intention of the author and what event the concept is applied to. It is also used to differentiate words from concepts, as a concept is a word that has some significant social/political meaning, experience and event, where the concept can function in.¹⁸ As it is now clear that "Conceptual History" binds both political and social, not to forget historical, content, the concepts semantical function cannot be based solely on these social and political contents.¹⁹ It is then evident that the non-semantics field by no means is to be regarded as unimportant. While it certainly is superseded in the early stages of analysis, it takes precedence afterwards, since an inquiry into the wording/conceptinology of social and political conflicts or structures automatically will bring up the discussion of non-semantics.²⁰ Through application of "Conceptual History" the writer breaks through the circle one might find itself in otherwise, where the writing will continually discuss the studied concept, without understanding the full context and changes the concept has undergone. Therefore studying a concept will never be purely based on semantics, since it cannot be limited without not containing the changes of meanings, conditions, context etc., which all correspond with each other, and are necessary in a "Conceptual History" study.²¹ The scholar must therefore always keep the many factors of the concept in mind, or the study will lose its relevance.

¹⁷ Koselleck, *Begreber, tid og erfaring*, p. 68

¹⁸ Koselleck, *Begreber, tid og erfaring*, p. 71

¹⁹ Koselleck, *Begreber, tid og erfaring*, p. 72

²⁰ Ibid.

²¹ Koselleck, *Begreber, tid og erfaring*, p. 73

Methodology

The intended goal of this thesis is tracking the changing understanding of the concept “Cultural Genocide” throughout time. In order to do this, the theoretical framework of “Conceptual History” will be applied to the various fields of discussions, which in turn will be studied in chronological order. By using the intended theory, it will be possible to determine the changing perceptions and applications of “Cultural Genocide”, while at the same time gaining a deeper understanding of the concept. In order to attain this goal, the study must start with the birth of the concept, which stems from a book written by Polish lawyer Raphael Lemkin in 1944. As Lemkin was a lawyer, it makes sense that the concept was created with a legal application and understanding in mind, meaning the concept will be researched in light of International Law and legal application. However, as the original creation of “Cultural Genocide” stems from an introductory book, the actual legal application is at this time still a product of hope, or as it will be defined as, an instance of “horizon of expectation”. The original creation of “Cultural Genocide” functions as a part of a bigger definition, which falls under the concept of “Genocide”. As such, first the general definition of “Genocide” must be discussed, alongside its many facets, alongside the hopeful intentions of Lemkin. This intention is more correctly referred to as “horizon of expectation” within the theoretical framework of “Conceptual Genocide”, which was explained in the earlier section, amply named “Conceptual History”.

The second section of analysis follows time chronologically, and is the Genocide Convention. The further defined forms of “Genocide” will then be explored, and in greater sense the genocidal form of “Cultural Genocide”. Within the section concerning the Genocide Convention the focus will lay upon the debates surrounding the concept “Cultural Genocide”; namely the supporters/critics of including the concept within International Law. This means that not only will we observe the context and intentions of the relevant delegates, but also the changing understandings of the different genocidal forms, hereunder “Cultural Genocide”. The next field of analysis is then the new debates surrounding “Cultural Genocide” during the 1970’s and up to the 2000’s. Here the concept was put in relation to newer legal fractions and concepts, in order to permit a possible new definition and subsequent legal application. This period means observing the debate surrounding whether “Cultural Genocide” carries the same definition as another concept, “Ethnocide”, and whether the two concepts can support the claim of “Cultural Genocide” within International Law, and other new legal venues of

interest. However, this marks the end of debates within the legal field of study concerning “Cultural Genocide”.

While the legal nature of “Cultural Genocide” has not changed, after the year 2000 there is less legal scholarly debates made on the subject. Instead there has been a blossoming of work made upon the subject of “Cultural Genocide” within another field, namely that of Sociology. The change of research field also means a different understanding of the concept, with the recent studies focusing less on debates as to whether “Cultural Genocide” should be included within International Law. Instead the concept is used to discuss the societies wherein natives have been the victim of discrimination. While this field of research has little to do with the previous legal analysis and understanding of “Cultural Genocide”, it is however where the concept has been met with new importance and application. The new sociologist research presents a new way of defining the understanding of “Cultural Genocide”, enabling a continued debate of “Cultural Genocide” outside the dwindling legal research, which indicates that future work concerning “Cultural Genocide” has moved fields to allow for a new understanding of the subject. Subsequently it is necessary to note the change of research field and conceptual definition of “Cultural Genocide”, which will be the final analysis section of this thesis. Furthermore, as the sociologist research is fairly substantial, the focus will be held on one fraction of the work, namely that made in relation to Australia.

“Cultural Genocide” and Raphael Lemkin – the invention of “Genocide”

In this section I will explain the inception of “Cultural Genocide”. The concept started out as a sphere under the term “Genocide”. The concept was neither fully realised nor named at this time. “Genocide” was at this time also not understood as it is today, but was a patchwork of different spheres, all being a different harming action taken against a group of peoples. The context and intention of the creator will therefore be discussed, explaining the different genocidal spheres, one of which later became the finalised form of “Cultural Genocide”.

After World War 1 tensions build in multiple countries, and no less in Germany and Poland. This especially concerned war-tensions and anti-Semitism. Jews were being put under new laws, that were meant to restrict and control them. In 1940 polish Jews were put in ghettos under German administration, with many Jews from different nations soon joining the polish in ghettos and camps. During these tensions some Jews escaped the ghettos; one of these was a Jewish lawyer, Raphael Lemkin. Lemkin was born on June 24 in the year of 1900²² and raised on a farm near the polish town of Bezwodene.²³ Having been home schooled by his mother and introduced to multiple older texts describing massacres of people, formed his early interest’s in violent actions taken against specific groups. Furthermore, during his childhood Lemkin heard about violence against people of Jewish descend, of which he was one, for example; “[...] pogroms in the Bialystok region involving fiendish mutilation rituals resulted in the murder of 70 Jews and grave injuries to 90 others”²⁴. As a result Lemkin grew up to have a strong sense of justice, which led him to change his major from philosophy at John Casimir University of Lvov in 1920, and instead switch to law²⁵. Lemkin began to recognize the possible need to be able to hold individuals and governments accountable for crimes against specific persecuted groups during the 20’s and 30’s²⁶, while also functioning as a lawyer, prosecutor and university teacher²⁷. By the 1930’s Lemkin had secured himself a position as an internationally known scholar within the field of International Criminal Law, and had “participated as a rapporteur²⁸ in such important meetings as the Conferences on the Unification of Criminal Law”²⁹. According to Lemkin it was the actions of Hitler during the

²² Cantor, p. 13

²³ Schabas, p. 24

²⁴ Cantor, p. 13

²⁵ Ibid.

²⁶ Luck, p.17

²⁷ Schabas, p. 24

²⁸ Lemkin was not a journalist, but wrote reports concerning the events of various meetings.

²⁹ Schabas, p. 24.

1930's that led Lemkin to submitting "a set of proposals to that end to the Fifth International Conference for the Unification of Criminal Law, convened in Madrid under the auspices of the League of Nations"³⁰ in 1933, which included a report and draft articles discussing the

*"barbarity, conceived as oppressive and destructive acts directed against individuals as members of a national, religious, or racial group, and the crime of vandalism, conceived as malicious destruction of works of art and culture because they represent the specific creations of the genius of such groups"*³¹.

These proposals were, however, not accepted by the participating states in the conference, not helped by the fact that Lemkin himself was not present, only his writings and advocates, since the Polish government had refused him a visa for fear of Lemkin spreading "anti-German propaganda" during the proceedings³². But we see here that the thoughts that would form the base for Lemkin's later theorising on his concept "genocide" and its cultural ramifications had begun to emerge.

When the 2. World War broke out in 1939 Lemkin escaped his home in Warsaw and sought refuge in Sweden, from where he later found his way to the United States. After arriving in the United States, Lemkin taught legal studies at Duke University and later at one of the prestigious Ivy League Schools, Yale University³³. It was during this time Lemkin wrote his book from 1944, "Axis Rule in Occupied Europe"³⁴, where he for the first time discussed his newly coined concept "Genocide"³⁵. During the Nuremberg trials in 1946 Lemkin worked as an adviser on the staff of the chief prosecutor in the trials of Nazi war criminals³⁶, where he faced great disappointment at the fact that "Genocide" was not used in the final judgement. Lemkin then left the Nuremberg Trials and rushed to New York where he began to initiate work on a Genocide Convention, where "Genocide" would become part of International Law and governments/individuals could be persecuted for their actions³⁷. Lemkin had been "disturbed (...) that what a government does to its own citizens does not fall under international law. Lemkin was unhappy about this, as William A. Schabas of the Irish Center

³⁰ Luck, p.17

³¹ Lemkin, *Axis Rule in Occupied Europe*, p. 91

³² Luck, p.17

³³ Schabas, p. 24

³⁴ This book will from now on be referred to as simply "Axis Rule", when not part of a footnote.

³⁵ Cantor, p. 13

³⁶ Ibid.

³⁷ Ibid.

for Human Rights at the National University of Ireland, claimed “because he looked to the future.”³⁸ Lemkin succeeded in convincing enough delegates of the newly formed U.N to sponsor his resolution of declaring “Genocide” an international crime, leading Lemkin to; “instruct a U.N. body to draw up a draft of a convention for the next GA session. In the course of a six-week period, he successfully lobbied all the delegates to get the resolution passed. On appointment by the secretary-general, Lemkin did the major drafting of the Convention, during which time he took a leave from his teaching job at Yale University Law School”.³⁹ The Genocide Convention was finally ratified by enough states and “went into force on January 12, 1951, which he [Lemkin] called “a day of triumph for mankind and the most beautiful day of my life.” Since then, 140 countries have signed on.”⁴⁰ However, the final text did not include political or cultural genocide, a fact that Lemkin found distressing. In the years following 1951 Lemkin faded into the shadows, although he received a nomination for the Nobel Prize five times during the 1950’s and finally died of a heart attack on August 28, 1959⁴¹.

As mentioned earlier, Lemkin had defined his concept “Genocide” prior to the Genocide Convention. When Lemkin created the concept “Genocide” he used the Greek concept for race or nation (Genos) and the latin verb “to kill” (caedere)⁴², and described the many parts “Genocide” covers. In his book *Axis Rule* from 1944 Lemkin had defined genocide as the destruction of a nation or an ethnic group⁴³, which is possible not only through mass killings, but also through what Lemkin defined as a coordinated plan of different actions which aims at destroying essential foundation parts of the life of a specific group, with the aim of annihilating the group(s) totally. And as such, Lemkin rationalised “Genocide” was made up of multiple forms, such as physical, social, cultural, economic, political and religious, but with their own implemental techniques.⁴⁴ As such, the book offers a longer introduction to “Genocide”, with a following specialising within the different forms of “Genocide”.

The first action Lemkin takes in order to explain his newly coined concept, is explaining the explicit meaning and factors necessary for an action or event to be deemed an act of

³⁸ Cantor, p. 13

³⁹ Cantor, p. 14

⁴⁰ Ibid.

⁴¹ Cantor, p. 15

⁴² Sautman, p. 181

⁴³ Lemkin, *Axis Rule in Occupied Europe*, p. 79

⁴⁴ Lemkin, *Axis Rule in Occupied Europe*, p. 79-95

“Genocide”. Lemkin explains that by use of the concept “Genocide”, it means; *“the destruction of a nation or of an ethnic group.”*⁴⁵, as the name itself refers to, by the earlier explanation. However, Lemkin also stated that “Genocide” did not necessarily have to be an immediate action resulting in the destruction of a nation/peoples; *“except when accomplished by mass killings of all members of a nation.”*⁴⁶ Hereby it was meant that physical killing would have to be almost instant, while other forms of “Genocide” might be gradual. Most often, Lemkin surmised, the destruction was in fact not immediate, but a result of long planning and multiple actions detrimental to the nation or peoples, which were the target of the “Genocide”. In order to complete this weakening and later eradication, the oppressing force could make use of such actions as;

*“disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity and even the lives of the individuals belonging to such groups.”*⁴⁷

Thereby Lemkin explained how “Genocide” was aimed at the destruction of an entire group of peoples or a complete nation, but it was often made possible through the actions inflicted upon individuals. Not in an entirely individual capacity, but as part of the attack on the group and as an act meant to weaken the peoples/nations resistance against the final solution, in whatever harsh form the oppressing force intended.⁴⁸ This could be slightly contradictory, as Lemkin claims the attacks are on a personal level, without being directly personal. But when considering the methods used, as presented above, the actions Lemkin presents as part of the “Genocidal” machine, have some individual consequence. Disintegration of political and social institutions might not seem to have a personal effect on the individual, until one considers how this would rob the individual of the ability to such things as voting. Politically people would therefore have less influence on matters of state, limiting their ability to show their opposition with the actions taken against them, and it could be seen as a personal attack if the victims were denied their political or other influence, on a level different to their neighbours. This would be the case if it was an entire group within an nation the limitations was directed at, such as the Jewish population in Germany and Poland during WW2, which

⁴⁵ Lemkin, *Axis Rule in Occupied Europe*, p. 79

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

also gave Lemkin much of his inspiration for the concept “Genocide”. Furthermore, social institutions could be schools, meaning the oppressing force would implement their own views into the subjects taught at the schools and universities, further implementing the oppressing force’s ideas and oppressing the people subjugated to the teaching.⁴⁹ Following this Lemkin also presents other parts of life that might be victim of disintegrations, such as language, religion or personal security. All of these would affect the individuals and lead to the greater weakening of an entire nation or group of people, in a way stemming from the individual plane.

This also leads Lemkin to theorize that “Genocide” has two phases, which are implemented as a way to support the following destruction of a nation/people and the later fate of the inflicted;

“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. The imposition, in turn, may be made upon the oppressed population which in turn is allowed to remain, or upon the territory alone, after removal of the population and the colonization of the area by the oppressor’s own nationals.”⁵⁰

These two phases can be described as a clarification of how the “*disintegration of the political and social institutions, [...]*”⁵¹ unfolds. Once again, the context, or “space of experience”, Lemkin functions within must be brought up; Lemkin is extremely affected by the turbulence of the 1940’s and WW2. As Lemkin was born a Jew and had to flee his homeland⁵², when Poland was overtaken by the German forces, it would seem odd that he should not be affected by this. The centralisation in Lemkin’s experiences with the German force in the 1940’s and prior, is evident throughout the book; for example on page 80 of his book “Axis Rule”, where he refers directly to Germany.⁵³ Indeed, “Genocide” and its two phases seems also to be based on what Lemkin could observe through the German occupation, as the most recent and the strongest example of “Genocidal” actions. The first phase Lemkin presents is the destruction or limiting of national patterns, which in turn could

⁴⁹ Lemkin, *Axis Rule in Occupied Europe*, p. 79

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Schabas, p. 24

⁵³ Lemkin, *Axis Rule in Occupied Europe*, p.80.

be the language or religion⁵⁴ as he earlier stated. This is followed by the addition of new rules or national patterns, generally following those of the oppressing forces wishes. This could also relate to the intentions, “horizon of expectation”, of the oppressing force. When eradicating the parts of an occupied country that displeases the occupying force, the country and people is weakened. Thereby the occupying force can implement their own views, effectively making the occupied country closer to their own in matters of state and culture etc. The intention could then be that these implementations over time will grow to become the occupied country’s natural patterns, so that the former occupied country will become a seamless part of the occupying country, without much hope for regaining their old independence and nationalism.

This whole process does bear similarities to another concept, namely “Denationalization”, which precedes Lemkin’s thoughts on “Genocide”. “Denationalization” is mainly defined as being deprived of national characteristics, status or the removal of governmental control and ownership.⁵⁵ This basic definition seems similar in its result and process, to that of “genocide” which Lemkin presents. As such, there could be a discussion about whether “Genocide” would be rendered redundant next to earlier established concept, and whether Lemkin not only entered an already explored field of study, bringing only new experiences and expectation, together with a new name for the same process? Lemkin does also address this problem himself, as he feels a distinction is necessary to explain the importance of furthering the use and understanding of “Genocide”. Especially since Lemkin believed “Genocide” superior to the earlier concept, with a better usefulness, effectively deeming “Denationalization” antiquated and inadequate to describe the modern patterns Lemkin observed in the 1930’s and 1940’s. Lemkin supports his claim of inadequacy by pinpointing three different reasons for “Genocide’s” superiority.

- 1) *“it does not connote the destruction of the biological structure;*
- 2) *inconnoting the destruction of one national pattern, it does not connote the imposition of the national pattern of the oppressor; and*
- 3) *denationalization is used by some authors to mean only deprivation of citizenship”⁵⁶*

⁵⁴ Lemkin, *Axis Rule in Occupied Europe*, p. 79

⁵⁵ <https://www.dictionary.com/browse/denationalization>

⁵⁶ Lemkin, *Axis Rule in Occupied Europe*, p. 79-80

As such, Lemkin reasons that based on the new experiences of the 20th century, or the additions to the “space of experience” when discussing “Conceptual History”, actions have expanding the understanding past what “Denationalization” can successfully be applied to. One fault is for example the lack of biological components, a stance Lemkin further explains in concepts of “Genocide”. At the same time Lemkin finds “Denationalization” lacking in usefulness, as it neither discusses how new patterns are implemented to replace those that have been destroyed and how the concept is therefore too simple. These are all valid points, since “Denationalization” seems to focus only on the destruction of national patterns and so on, while not taking into account the context and intention hereof, as is done within the study of “Genocide”. It further strengthens “Genocide” as a concept and study, not only in a much more valid historical analytical sense, but also in a legal sense, which was Lemkin’s original intent. “Genocide” was meant to function within the International legal field, as is obvious from not only Lemkin’s field of expertise, being International Law, but also in the later Genocide Convention, meant to draft a law concerning acts of “Genocide”. Therefore it makes sense that Lemkin focuses not only on the initial destruction of patterns in occupied countries and of peoples, but also what expectation lies behind the destruction, how it is actually implemented and to what effect.

Once again, the obvious choice of example hereof is Germany, and how its actions during the 1930’s and 40’s applies to the idea of “Genocide”. As Lemkin’s own “space of experience” seems based in the German oppression and actions leading up to, and during, WW2. Lemkin’s writings upon the subject is also made during the time this all happened, further strengthening Lemkin’s connection to the context of the society he wrote in. As such, he has a whole section within his presentation of “Genocide”, which he dedicates to the German example. This is achieved by declaring “Genocide” to be the directly opposite of the Rousseau-Portalis Doctrine, which “*holds that war is directed against sovereigns and armies, not against subjects and civilians*”.⁵⁷ This idea makes sense, as the Rousseau-Portalis Doctrine would remove the individual slights which are thrust upon nations or specific groups, this in turn is what Lemkin argues is a cornerstone of “Genocide”. It is also based on this distinction that Lemkin argues the war efforts practiced by the German forces are a product of “Genocide”. Rather than suiting the warring methods of the Rousseau-Portalis Doctrine, where the animosity is aimed solely at the enemy-sovereign and forces. Lemkin backs this statement up with several examples, one being;

⁵⁷ Lemkin, *Axis Rule in Occupied Europe*, p. 80

“[...] because Germany is waging a total war; and secondly, because, according to the doctrine of National Socialism, the nation, not the state, is the predominant factor. In this German conception the nation provides the biological element for the state. Consequently, in enforcing the New Order, the Germans prepared, waged and continued as a war not merely against states and their armies but against peoples.”⁵⁸

There is some truth to this distinction; much of the German oppression of occupied countries, and within Germany's own borders, was aimed at the Jewish population. Singling out a specific unwanted part of a nation and aiming at destroying this part, does not comply with earlier ideas of warfare. But when Lemkin declares “Genocide” to be the opposite phenomenon to the Rousseau-Portalis Doctrine, Lemkin consequently distances phases and patterns within “Genocide”, from that of the Rousseau-Portalis Doctrine. Again, Lemkin defines the Rousseau-Portalis Doctrine as a warfare directed at the enemy-sovereigns and their army, and the general population is only affected through indirect consequences. As such, subjects of the enemy state are only directly hurt, if they are part of the army.⁵⁹ Whereas “Genocide” often has a political or physical form, or is a result of warfare that shares similarities to the aims of the Rousseau-Portalis Doctrine. Is one to assume “Genocide” does not aim to attack an enemy-sovereign or fight a foreign army? As such, “Genocide” could be described as less of a form of warfare, and more of a war crime, which is what, was discussed during the Genocide Convention, which will be perused later, in the following section. In *Axis Rule* Lemkin seems to build upon German's use of “Genocide” as a form of warfare, as the themes of “Genocide” held such importance in the German Nazi agenda. Lemkin states that war offered the opportunity the Nazi Party needed in order to carry out their new form of policy, which relied heavily on actions Lemkin has dubbed examples of “Genocide”. As such, Lemkin provides a “horizon of expectation”, or the intended result, for the German Nazi forces and subsequently the Nazi state;

“The enemy nation within the control of Germany must be destroyed, disintegrated, or weakened in different degrees for decades to come. Thus

⁵⁸ Lemkin, *Axis Rule in Occupied Europe*, p. 80-81

⁵⁹ Lemkin, *Axis Rule in Occupied Europe*, p. 80

the German people in the post-war period will be in a position to deal with other European peoples from the vantage point of biological superiority.”⁶⁰

The goal was therefore, according to Lemkin, to destroy the enemy groups within Germany and its occupied countries, or at the very least to dilute the population of these enemy groups, so that they will be permanently weakened. The imposition of policies applying to specific enemy groups, such as the Jews, is thereby considered destructive on a bigger scale, than actual injuries sustained from fighting⁶¹, as these heals faster. Lemkin is very careful with mentioning specific enemy groups, possibly since he himself was a Jew that had to escape the German forces and feared his attachment could diminish his theoretical work. However, as the “space of experience” exists in the 21st century where we know the context of WW2, Jews are constantly present on the subconscious level. It is obvious which enemy groups Lemkin discusses when claiming their destruction was in an effort to biologically strengthen Germany, and hence Lemkin also refers to other targeted groups, without making “Genocide” bespoke to Jewish suppression and elimination. As a result Germany would stand stronger than the subjugated groups and be biologically superior, even if the German forces found themselves defeated.⁶² Based on this, one could describe “Genocide” as a new form of warfare where the intention was achieving part of the goal of the oppressing force, despite possible defeat on the battlefield. Using Germany as an example one can discuss how they succeeded in coaxing out enemy groups such as the Jews, and emerging with the stronger number of people. Most of this is based in the biological aspect of “Genocide”, where genetic superiority and the ideas of superior biological numbers was the envisioned result, which is how Lemkin describes the vision of Adolf Hitler.⁶³ But while this section seems to paint the “Genocide” actions of Germany as purely biological, earlier sections has also presented both cultural and political forms of “Genocide”;

“The techniques of genocide, which the German occupant has developed in the various occupied countries, represent a concentrated and coordinated attack upon all elements of nationhood.”⁶⁴

Therefore, Lemkin believed “Genocide” to have different fields of application, each with their own patterns etc. These fields would be: political, biological, religious, economic,

⁶⁰ Lemkin, *Axis Rule in Occupied Europe*, p. 80-81

⁶¹ Ibid.

⁶² Lemkin, *Axis Rule in Occupied Europe*, p. 80-81

⁶³ Lemkin, *Axis Rule in Occupied Europe*, p. 81

⁶⁴ Lemkin, *Axis Rule in Occupied Europe*, p. 82

moral, physical and cultural. These will be discussed further in the order in which they appear within Lemkin's book, *Axis Rule*, and I will begin with the political phase of "Genocide":

During the war, the newly incorporated areas under German rule experienced how the local institutions of former self-government, were made to follow the German example. This meant, that the new administration following German laws and control, effectively losing their own political system, as well as their legal system.⁶⁵ According to Lemkin this was equal to a genocide, because even if no one was physically harmed, in this phase of "Genocide", the repressed people was still deprived a crucial part of their nationalism. "*Every reminder of former national character was obliterated*"⁶⁶, to the extent that commercial signs and writings on the side of buildings or along the roads where changed to a German form, not to mention the changed naming of communities or localities in an effort to copy the German form.⁶⁷ Essentially, the new laws and political rule changed the oppressed country and made the inhabitants strangers in their own country. This is part of why Lemkin claims political rule can harm a group of people, as they are denied a part of themselves; by this oppression the oppressing force effectively kill off a part of the people, whose country they occupy. Another political ploy that harmed the people of an oppressed country was being made into second class citizens. Lemkin discusses how the Germans whom lived in the occupied areas helped fuel the new caste system and the newly constructed Germanised political system, through the "Volksliste". This was a register of Germans who lived in the occupied country, and therefore held certain privileges;

*"(...) special cards entitled them to special privileges and favors, particularly in the fields of rationing, employment, supervising enterprises of local inhabitants, and so on."*⁶⁸

The German example was not only set as the ideal, but also the most comfortable position; as there were a large number of privileges connected to being a German citizen in the occupied areas. While this is not confined solely to WW2 and the German nation, Lemkin does describe a stronger security, rooting in policies bespoke to showing the ease and better life quality while complying with the occupying forces. And Lemkin claims a further privilege for joining the German example, was the possibility of obtaining these German privileges:

⁶⁵ Lemkin, *Axis Rule in Occupied Europe*, p. 82

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Lemkin, *Axis Rule in Occupied Europe*, p. 83

“In order to disrupt the national unity of the local population, it was declared that non-Germans, married to Germans, may upon their application be put on the Volksliste.”⁶⁹ This process bears similarities to “colonization”, to which Lemkin wasn’t blind. It seems natural to discuss, the similarities between “colonization” and the different forms of “Genocide”, to which Lemkin is given credit for discussing this himself, albeit shortly. The subject will however also find its way into this thesis in the third analytical section of this thesis. Lemkin himself claims that;

“In line with this policy of imposing the German national pattern, particularly in the incorporated territories, the occupant has organized a system of colonization of these areas. (...) The Polish population have been removed from their homes in order to make place for German settlers (...)”.⁷⁰

Although an obvious example, one must consider Lemkin’s use of Poland as an example for the German occupying forces. As presented in the beginning of this analysis, Lemkin himself was a Polish Jew that escaped the German occupation of his home country. Therefore it seems amazing that this would not affect him, and that it might not colour his writings in a way that could be detrimental, as has been discussed earlier. However, as Lemkin specifically names his work *Axis Rule in Occupied Europe; Laws of Occupation, Analysis of Government, Proposals for Redress*, it is clear he means to focus on Germany’s policies during WW2, and Poland being a occupied country, had to make an appearance. Lemkin does his best though, to not let himself become personal, although he frequently uses Poland as an example to support his claims. Had Lemkin not used Poland as an example it would have harmed his thinking in a bigger part, since the occupation of Poland was both well documented and a big part of the German warfare. The occupation of Poland and Lemkin subsequently fleeing his home is therefore also part of his context for writing the book and creating the concept “Genocide”. The things he experiences must have formed the base for his writings, not only in the political sense of “Genocide”, but also the social.

The social phase of “Genocide” is described just as quickly as the political phase although with fewer examples and explanations, which could have strengthened this area of “Genocide”. Essentially it is the destruction of the social patterns described by Lemkin,

⁶⁹ Lemkin, *Axis Rule in Occupied Europe*, p. 83

⁷⁰ Ibid.

which functions as a result of “*the abolition of local law and local courts and the imposition of German law and courts, and also by Germanization of the judicial language and of the bar.*”⁷¹ Hereby Lemkin claims that these changes mentioned in the quote, assists in crumbling the social structure of an occupied nation. And as this social structure is vital in concepts of national developments, it is these that the occupying force seeks to eradicate first. A way of achieving this would be the removal of the intelligentsia⁷², as Lemkin claims these individuals would be the biggest resistance towards;

*“Nazification. This is especially true in Poland and Slovenia (...), where the intelligentsia and the clergy were in great part removed from the rest of the population and deported for forced labor in Germany. The tendency of the occupant is to retain in Poland only the laboring and peasant class, while in the western occupied countries the industrialist class is also allowed to remain, since it can aid in integrating the local industries with the German war economy”.*⁷³

By keeping only the people of lower education within the occupied nation, the occupying force thereby protects itself against resistance, while at the same time opening up several important positions for the Germans to undertake. This would in turn further strengthen the social patterns of Germanization. Examples from the earlier political phase could also support this, as all laws and roads etc. assume a German example, enforcing a German example and way of life. Lemkin does not refer to this, or links the social phase of “Genocide” to later introduced phases. Instead each phase is introduced independent of the others, retaining links as they all function within “Genocide”, but otherwise stand alone.

After the social phase Lemkin introduces the cultural phase of “Genocide”. This is one of his more detailed introductions, and also one of the forms of “Genocide” he later builds upon and gives higher importance; it is also the main focus for this thesis in the later analytical sections. When describing how “Genocide” might have a cultural meaning, and therefore evolved into what was later understood as “Cultural Genocide”, Lemkin presents the act as one that deprives a nation or group of people of their cultural values. Culture is seen by Lemkin as defining characteristics and product of a people, such as language, music or art. Lemkin gives an example of this harmfully cultural deprivation, through instances such as the

⁷¹ Lemkin, *Axis Rule in Occupied Europe*, p. 83

⁷² Intelligentsia is meant as the educated part of a nation, i.e. the people of higher education.

⁷³ Lemkin, *Axis Rule in Occupied Europe*, p. 83

language being forbidden in schools and throughout printing within occupied nations.⁷⁴ The act of breaking down the cultural characteristics prevents the occupied nation the “*expression of the national spirit through artistic media*”⁷⁵, and eases the establishment of the culture and ideals of the occupying force. Lemkin declares this destruction of the national pride and culture ran deep in the occupied countries, with national monuments and libraries etc. being destroyed, as they for example were in Poland.⁷⁶ Lemkin explains the effect of losing one’s culture in greater detail and with more emotion than in other sections of his presentations of “Genocide” phases:

*“In 1939 the German burned the great library of the Jewish Theological Seminary at Lublin, Poland. This was reported by the Germans as follows: for us it was a matter of special pride to destroy the Talmudic Academy which was known as the greatest in Poland. (...) The Jews of Luplin were assembled around and cried bitterly. Their cries almost silenced us. Then we summoned the military band and the joyful shouts of the soldiers silenced the sound of the Jewish cries”.*⁷⁷

This is the first time Lemkin brings in personal experiences as a way to support his claims, as the quote is from a German spectator to the burning. Furthermore, Lemkin himself was a Polish Jew of high education, who escaped Poland the same year as the burning⁷⁸; therefore it seems logical that the event would have made its imprint when Lemkin learned hereof. In concepts of “Conceptual History” it is important to consider the “space of experience” when discussing a concept, and it might help forming an understanding of Lemkin’s views. From later writings, we know Lemkin held “Cultural Genocide” in high regard, and it is clear he presents the cultural impact and phases of “Genocide” in a different way in his earliest depictions of the concept, namely those presented here. He describes the deep impact and sorrow of the Jews, in a way that is significantly different from his mostly detached and theoretical approach he otherwise adopts. Here Lemkin actively dwells on the effects of losing one’s culture as the quote mentions the bitter tears and obvious distress that almost

⁷⁴ Lemkin, *Axis Rule in Occupied Europe*, p. 84

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Lemkin, *Axis Rule in Occupied Europe*, p. 85

⁷⁸ Schabas, p. 24

touched the assembled Germans.⁷⁹ But since Lemkin himself is a Polish Jew, it is also his culture that is affected. As he had escaped Poland he was not physically put under the restraints of the different phases of “Genocide” that has been presented or will be. He was not living in ghettos, under laws bespoke to Jews or living of meagre rations; as such these were pains to observe over distance as a great evil but not anything that affected Lemkin privately. But as he still identified as a Polish Jew, he shared the culture of the community he grew up. And so, the cultural deprivation and destruction also affected Lemkin on a more personal level, and became a part of his “space of experience” or the context behind him theorising a cultural effect of “Genocide”, as well as the consequence of losing one’s culture.

The difference of personal investment is clear, as Lemkin again assumes a somewhat more detached demeanour when discussing the economics of “Genocide”. Lemkin starts out by claiming that when the economic foundation of a nation is destroyed or undergoes severe changes, it will bring the development to a halt or perhaps even force development back several years.⁸⁰ Additionally, the loss of an economic security net will lower the living standards of the occupied nation and “[f]urthermore, a daily fight literally for bread and for physical survival may handicap thinking in both general and national concepts”.⁸¹ therefore the economic stability helps safeguard the overall security of the nation, but during occupation the economic situation reflects the dominant power structure. An example Lemkin gives is Poland, where the occupying forces set about to shift all economic resources from the nation’s inhabitants and instead direct it towards the Germans, either present in Poland, home in Germany or at war. Furthermore, as was the case with the higher paying jobs, German’s soon overtook the occupied banks, laying claim to all within. A Polish individual might only retrieve their property, if they could prove they were of German ancestry. Lemkin uses this to explain how: “[...] the German element in Poland was immediately made financially stronger than the Polish”.⁸² Therefore Lemkin surmises the individual security in an occupied nation relied on either being of German origin or being completely devoted to the German example, as not complying with the German example brought financial danger.⁸³

⁷⁹ Lemkin, *Axis Rule in Occupied Europe*, p. 85

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Lemkin, *Axis Rule in Occupied Europe*, p. 86

Another pattern of “Genocide” Lemkin briefly introduces is the biological aspect. When Lemkin discusses biology, it is mainly genealogy and the birth rate his work encompasses, as this was also the focus of the German forces. Lemkin explains that;

*“In the occupied countries of “people of non-related blood,” a policy of depopulation is pursued. Foremost among the methods employed for this purpose is the adoption of measures calculated to decrease the birthrate of the national groups of non-related blood, while at the same time steps are taken to encourage the birthrate of the Volksdeutsche living in these countries”.*⁸⁴

Lemkin then claims that a way for the German occupying force to ensure this was forbidding marriage between two Polish individuals, unless the Governor of the district had approved it. Another way of decreasing the birth rate was segregation of males and females, or discrimination in concepts of rationing. Lemkin claims that insufficient rations for families, meant that parents often went undernourished and so fewer children would be set into the world, by the occupied people.⁸⁵ As such, not only was the enemy groups decreased in population, they were also secured in having less individuals for the coming generations, securing Germany’s position as the stronger race in population and genes, as they would not have suffered malnutrition that would weaken certain individuals and affect children. Lemkin had earlier in his work discussed how Hitler and Germany sought to weed out the undesired of their occupied areas, in an effort to leave Germany superior and with fewer enemies.⁸⁶ Lemkin does however not refer to this again, although it would have strengthened his thesis on the biological effect of “Genocide”.

The next pattern of “Genocide” Lemkin presents is the physical infliction. Now, when discussing physical patterns in accordance with “Genocide”, most would assume it is the act of direct harm, either through beatings or actual murdering etc. But Lemkin suggests that the physical aspect should also be observed through the harming and physical weakening of a group of people. As a result, Lemkin claims the physical effects are mainly carried out in three different ways; racial discrimination in feeding, endangering of health and finally mass killings. Ration differences is a way of physically harming and weakening a people, as Lemkin discusses, especially if the differences means some people will suffer extreme

⁸⁴ Lemkin, *Axis Rule in Occupied Europe*, p. 86

⁸⁵ Ibid.

⁸⁶ Lemkin, *Axis Rule in Occupied Europe*, p. 81

malnourishment. Lemkin also points out that the prioritising of rations was a specific ploy by the Germans to establish racial superiority; “*Rationing of food is organized according to racial principles throughout the occupied countries*”,⁸⁷ with the German people more deserving of food and the ones that are taken care of first. As a result Germans felt very little wants from their time before the war, despite warfare often brings about a shortage of food, while Lemkin points out Jews were slowly starved;

*“The German population is getting 93 per cent of its pre-war diet, while those in the occupied territories receive much less: in Warsaw, for example, the Poles receive 66 per cent of the pre-war rations and the Jews only 20 per cent”*⁸⁸

Lemkin has these numbers from a publication by the Institute of Jewish Affairs, titled *Starvation over Europe (Made in Germany): A Documented Report, 1943*⁸⁹, which brings some credibility to his claims. The numbers also leads to the endangering of health, which Lemkin also files as part of the physical patterns of “Genocide”, since the difference in rations resulted in a decline of health for many of the occupied nations, as well as an increased death rate. As the undesired national groups received insufficient nutriment, and often had difficulty in finding necessities such as medicine, blankets, firewood and warm clothing, meaning more people grew weak and sick.⁹⁰ Jews were especially affected, as they received next to no fuel, and due to the crowding and poor conditions in the ghettos, often suffered terribly from cold and no fresh air. And as they were often transported through the cold in unheated cattle trucks and freight cars, the result was according to Lemkin a decimation of the Jews.⁹¹ The final physical form Lemkin claims is found within “Genocide”, is the mass killings. These mass killings were mainly aimed at certain enemy groups, such as “*Poles, Russians, and Jews, as well as against leading personalities from among the non-collaborationist groups in all the occupied countries*”.⁹² Many intellectuals were also liquidated, as Lemkin explains these individuals had been considered the ones to contain the strongest national ideals and was often suspected as being leaders of the resistance.⁹³ Lemkin does not explain how these mass killings were carried out, only that they happened and that

⁸⁷ Lemkin, *Axis Rule in Occupied Europe*, p. 87

⁸⁸ Ibid.

⁸⁹ Footnote 35 and 36 in Lemkin, *Axis Rule*, p. 87

⁹⁰ Lemkin, *Axis Rule in Occupied Europe*, p. 88

⁹¹ Ibid.

⁹² Ibid.

⁹³ Lemkin, *Axis Rule in Occupied Europe*, p. 88-89

according to the Institute of Jewish Affairs of the American Jewish Congress in New York, approximately 1,702,500 Jews were killed.⁹⁴

The final two patterns of “Genocide” is introduced in only a few lines, perhaps because Lemkin did not consider them as widespread or affecting as the prior presented patterns. Still, the examples introduce interesting facts and possible analysis, if they had been further explored. The first of these small presentations is the religious aspect. Lemkin explains that in many occupied nations, the Germans have shown their disdain of multiple religions, not only the Jewish faith. An example tells that;

*“In Luxemburg, where the population is predominantly Catholic and religion plays an important role in national life, especially in the field of education, the occupant has tried to disrupt these national and religious influences.”*⁹⁵

The way of achieving this has, among other approaches, been by targeting the young population. Children who had turned 14 was then allowed to renounce any religious attachments, as the occupying force rather saw them engaged in activities closer to the German example, mainly pro-Nazi youth organisations. At the same time in Poland, the destruction and pillaging of church property, doubled with the fierce persecution of clergy, *“have sought to destroy the religious leadership of the Polish nations”*.⁹⁶ With no churches to pray within or religious leaders to foster the religious learning, the occupied nations were instead bidden to seek other pleasures and activities, this time affecting their moral compass. The moral pattern of “Genocide” was according to Lemkin aimed at weakening *“the spiritual resistance of the national group”*⁹⁷ by attempting to *“create an atmosphere of moral debasement within this group”*.⁹⁸ The hope was that by introducing different temptations, the occupied nation would lose some moral convictions that would otherwise drive them to the forming of resistance groups;

⁹⁴ Lemkin, *Axis Rule in Occupied Europe*, p. 89

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Lemkin, *Axis Rule in Occupied Europe*, p. 89-90

⁹⁸ Ibid.

*“It is important for the realization of such a plan that the desire for cheap individual pleasure be substituted for the desire for collective feelings and ideal based on higher morality”.*⁹⁹

A way of doing this was according to Lemkin the spreading of pornographic movies and materials, cheap beer to substitute the expensive food and relation of curfew, if one had a ticket from one of the gambling houses the Germans had allowed to be established. As such occupied nations would hopefully switch out their religious practices with more depraved forms of entertainment. This, coupled with the fact that most of the religious leaders and intelligentsia, who would fight harder to keep their moral standards, were removed, were meant to disintegrate resistance and ease the transferring of new ideals and nationalistic patterns, in a way that would suit the wishes of the oppressing force.

Having spent some time discussing “space of experience” throughout the analysis of Lemkin’s definition of “Genocide” and introduction to “Cultural Genocide”, which is the concept that will be analysed from here on out, we will now discuss “horizon of expectation”. When working within the field of “Conceptual History”, it is important to consider influences such as context and intention, the latter being the theme of this section. Lemkin is however pretty open with his “horizon of expectation”, as he ends his chapter on “Genocide” with his recommendations for the future. First, we must however explain why so much time was given to explain “Genocide” in its many forms, when it is the cultural form that is the subject of this thesis. But when Lemkin first introduces “Cultural Genocide”, it is not as its own concept, but rather as a part of the system “Genocide” resides over. Later he further develops the concept “Cultural Genocide”, making it its own category. However the first thinking upon the subject is so jumbled up within the idea of “Genocide”, that it is important to first understand this mixing of meanings which was the concept’s beginning. When Lemkin describes “Genocide” in all its forms and patterns, it’s not only in terms of his own context and “space of experience”, but as a hope that the concept and its patterns now can be recognised:

“The above-described techniques of genocide represent an elaborate, almost scientific, system developed to an extent never before achieved by any nation. Hence the significance of genocide and the

⁹⁹ Lemkin, *Axis Rule in Occupied Europe*, p. 90

need to review international law in the light of the German practices of the present war.”¹⁰⁰

This is the main hope of Lemkin and the reason for his work, especially as Lemkin describes how he in 1933 submitted to the Fifth International Conference for the Unification of Penal Law, a report and two draft articles, where he proposed the instalment of new laws. These laws would be against barbarity and vandalism during warfare, and laid the base work for his concept “Genocide”. But the drafts were not accepted, which Lemkin rallies against, claiming it would have enabled later punishment on the people found guilty of such crimes, especially in regards to WW2.¹⁰¹ As such, Lemkin laments how the Nazis cannot be tried for “Genocide”, despite how Lemkin believes they should be. The reasoning for this is described as their actions, which had gruesome consequences. Lemkin finds that the genocidal actions during WW2 deprived the world in a sense; *“The destruction of a nation, therefore, results in the loss of its future contributions to the world.”¹⁰²* This is a main concern of Lemkin’s, which is why he urges the acceptance of “Genocide” within International Law, in an effort to deteriorate future genocidal attacks on occupied nations. Lemkin’s “space of expectation” can then be described as two parts; one realistic and one unrealistic. The realistic part would be the acceptance of “Genocide” within International Law, a wish that propelled Lemkin’s depictions of “Genocide” patterns, so that the use of the concept becomes clear and a draft easily can be made. The unrealistic wish of Lemkin is an everlasting peace, where the act of “Genocide” would become obsolete and the draft therefore considered redundant. But as Lemkin is a realistic man, he writes that *“Many hope that there will be no more wars, but we dare not rely on mere hopes for protection against genocidal practices by ruthless conquerors.”¹⁰³* Therefore, it is necessary that a law is made, to ensure some protection for future generations, as:

“In the situation as it exists at present there is no means of providing for the alleviation of the treatment of populations under occupation until the actual moment of liberation. It is then too late for remedies, for after liberation such populations can at best obtain only reparation of damages but never restoration of those values which have been

¹⁰⁰ Lemkin, *Axis Rule in Occupied Europe*, p. 90

¹⁰¹ Lemkin, *Axis Rule in Occupied Europe*, 91-92

¹⁰² Lemkin, *Axis Rule in Occupied Europe*, p. 91

¹⁰³ Lemkin, *Axis Rule in Occupied Europe*, p. 92

destroyed and which cannot be restored, such as human life, treasures of art, and historical archives.”¹⁰⁴

Lemkin then set out to realise his “horizon of expectation”, and bring it into the now instead of the future, which leads us to an analysis of the “Genocide Convention”, where Lemkin proposed the acceptance of three forms of “Genocide”: the physical, biological and the cultural. It is mainly the concept “Cultural Genocide” that will be analysed, in how it is presented, undergoes changes, and what support or lack thereof it was met with, all in the light of the “space of experience” and “horizon of expectation” of the delegates present.

¹⁰⁴ Lemkin, *Axis Rule in Occupied Europe*, p. 94-95

“The Genocide Convention” – “Cultural Genocide” in the late 40’s and early 50’s

Within this analytical section I plan to establish the now fully defined “Cultural Genocide” as presented by Lemkin, and how the debates of the Genocide Convention slowly changed this. What I hereby mean is that during the discussions, “Physical Genocide” was connected to the concept of “Genocide” in greater part, effectively challenging the understanding of “Cultural Genocide”. The concept was weakened throughout the Convention, before finally being deemed unfit for inclusion within the intended law. Therefore the supporters and critiques of the concept will be explored, while discussing the ensued weakening of the concept’s definition.

The reason why questions such as race started to awaken during the 1940’s, might very well be traced back to the 1920’s. It was during this period the scientific validity of race underwent some changes, as race had previously been defined as first colour and since a way of determining the class of humans as well as animals, plants and so on. Instead, some sociologist of the Chicago School began viewing race and racism as a notably interesting field of study¹⁰⁵. After, and during, the events of WW2 the study of perceptions of race and specific groups of people took on a greater importance. This can also be described as what was spurred Lemkin to invent “Genocide” and discuss the perimeters, extending beyond the discussions concerning culture and racial-groups. This makes sense, since the events of WW2 opened up different discussions in the wake of wartime actions, wherein the question of race gained more importance within scholarly discourse. As has been stated earlier, this period of time played a big part of the “space of experience” for Lemkin in terms of his writing “Axis Rule”. At the same time, the race and racism of the 1940’s seems to have been based in individual prejudice, as it was mainly Hitler’s hate of Jews that gave rise to the racial discrimination against Jews, and allowed other individuals to voice their similar prejudices. This is supported by Clair and Denis, who in their article describes the time around WW2 as a period giving rise to the “*first phase in the sociological study of racism, in which dominant theories, (...) conceived racism as a set of explicit individual-level beliefs*”.¹⁰⁶ These changing events of the 20’s and 40’s seems natural to be considered as part of the “space of experiences” for the debating forces of the Genocide convention, which was the culmination of Lemkin’s wishes of having his theoretical concepts become and acknowledged part of International Law.

¹⁰⁵ Clair and Denis, p. 858

¹⁰⁶ Ibid.

In his book *Axis Rule* from 1944 Lemkin had defined “Genocide” *as the destruction of a nation or an ethnic group*¹⁰⁷, which is possible not only through mass killings, but also through what Lemkin defined as a coordinated plan of different actions which aims at destroying essential foundation parts of the life of a specific group, with the specific aim of annihilating the group(s) totally. And as such, Lemkin rationalised “*Genocide*” *was made up of multiple possible forms, such as physical, social, cultural, economic, political and religious, but with their own implemental techniques*”¹⁰⁸. At the time of the publication of Lemkin’s work, it was however still a theoretical conceptualising, and not an accepted part of International Law. This started to change after 1945, where multiple Nazis, both as individuals and as part of the Nazi movement, were convicted of genocidal actions during the Nuremberg Trials.¹⁰⁹ This led to a movement aiming at including “Genocide” into International Law, and thereby establishes some credibility, possible prevention and punishment of the act. The process of “Genocide” during the Nuremberg trials and the up-and-coming convention was presented in 1947, in an article in the journal “World Affairs”. Here the scholar Milliren describes how “Genocide” was in fact present in;

*“count 3 of the Indictment of Nazi leaders at Nuremberg, which read in part, “They conducted deliberate and systematic genocide, viz., the extermination of racial and national groups, against the civilian population of certain occupied territories in order to destroy particular races and classes of people and national, racial or religious groups, particularly Jews, Poles, Gypsies and others.” However, this does not cover acts of genocide committed outside the state of warfare. All crimes of genocide committed by the Nazis before the outbreak of the war, however revolting, were beyond the limited jurisdiction of the Nuremberg Tribunal”*¹¹⁰

This means that in the short time between Lemkin publishing his book and the Nuremberg trials, multiple people and countries had read Lemkin’s concept of “Genocide”, while also supporting his belief that this should be understood as a war crime, and that the Nazi forces should be punished accordingly. But as Milliren also points out, the understanding of “Genocide” was in 1945 limited to acts committed during war and, as the focus was on the

¹⁰⁷ Lemkin, *Axis Rule in Occupied Europe*, p. 79

¹⁰⁸ Lemkin, *Axis Rule in Occupied Europe*, p. 79-95

¹⁰⁹ Lemkin, *Genocide as a Crime under International Law*, p. 147

¹¹⁰ Milliren, p. 293

physical extermination of individuals, the understanding of “Genocide” was rooted mainly in the physical patterns. There were therefore no preventing structures in place to protect against genocidal patterns, nor against acts of “Genocide” outside of actual war. To sum up, there was no understanding of genocidal prevention, such as Lemkin had originally envisioned it. To battle this, an understanding was reached, that there was an apparent need for including “Genocide” within International Law, and a need for defining the concept, and thereby establishing ways of preventing genocidal acts, while also making “Genocide” a punishable act. As a result, the First General Assembly of the United Nations voted to adopt a resolution which would declare “Genocide” as a part of International Law, even during peacetime.¹¹¹ As a result the Genocide Convention was established, with the goal of defining and passing through “Genocide” within International Law.

But when Lemkin drew up the draft for the Genocide Convention, with the help of Professors Vespasian Pella and Henri Donnedieu de Vabres, it divided “Genocide” into only three categories: Physical, biological and cultural genocide¹¹², leaving the other formerly presented patterns behind. The adoption of the Genocide Convention began with adopting the

*“Resolution 96(I) by the UN General Assembly on 11 December 1946. The text of this resolution provided as follows: Genocide 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 humanitarian groups, which is contrary to moral law and to the aims of the United Nations.”*¹¹³

“Genocide” was thereby defined as an action where the victim is not an individual, but instead an entire human group that together share some connecting elements, one possible example being culture. However, when the final text of the Genocide Convention was adopted by the UN General Assembly in 1948, on 9 December, only the physical and biological part of “Genocide” was retained, the cultural part was excluded, except for a heavily diluted part. “Genocide” was then defined as an act applied upon groups of national,

¹¹¹ Milliren, p. 293

¹¹² United Nations Economic and Social Council, Draft Convention on the Crime of Genocide, U.N. Doc. E/447 (26 June 1947), reprinted in HIRAD ABTAHI & PHILLIPA WEBB, THE GENOCIDE CONVENTION: THE TRAVAUX PRÉPARATOIRES (Martinus Nijhoff Publishers, 2008), Vol. 1, 209-281: 215.

¹¹³ Akhavan, p. 250

racial or religious aspect¹¹⁴. The earlier drafts stated that “Cultural Genocide” includes the destruction of specific traits of a group by;

- a. Forcing the transfer of children to another group
- b. A forced and systematic exile of individuals who represent a shared culture of the group
- c. Prohibition of usage of a national language, even when in private
- d. Systematic destruction or prohibition of books printed in a national language or is a religious work of a specific group
- e. A systematic destruction of monuments with a historic or religious value or the destruction/dispersion of documents and objects which carry a historical/artistic/religious value, and of objects which can be used in religious concepts of worship.¹¹⁵

As such we are presented with the fully materialised form of “Cultural Genocide” with its own patterns and forms, rather than a phase of “Genocide”. And as this was the first draft presented to the delegates of different nations, we are also presented with their perceptions of the concept. These perceptions are evident throughout the process of the convention, through the discussion of whether or not “Cultural Genocide” should be added at all, with supporters of the concept, and the sceptics alike.

The decision about whether or not “Cultural Genocide” should be included in the final draft was a long discussion, coloured by the opinions of different nations and delegates. Multiple states supported the inclusion of a cultural aspect to Genocide, some being Pakistan, Venezuela, China¹¹⁶, and Egypt¹¹⁷. The head of the Pakistani delegation, Sadar Bahadur Khan, stated that “Cultural Genocide” represented the primary goal of a campaign with the intent of eliminating a group, with “Physical Genocide” being the means of obtaining this goal. This also fits nicely with the original way of viewing “Cultural Genocide” as a pattern within “Genocide” where the ultimate goal is physical destruction, as Lemkin presented in “Axis Rule”. Sadar Bahadur Khan further stated that “for millions of men in most Eastern countries, the protection of sacred books and shrines was more important than life itself, and

¹¹⁴ Akhavan, p. 250

¹¹⁵ Ibid

¹¹⁶ Herschkopf and Hunter, p. 14-16

¹¹⁷ Akhavan, p. 265-266

thus, attacks on culture were almost more damaging than attacks on one's person"¹¹⁸. Bahadur Khan has been described as bemoaning the fact that some delegates viewed "Cultural Genocide" as something less brutal than its physical counterpart, since it was evident for Bahadur Khan and his delegation that "Cultural Genocide" was much more sinister¹¹⁹. As mentioned above, Bahadur Khan used religious texts as an example of what could become a victim of "Cultural Genocide" and described what such an action might entitle;

*"(...) the destruction of those sacred books or shrines might mean the extinction of spiritual life. Certain materialistic philosophies prevented some people from understanding the importance which millions of men in the world attached to the spiritual life."*¹²⁰.

By explaining that certain part of a people's culture had an importance spreading beyond the materialistic value, Badur Khan clarifies the importance of certain objects. These objects, by use of being culturally important objects, not only build the structure for cultural living for a group of people, but would also provide insight into this particular culture. These sacred books and shrines are living embodiments of a specific culture, according to Bhadur Khan. As such, the Pakistani delegate saw "Cultural Genocide" as highly damaging to the individuals of a shared nation or culture, in an equal amount to physical harming. Badur Khan described the necessity of adopting "Cultural Genocide" based on these examples, and claimed that the chief motive behind "Cultural Genocide" was a desire to destroy the ideas, values and the *"soul of a national, racial or religious group, rather than its physical existence. Understanding the gravity of cultural genocide is itself a matter of cultural experience"*¹²¹. The delegation of Venezuela and China was likeminded in concepts of the Pakistani delegation's view of "Cultural Genocide", with China further explaining the possible ramification of a "Cultural Genocide". The Chinese delegation noted that while "Cultural Genocide" might seem the less brutal version of "Genocide"¹²², it might be the most harmful, since it "worked below the surface and attacked a whole population, attempting to deprive it of its ancestral culture and to destroy its very language."¹²³.

¹¹⁸ Herschkopf and Hunter, p. 14-16

¹¹⁹ Akhavan, p. 265-266

¹²⁰ Ibid.

¹²¹ Akhavan, p. 265-266

¹²² Herschkopf and Hunter, p. 14-16

¹²³ Ibid.

Another supporter of the inclusion of “Cultural Genocide” was the Egyptian delegation, who stated that a reason for the inclusion of “Cultural Genocide” would be “the behaviour of certain metropolitan Powers in Non-Self Governing Territories, which were attempting to substitute their own culture for the ancient one respected by the local population.”¹²⁴. As such, the Egyptian delegation based their support on the danger of “Colonialism”; with this it is meant that how when some states assume control of other states or areas, they often inflict their own culture which in turn might harm the original ancestral culture present prior to the colonisation. This would in turn become a phenomenon which would be closely discussed in regards to “Cultural Genocide”, since the two concepts would easily overlap, which will be discussed further in a later section of this paper.

The supporters of including “Cultural Genocide” based much of their reasoning in the spiritual and individualistic spheres. Furthering the understanding of what Lemkin had presented as cultural damage during acts of “Genocide” and the later conceptualising of “Cultural Genocide” in terms of International Law presented earlier in the chapter, the supporters presented how their country could possibly suffer in terms of “Cultural Genocide”. There are also some underlying patterns to the examples these supporters give: the middle-eastern nations focus on Holy Scriptures and the like, while China focuses more on things such as language. These different focus points might also have different meaning. Through the destruction of the Jewish religious symbols, as the burning of the library of the Jewish Theological Seminary in Poland, where many books of significant historical and spiritual importance was burned¹²⁵, one can understand the views presented by the Pakistani delegate Bhadur Khan. Bhadur Khan describes how a nation or a group of peoples that are connected by a strong religious belief, in such a way that the religion becomes part of the shared culture, might be deprived of significant connections and values, if these culturally religious connections were damaged. It is something Lemkin had discussed in his book from 1944, in terms of cultural and religious patterns of “Genocide”, but with minimal focus. While the book burning in Poland was an example of cultural patterns of “Genocide”, Lemkin did not focus on the connection to religion through the books that were burned, or how religion in some cases can become a big part of a nation’s, or group of people’s cultural self-perception. It is therefore Bhadur Khan who details the religious aspects within some cultures and how devastating certain losses within these would be. Another supporter is China, whose focus is

¹²⁴ Akhavan, p. 265-266

¹²⁵ Lemkin, *Axis Rule in Occupied Europe*, p. 85

less on the religious culture and more on non-religious things such as language.¹²⁶ This might stem from personal experiences, as China had earlier been a victim of bigger nations. An example of this is the “Opium Wars” where Britain forced China to import opium from the British colony in India, which left many Chinese people addicted to Opium and overall had a dramatic effect on the Chinese living standards.¹²⁷ The hope of preventing such enforcement of harming acts by another nation could therefore be a part of why the Chinese delegate supported “Cultural Genocide”, with an opinion about the wrongs of substituting other nation’s cultures and way of living by enforced another form of living, similar to that being held by the Egyptian delegate.¹²⁸

While the inclusion of “Cultural Genocide” in the final draft of the Genocide Convention seems to have had its support, many delegates also voiced their concerns. And exactly how many placed their vote for or against seems to be a case of confusion. E.g. According to Robert Krieken, another scholar named Johannes Morsink have described the UN essentially divided itself into three different blocks when discussing “Cultural Genocide”; the supporters consisting of the communist and Arab delegations, North and South America opposing the retaining of an “Cultural Genocide” article and finally the Western European delegations, which wavered in their support¹²⁹. However Krieken seems to have misunderstood Morsink, as Morsink himself mentions in an article that one South American country did support the inclusion of “Cultural Genocide”, namely Venezuela¹³⁰. However, the final tally of votes is where the confusion lies. Herschkopf and Hunter claims that when the final vote was taken as to whether “Cultural Genocide” should be its own part within International Law, 25 was against this, with 16 supporting the inclusion and finally 4 countries with absent votes.¹³¹ These numbers are further supported by Robert Krieken in an article from 2004¹³², but Johannes Morsink instead claims within his writings that the removal of Article III, the article of “Cultural Genocide”, was supported by no less than 31 votes, with 14 supporting the inclusion and 10 absent votes.¹³³ No matter the actual numbers, it seems to be agreed that the supporters were outnumbered by the sceptics, and “Cultural Genocide” was subsequently written out of the final draft.

¹²⁶ Herschkopf and Hunter, p. 14-16

¹²⁷ Scott, p. 25

¹²⁸ Akhavan, p. 265-266

¹²⁹ Krieken, *Cultural Genocide in Australia*, p. 137

¹³⁰ Morsink, p. 1036-1037

¹³¹ Herschkopf and Hunter, p. 14-16

¹³² Krieken, *Rethinking Cultural Genocide*, p. 138

¹³³ Morsink, p. 1031

The lack of support towards the adoption of “Cultural Genocide” within International Law came from a number of nations and their delegates, such as the United States, Canada, South Africa, Sweden, Denmark and France. Much like in terms of the supporters, many opposing delegates explained their reasoning for why the inclusion of “Cultural Genocide” was unnecessary, many based on the discussion about the definition of culture, the lack of actual physical harm and the inadequate application of the concept. In their article Herschkopf and Hunter describes the opposition as based on the delegates belief that;

“Unlike its physical counterpart, cultural genocide did not shock the conscience of mankind (...) it fell within the sphere of general human rights protection, or protection of minority rights (...) it was too vague a concept to include in the genocide convention, and (...) it might lead to abuses of the concept or prevent widespread support of the [genocide] convention”¹³⁴

The Danish delegate, Per Federspeil, was one of the delegates that did not approve of “Cultural Genocide” within International Law. This was partly because he felt the definition and upholding of the hypothetical law would show serious difficulty, and because; *“It would show a lack of logic and a sense of proportion to include in the same convention both mass murders in gas chambers and the closing of libraries”¹³⁵*. This was allegedly a response to Lemkin’s comment about burning books, in regard to “Cultural Genocide”¹³⁶. And in some sense there is logic in this statement, if one focuses on the “Genocide” part of “Cultural Genocide”. But as the supporters had claimed, some cultures are a big part of life and an individual’s way of observing the world, harm to this could therefore be described as being just as harmful as actual physical injury. The opposition did not seem to place the same importance upon culture, and instead described it as less important than physical acts, as is evident from the Danish delegate’s quote. There are less actual quotes showing the intentions of the opposition, but some discussion is still possible. Especially since many scholars have agreed that it was a varying understanding and sensitivity to the cultural dimensions within “Genocide”, and thereby the meaning of “Cultural Genocide”, coupled with a confusion as to what it means to destroy a group of peoples outside of physical harm, enforcement or total

¹³⁴ Herschkopf and Hunter, p. 14-16

¹³⁵ Krieken, *Cultural Genocide in Australia*, p. 129

¹³⁶ Ibid.

physical destruction.¹³⁷ The problem could therefore be described as a difficulty in assessing the emotional harm and its importance, when compared to physical injuries, which was easier to define in terms of inclusion within International Law. The big difference of opinions can therefore be described as to whether “Genocide” includes a necessity for actual physical destruction, or whether it is possible to kill part of a human or group of peoples, with no actual deaths occurring and the method a much more subtle form of oppression. As such many delegates “viewed cultural genocide as something analytically distinct from physical genocide and were uncomfortable putting it in the same category as genocide akin to the Holocaust”.¹³⁸ Essentially, the opposition was based on the fluid definition of “Cultural Genocide”, and the many different possible acts, which meant the opposition felt that the concept belonged to “*an undefined legal sphere outside of prohibited conduct contained in the Convention, and not punishable as such.*”¹³⁹

The creator of the concept, Lemkin, was an obvious supporter of including “Cultural Genocide” within the final draft, and in the second draft the three divided forms of “Genocide” was retained. But within the second draft, the 3rd form of “Cultural Genocide” was omitted¹⁴⁰, namely the forcible transfer of children. The clause was however re-introduced later, as the convention underwent a re-framing of perception, instead observing the forcible transfer of children as an example of “Physical Genocide” rather than “Cultural Genocide”.¹⁴¹ This re-framed clause was the only part of “Cultural Genocide” that found its way into the final draft and ended up being omitted into International Law. Krieken ponders upon the removal of “Cultural Genocide” and the strong opposition to the concept, by pointing out that at the time of the convention, many colonial powers grew restless. He claims that the colonial powers became defensive, as they became sensitive in terms of criticism of their policies within their non-self-governing territories.¹⁴² This view is supported by Shamiran Mako, and William Schabas, whose work Mako bases her opinion on;

*“Australia, the United States, Canada, Sweden, France, Peru, India,
and the United Kingdom, in fact, demonstrated their dissatisfaction*

¹³⁷ Krieken, *Cultural Genocide in Australia*, p. 138

¹³⁸ Kingston, p. 65

¹³⁹ Herschkopf and Hunter, p. 16-17

¹⁴⁰ All drafts from the convention is available online, on a site called preventgenocide.org. While this is not the most updated site, it is detailed in explanation, offers translation and several sources. The site does however hold the drafts of the Genocide Convention, which are presented in an easy to access sphere, with the link <http://www.preventgenocide.org/law/convention/drafts/>

¹⁴¹ Krieken, *Cultural Genocide in Australia*, p. 137

¹⁴² Krieken, *Rethinking Cultural Genocide*, p. 834

*with the inclusion of a cultural genocide clause stemming from their ongoing and past treatment of minorities, indigenous groups and immigrants.”*¹⁴³

These different influences and opinions might very well have been some of the reasons as to why “Cultural Genocide” had so few supporters during the drafting, and why it ultimately was deemed unnecessary within International Law. Lemkin himself held “Cultural Genocide” in the highest opinion, as;

*“[...] the foundational conceptual ingredient of genocide for Lemkin was culture not ‘civilian’. For Lemkin culture animates the genos in genocide – the social group ‘exists by virtue of its common culture’. (...) during the process of construction of the draft UN Convention, Lemkin argued that ‘Cultural Genocide is the most important part of the Convention’.”*¹⁴⁴

But as Lemkin’s view of “Cultural Genocide” did not get across to the opposing delegates, and some outsiders, the concept lost its value, and while Lemkin himself described the process; *“I defended it successfully through two drafts. (...) But there was not enough support for this idea in the Committee....So with a heavy heart I decided not to press for it.”*¹⁴⁵ As a result, the final draft contained no parts of “Cultural Genocide”, save the part of forcible removal of children. But this is misleading, as “Physical Genocide” normally describes actions that result in injury or death, while removing children does not necessarily need to be a violent affair. As such, the removal of children seems misplaced within the form of “Genocide” it is placed, but it is however a recognised offense within International Law and the only part that resembles “Cultural Genocide”. It is therefore not surprising it is this part that later scholars base their work on and branch out from, when discussing “Cultural Genocide”, as can be observed in the following section.

¹⁴³ Mako, p. 183

¹⁴⁴ Short, *Cultural genocide and indigenous peoples*, p. 837

¹⁴⁵ Ibid.

“Ethnocide” and “Colonialism” compared to “Cultural Genocide” – Discussions from the 1940’s till the early 2000’s.

One of the eternal discussions surrounding “Cultural Genocide” is whether the concept is still relevant, when other concepts could potentially replace it and carries a much more acknowledged definition. One of these concepts is that of “Ethnocide”. “Ethnocide” is defined by Oxfords Dictionaries as being a deliberate and systematic elimination of a culture of any ethnic group, and the concept is often linked to a forced assimilation among an ethnic group, and as such the concept of “Ethnocide” carries a similar definition to that of “Cultural Genocide”, as have been presented earlier in this thesis. The connection between the two concepts has therefore spurred some debates, as to the relevance of a new concept and the similarities/differences of the two concepts, together with what new insight “Cultural Genocide” might bring.

The close resemblance between “Cultural Genocide” and “Ethnocide” can be dated back to the birth of “Cultural Genocide”. Within his book from 1944 where he introduces “Genocide” and “Cultural Genocide”, Lemkin himself addresses the question¹⁴⁶. It is a short mentioning, really just a quick consideration within a footnote, but here he points out how “Cultural Genocide” resembles the already existing concept of “Ethnocide” and how the two concepts can be applied to similar episodes. This mentioned establishes two things: first off, the concept of “Ethnocide” was established prior to “Cultural Genocide” and held an already acknowledged position within International discourse. Secondly, in the 1940’s the new budding concept of “Cultural Genocide” functioned within areas similar to those of “Ethnocide”. This would mean a need for distinct differences to be pointed out between the two concepts, or a discussion, as to whether “Cultural Genocide” would be redundant, as the concept was already established. Lemkin however felt there was a difference between the two concepts that warranted the further establishment of “Cultural Genocide”. Lemkin did not actually discuss the differences or similarities of the two concepts, other than the small footnote. Others have however also realised the resemblance of the two concepts, many discussing whether an already established concept renders “Cultural Genocide” redundant. Akhavan mentions how the resemblance was brought up during the Genocide Convention in 1947, where in one draft article 7 states; “provided that Indigenous peoples have the

¹⁴⁶ Lemkin, *Axis Rule*, p. 79

collective and individual right not to be subjected to ethnocide and cultural genocide”.¹⁴⁷ Akhavan claims that the draft would have introduced a broader understanding of “Cultural Genocide”¹⁴⁸, while also establishing it as a concept of equal importance to “Ethnocide”. Mako, another scholar, claims that while “Cultural Genocide” was presented as, and has served as the framework for, the non-physical destruction of a group¹⁴⁹. Thereby it was meant that the consequences attained during an act of “Cultural Genocide” did not have to include physical harm or death, and mostly weren’t physically constructed as is also evident from the section regarding the Genocide Convention earlier in the thesis, but relied on another type of enforcement. But, as again was evident from the section regarding the Genocide Convention, and more specifically the opposing factors, a discussion broke out about the physical aspect. Mako claims this debate was mainly fuelled by nations fearing prosecution for “*ethnocidal acts, namely Australia, the United States, Sweden and Canada*”.¹⁵⁰

There seems to be some claims to this idea, since earlier analysis indicated the same influences, and as the criticism of “Cultural Genocide” at the time of the Genocide Convention was based in its ambiguity in regards to physical harm and acts committed by occupying forces, some being amongst the voting nations. We can therefore consider the fact that during the Genocide Convention and the continuous debate, the frame of analysis regarding “Cultural Genocide” was shifted. The shift might have begun as the nations discussed the definition and application of the concept, which “*sparked a contentious debate about the distinguishing elements of the physical destruction of a people and their cultural dissipation.*”¹⁵¹ The prevailing debate then seems based in the distinction of actual mass-killings versus the cultural destruction. Observing the confusion from an “objective” stand, it might have been the shared use of “Genocide” between the cultural and the physical aspects which was the root of the problem. As “Genocide” was, and still is, widely understood as the destruction of a group of peoples, the understanding of the concept might easily be linked to act of physical consequences. After all, mass-killings indicate physical destruction of a people or group through murder. This was also how Lemkin presented the term originally, as spheres within the broader concept holding different positions of less physical effect, the concept of “Genocide” was linked to actual harming. The addition of culture then challenges

¹⁴⁷ Akhavan, p. 253-254

¹⁴⁸ Ibid.

¹⁴⁹ Mako, p. 175

¹⁵⁰ Mako, p. 175-176

¹⁵¹ Ibid.

this violence, which might easily have been what seemed conflicting. After all, the genocidal part of “Cultural Genocide” indicate a connection to the already acknowledged “Genocide”, which makes the concept of “Physical Genocide” easily accepted, but does not fit the definition of “Cultural Genocide”. Overall Lemkin presented “Cultural Genocide” as a non-physical form of “Genocide”, where it is the culture of a people that is killed, and in this case not their physical forms, but in this case the cultural aspects. Application of the concept, concerning the killing of cultures, alongside physical murder, might easily complicate a successful drafting and addition to International Law. Furthermore, in an effort to understand the concept of “Cultural Genocide”, it seems as if many focused on the relation to the acknowledged physical form, and tried to establish the connection better.

This could also be said to be the reason behind much confusion during the debate, in regards to the definition and punishable sphere concerning “Cultural Genocide”, and the continuous debate of the concept’s relation to “Ethnocide”. The reason, being the similarities in application of “Ethnocide” and “Cultural Genocide”, which could cause some to regard the concepts as sharing the same definition, perhaps clinging to the slightly more familiar “Ethnocide”. Trouble is that “Ethnocide” is generally defined as a more peaceful process where the cultural loss is achieved through assimilation, mostly due to colonial power movements or other forms of reducing power of the declining culture.¹⁵² But through the earlier discussions about the nature of “Cultural Genocide”, the process here is not usually peaceful and gradual assimilation. Rather, “Cultural Genocide” is a direct intentional attack aimed at destroying a culture, in some cases using force to reach this goal, as with forceful destruction of cultural symbols. An example of this could be the destruction of Jewish synagogues during WW2. The distinction is what seems to be lacking during the Genocide Convention, as “Ethnocide” does have a greater application in regards to punishing old actions performed by colonial powers. As distinction between the concepts, or a shared definition, was therefore never agreed upon during the proceedings of the convention, and the confusion subsequently dismissed “Cultural Genocide” from admission into International Law.

While the actual discussion of “Ethnocide” vs. “Cultural Genocide” was rather subdued, not to mention inconclusive, during the Genocide Convention, the debate sprung up again during the 1970’s. Speaking in terms of the societal context and the “Space of Experience” upon

¹⁵² Sautman, p. 189-190

which the debate was based in the 1970's, we therefore have to consider the actual experience prior to the 1970's. The reason why questions such as race, "Cultural Genocide" and "Ethnocide" started to awaken after the 1940's, might very well be traced back to the 1920's. As was the case with the "Space of Experience" for the debating during the Genocide Convention, the 20's had declared skin colour was not synonymous with one's level of intelligence. Instead the question of race became an important scientific field of study, bringing greater equality to the different races¹⁵³. This, coupled with the experiences of WWII, meant that the scholars and debaters of the 1970's had a greater understanding of racial dynamics, especially since the time after the Genocide Convention enabled an even greater field for racial discussions and understanding. The discussions and questions concerning race, and the inequality hereof, proceeded throughout the 1950's and 1960's, where the Civil Rights Movement started to break down barriers and focus on inequality of race. The differences between races, which could be described as class structure and a function of hegemony, were evident throughout societies, for example in the United States. Staples of a society's segregation structures could be observed through income inequality, workplace discrimination, educational and educational opportunities, etc.¹⁵⁴ So, through these socially accepted dividers of race, racism and the injustice of such actions, the contemporary societies could readily observe the growing consciousness of these matters. One of the results was the aforementioned Civil Rights Movement, who although mostly based in the experience of coloured peoples, also raised awareness for other races and oppressed groups. The sentiments of the Civil Rights Movement were also not confined to the United States, but had spread to most of the western countries.¹⁵⁵ Same as with WW2, there was an awakening to racially grounded problems, one aimed mostly at Jews and the other at African-American. But as the Movement grew it influenced other factions, such as; *"increasing immigration, the fall of colonialism abroad, and the economic rise of developing nations coincided with the precipitous decline in overtly racist attitudes, as measured by representative opinion surveys"*.¹⁵⁶

By chipping away at racial prejudice, and actually becoming aware of the problem, the 1950's and 60's enabled a discussion of discrimination and oppression of groups of people based on race, or culture, which in turn gave rise to the prevention of such actions

¹⁵³ Clair and Denis, p. 858

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

within International Law and Justice systems. As a result, in 1971 there was a sub-commission of the U.N., whose job it was to prevent discrimination and protect minorities. It also meant that the growing awareness for racial inequality and oppression enabled a new discussion in 1971 concerning “Cultural Genocide” alongside “Ethnocide” in terms of possible inclusion within International Law.

According to Herschkopf and Hunter, the discussion started in 1971, when the U.N Sub-commission tasked with the prevention of discrimination and protection of minorities began a rapport concerning “Genocide” within International Law.¹⁵⁷ For this reason, the board appointed Nicodéme Ruhashyankiko to lead the investigation and write the rapport, which was based on the opinions of governments and international organisations, not to mention scholarly books and commentaries. Part of the intention, was to open up a discussion, not only about “Genocide” within International Law, but also offer recommendations moving forward, meaning that the rapport also discussed the possible inclusion of “Cultural Genocide” which was originally omitted.¹⁵⁸ Ruhashyankiko spent seven years gathering the materials and opinion on which he based his rapport’s conclusion. Again, the rapport was mainly focused on the development of “Genocide” since its inclusion to International Law in the 1940’s, and upon possible future acts, under where a discussion of “Cultural Genocide” was placed. As such, there was a part of the conclusion that evolved the discussion of “Ethnocide” and “Cultural Genocide”, and a possible legal form of the latter. This conclusion was that;

“[...] the Special Rapporteur is unable to draw a definite conclusion as to whether the acts regarded as cultural genocide or —ethnocidel are constituent elements of the crime of genocide and whether it is possible to conclude an additional convention covering cultural genocide or to include it in a revised convention on genocide.”¹⁵⁹

Once again “Cultural Genocide” was deemed unfit for inclusion within “Genocide”, due to the difficulty in defining the term and placing it alongside the more physical variant of “Genocide”. Furthermore, Ruhashyankiko made no distinction between “Cultural Genocide” and “Ethnocide” in his conclusion, instead allotting the same definition to both concepts. In terms of this, it is possible to conclude that in the 1970’s, the two concepts were considered

¹⁵⁷ Herschkopf and Hunter, p. 18

¹⁵⁸ Ibid.

¹⁵⁹ Ruhashyankiko, 4 July 1978, para. 461.

able to describe the same event, despite earlier scholar's such as Lemkin made it clear that they were different and believed the concepts should be observed separately. As Ruhashyankiko also claims there were a distinct need for further discussing and outlining of "Cultural Genocide", and thereby "Ethnocide", this leads to the 1980's and 90's, where this was discussed. In 1985 it was decided that a draft was to be created, concerning the rights of indigenous peoples. After years of debate and re-writing, a draft was sent to the Commission for Human Rights for consideration in 1994. This was the first time there was an effort to outline and address "Cultural Genocide" in an effort to include it within International Law since it was omitted during the earlier Genocide Convention. However, during these writings "Cultural Genocide" was placed alongside "Ethnocide" once again, and the two concepts were considered alike, just as they had been in the 1980's.¹⁶⁰ But "*although the terms were used in the 1991 Declaration of San José, they were not developed by States, and were, as a result, not part of international law.*"¹⁶¹ Once again the reason was the concept(s) created confusion, with many states declaring the definition(s) ambiguous. This led to the "Cultural Genocide" and "Ethnocide" finally being omitted from the finished Declaration on the Rights of Indigenous Peoples, which was adopted in 2007.

While so forth the two concepts of "Cultural Genocide" and "Ethnocide" have been defined as similar in definition, and thereby two names for the same event, some scholars disagree. One of these is Barry Sautman, who in his 2003 article 'Cultural genocide and Tibet', defines the two concepts and discusses the difficulties when comparing them. Sautman defines the concepts as widely different, even if they function within similar events, as; "

*"Unlike cultural genocide, which is invariably connected to mass ethnic murder on a grand scale, ethnocide, as envisaged by proponents of the concept, is not necessarily tied to killing. (...) The intent that underlies ethnocide may not be identical to the intent that underlies cultural genocide because ethnocide is not tied to the physical or biological destruction of a group, and is thus typically aimed at a forced assimilation, not population decimation."*¹⁶²

"Cultural Genocide" is therefore, as it was also presented by Lemkin, defined by Sautman as connected to mass murder and genocide, while "Ethnocide" is a much more subtle

¹⁶⁰ Mako, p. 186

¹⁶¹ Mako, p. 187

¹⁶² Sautman, p. 189-190

experience, although it still causes harm to its victim's. The intentions are different, with "Ethnocide" being meant as assimilation into the ideals and example of the oppressing forces, while "Cultural Genocide" is the consistent destruction of a culture in the intent of exterminating the culture and possibly the groups of peoples whom is a part of said culture. Sautman even confronts the discussions of the 1970's and those beginning in the 1980's leading up to the early 2000's, as a result of increased political activism.¹⁶³ This change allowed for a new discussion about returning "Cultural Genocide" to the stage of International Law, although the concept underwent alterations, such as the close relationship with "Ethnocide", as "Cultural Genocide" had appeared as a lone subject of discussion during the 1940's Genocide Convention. There is a certain irony in the fact that "Cultural Genocide" was brought up in a new discussion within Human Rights, and not International Law and in regards to "Genocide", since multiple Western countries had urged this shift in paradigm in 1948¹⁶⁴, but Lemkin had persisted his conviction that "Cultural Genocide" should be a recognised concept within the same sense as "Genocide". A persistent fact was however the confusion as to the definition of the concept, and whether it should become a recognised legal term.

It is evident that throughout the 1970's and 1980's there was an awakening to the concept of "Cultural Genocide", and a discussion much like that of the 1940's as to the position of the concept within International Law. But "Cultural Genocide" seems to have gained more support in its second wave, as some facts seem to indicate the concept was closer to acceptance than ever before, despite its confused relationship with "Ethnocide". An example of the importance, which was placed upon both "Ethnocide" and "Cultural Genocide", is that both concepts were featured in the 1991 Declaration of San José¹⁶⁵, which describes a deeper form of partnership between the United States and Central America. Although the concepts were not developed or described in any degree of detail in regards to definition or ways of prevention, the fact that they were mentioned points to the substantial difference in perception between the early 1970's and 1991. Furthermore, the concepts were used in regards to the United States, which formerly was part of the adamant opposing force criticising "Cultural Genocide". It is therefore safe to assume that the concepts, at this point in time was believed to prevail and become a part of Human Rights, and therefore in some sense the International Law. Especially since a former opposing force had begun to accept the

¹⁶³ Luck, p. 26

¹⁶⁴ Ibid.

¹⁶⁵ Mako, p. 187

concept. The greater acceptance and understanding of the concepts also comes to light in an example from 1993, where “the Working Group produced the Draft Declaration on the Rights of Indigenous Peoples”¹⁶⁶, wherein article 7 read “*indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide*”¹⁶⁷. From the description there even seems at this time to have been a better understanding of the area “Cultural Genocide” and “Ethnocide” functions within, although the concepts were still considered similar. The draft was particular in its wish for prevention of certain acts which it defined as part of “Cultural Genocide” and “Ethnocide”, namely “any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities.”¹⁶⁸ While this description is rather vague, it bears similarity to both the earlier definition of “Cultural Genocide” and “Ethnocide”, which seems to indicate that the only recognised definition was the few points shared by the two concepts. So, although the concepts and in particular “Cultural Genocide” had become part of International thinking on harmful actions against culture, and in a greater form upon indigenous peoples, the concepts were not further developed. Furthermore, “Cultural Genocide” was related in a greater sense to indigenous people, which although it did not go completely against the original definitions of the 1940’s, limited the concept. The cultural aspect presented by Lemkin in his work from 1944 and during the Genocide Convention was not further discussed. Rather, as have been evident from earlier in the analysis, scholars tried to rid the confusion concerning the definition of “Cultural Genocide”, by combining the concept with “Ethnocide”, due to the similarities they held. But as the two concepts have different bases of application, the connection between the two can create more confusion, as shown in regards to indigenous peoples. It could be this confusion and the lack of actual defining that kept confounding people when they tried to include the concepts within different drafts, as was the instance with the draft from 1993 concerning the Draft Declaration on the Rights of Indigenous Peoples, where after a number of debates over the next decade resulted in the removal of the mention of “Cultural Genocide”.¹⁶⁹ Whether “Ethnocide” was permitted to stay is unclear; if the two concepts were considered the same it makes sense it was removed alongside “Cultural Genocide”. If however it was not removed, as is insinuated by Luck only mentioning the removal of “Cultural Genocide” from the draft, it opens another point of view, where it was “Cultural Genocide” that created a confused debate while “Ethnocide”

¹⁶⁶ Luck, p. 26

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

was widely understood. This could be the case, as it has been evident in earlier sections of this thesis, that the concept of “Ethnocide” preceded “Cultural Genocide” and held a greater acknowledgement internationally.

Some scholars have been obvious in their preference to “Ethnocide”, such as Pierre Clastres. Clastres is one of the supporters of disregarding “Cultural Genocide”, as; “ethnocide, from the perspective of its agents, does not recognize itself as a destructive enterprise: on the contrary, it is a duty, demanded by the humanism inscribed at the heart of Western culture”.¹⁷⁰ Clastre focuses on the intentions, and to some degree the “horizon of expectation”, of the executioners. As has been discussed prior, “Ethnocide” is mostly a peaceful assimilation based on the idea that the executioners are benefitting the afflicted groups of peoples. The biggest difference of the two concepts could therefore be described in terms of perception, as “Cultural Genocide” has a more bleak pessimism to it. The reason for this is the intention of total destruction of a culture, going as far as to use violence as, if necessary. “Ethnocide” is slightly more neutral, as the act is mostly based on assimilation through passive enforcement and next to none violence; the hope is a natural and gradual change into the “the-better-set-example” of the oppressing force or nation, or so is the perception at least of the agents.¹⁷¹ The concept of “Ethnocide” has therefore also often been related to acts of colonisation. “Colonisation” is another concept which can also be discussed in regards to “Cultural Genocide”, as well as “Ethnocide”. “Colonialism” is defined in Oxford Advanced Learner’s Dictionary, as “the practice by which a powerful country controls another country or other countries”¹⁷². Interestingly neither “Ethnocide” nor “Cultural Genocide” is present in this work, although “Genocide” can be found on page 646.¹⁷³ In 2005 it seems, neither “Cultural Genocide” nor “Ethnocide” found enough support to merit a place within the accepted English language and wording. “Colonialism” however is a recognised term, often used to discuss historical colonialism and colonies, often with criticism of the actions undertaking in terms of these acts. Two scholars, Davis and Zannis, describe colonialism as

“The intention to replace independence with dependence, an integral factor for all colonial systems, is proof of intent to destroy. Colonialism controls through the deliberate and systematic destruction of racial, political and cultural groups. Genocide is the means by which

¹⁷⁰ Krieken, *Cultural Genocide in Australia*, pp. 142-143

¹⁷¹ Ibid.

¹⁷² Oxford Advanced Learner’s Dictionary, pp. 293-294

¹⁷³ Oxford Advanced Learner’s Dictionary, p. 646

colonialism creates, sustains and extends its control to enrich itself.”¹⁷⁴

Using this understanding, a relation between “Genocide” and “Colonialism” is made, claiming the occupying forces would use mass killings as a way to enforce their own ideals. This article was produced in the 1970’s, and as such a product of the understanding at that time, so we can understand a more general description of “Colonialism” at this time, which was based upon an intention of violence. Davis and Zannis do however also mention that these acts are focused on specific structural pillars of life, namely politics, race and culture. These are the attack points, which seem to suggest a relationship between “Colonialism”, “Ethnocide” and “Cultural Genocide”. If we assume that the agents of “Colonialism” believe they are pursuing the natural assimilation of an oppressed nation and that this will ultimately benefit the affected peoples,¹⁷⁵ then a natural connection to “Ethnocide” is logical, since this concept describes the peaceful assimilation of a people into an imposed ideal. And in some sense “Cultural Genocide” would fit the perimeters of “Colonialism” too, since the concept is a process of eliminating an unwanted cultural and thereby loosening the cultural binding of a group of peoples or a nation. But as this is not normally a gradual development or passive, rather an abrupt forceful destruction, there is also some difficulty in relating the perception of “Colonialism” as presented in Robert Krieken’s work, to the concept of “Cultural Genocide”. Other scholars have noted this, and stated that while “Ethnocide” plays a bigger role within the scope of “Colonialism”, a form of “Cultural Genocide” could be discussed as existing within “Decolonisation”. Hitchcock and Twedt suggests that during the rebuilding of certain nations after a period of “Colonisation”, some state impositions might take place in terms of education, efforts to modernise and structuring of a new nation post-colonialism.¹⁷⁶ One of the traits of these new structures that might relate to “Cultural Genocide” : is the implementations of national educational systems which do not offer instruction in the indigenous tongues and traditions¹⁷⁷, thus cutting of the connection to a cultural sphere. Mako further states that the connection of “Colonisation” to the concept of “Cultural Genocide” has been discussed by the inventor of the concept, Lemkin;

“In reference to colonialism in the United States, Lemkin suggested that colonial enslavement of American Indians was cultural genocide

¹⁷⁴ R. Davis and M. Zannis, p. 30

¹⁷⁵ Krieken, *Cultural Genocide in Australia*, p. 142-143

¹⁷⁶ Hitchcock and Twedt, p. 542-543

¹⁷⁷ Ibid.

and constituted an "effective and thorough method of destroying a culture, and of de-socializing human beings".¹⁷⁸

Based on this and the prior linking of “Cultural Genocide” to the concept of “Ethnocide”, one could discuss the early understanding of how “Cultural Genocide” and “Colonialism” might work together in some instances. The mechanisms of the concepts and their interlinking features might have been established in the 40’s, but it was evidently the 1970’s where they were more closely analysed in regards to each other. While “Colonialism” might not have been mentioned in these discussions concerning “Cultural Genocide” and “Ethnocide”, it was none the less often acts of “Colonialism” which was used as examples or was meant to become preventable. But at the same time, as “Colonialism” was never directly connected in more than a vague event-description, the 1970’s rather gave birth to a later discussion of the connection between the three concepts, in a greater way than had been undertaken before. The discussion of “Cultural Genocide” versus “Ethnocide” however, was amply furnished. As the analysis has earlier presented and discussed, the two concepts was regarded as describing the same acts, and there was a discussion as to whether they should be added to several newly formed drafts, but the difficulty in defining the concepts prevented this. It is the belief of the author, that the fault lied in believing the concepts to be the same, without acting under this perception. The trouble with the discussions of the 1970’s and later, where that despite a perpetual claim of the similarities between “Cultural Genocide” and “Ethnocide” the concepts were never actually joined. Instead the concepts still appeared separate although they were mentioned alongside each other. An example is the earliest example of the 1970’s, where a sub-commission of the U.N., with the job of preventing discrimination and projecting minorities, began a rapport concerning International Law which focused on the evolvement of “Genocide” since the birth of the concept in 1944.¹⁷⁹ In this rapport “Cultural Genocide” was discussed and analysed, in connection to the concept of “Ethnocide”. And as has been presented continuously throughout this section of analysis, the two concepts have scarcely been discussed apart in the years to come. In fact, they have continuously been mentioned alongside each other, where their similarities were discussed in the hopes of reaching an understanding that would allow for inclusion within International Law, but still clinging to the concepts’ different names. By not creating a combined name for the concepts, there was a perpetual divide between the two concepts, which seems only to have made a compromise

¹⁷⁸ Mako, p. 181

¹⁷⁹ Herschkopf and Hunter, p. 18

harder. Another reason for this could be described as a highly one-sided analysis which never followed through in terms of uniting or separating the concepts fully.

It has mainly been a claim of the similarities of “Cultural Genocide” and “Ethnocide” which have carried the discussions, but with very few explanations of what the similarities are and what this means for the continuing use of the concepts; Instead it is the differences that are pointed out and explained, as in the case of Clastre, or as reflections upon these years of discussion by later scholars. If this is the case, then why were the two concepts still mentioned alongside each other? And why did no one try to understand the concepts better, if they wanted to connect the two under one definition? It can therefore be concluded that in the 1970’s and up through the 1990’s, “Cultural Genocide” was not fully understood as an individual concept, and in a hope of bettering an understanding which would allow for the concepts inclusion within International Law, “Cultural Genocide” was compared to the similar “Ethnocide”. However, as this idea was not followed through, a greater confusion concerning both concepts ensued, finally once again resulting in no drafts containing “Cultural Genocide” within its articles.

This does however not mean the discussions concerning “Cultural Genocide” died out after it was excluded from International Law and drafts concerning Human Rights. It is true that the legal scholarly work within this field has halted ever so slightly, but instead “Cultural Genocide” has found its way into the field of sociological research. Starting in the early 2000’s, sociologists have adopted the concept of “Cultural Genocide” in their discussions of indigenous peoples and the harmful actions taken against them by their governments, or other oppressing forces. Kingston explains this shift from the legal sphere to that of sociology, by claiming that;

“The concept of cultural genocide provides an issue frame for conceptualizing extreme violations of cultural rights, thereby offering opportunities to build and mobilize a broad supporter base for rights protection. This is particularly important for indigenous rights advocacy, which has often been overlooked by scholars.”¹⁸⁰

As such, the discussions concerning “Cultural Genocide” has evolved into a framing tool, when analysing actions taken against indigenous tribes, as an effect of “Colonialism”. The

¹⁸⁰ Kingston, p. 77

concept is also used when discussing trials and acts of redress based on these events, as such maintaining a degree of the legal application for which “Cultural Genocide” was originally created for. The following analysis will therefore cover this use of “Cultural Genocide” within the sociological sphere, with its primary focus on the actions undertaken against the indigenous peoples of Australia.

“Cultural Genocide” in Australia – Discussions from the early 2000’s and till now

Changing the field from legal focus to sociology means that the following section will be different from the previous analytical sections. The scholars also tries to adapt “Cultural Genocide” to their study, and through this tries to create a greater understanding of the concept, which touches upon its former legal meaning, but now broadening beyond this discussion.

The field of sociology within the framework of “Conceptual History” has a long background, and its own specific traits. According to Koselleck, founder of “Conceptual History”, any study within Sociology and concepts face certain difficulties. But mostly it is a critical study of the meaning of words within a society, as Koselleck exemplifies by the use of “Stand”¹⁸¹, which bears a meaning alike that of “class” or “citizen”, in relation to different meanings within Prussia. As such, it is wording and meaning that bears the focus of the study, especially in light of the societal events the word(s) were used within. Koselleck describes the importance of work within the field of sociology by claiming that;

*“It draws our attention to the autonomous power of words, without whose use human actions and passions could hardly be experienced (...) this epigram stands in a long tradition concerned with the relation of word and thing, (...) of language and the world.”*¹⁸²

As such, both within the sphere of sociology and “Conceptual History”, words are windows into the passions and experiences of men, and thereby coloured by the event in where the word is associated at the time. Especially events of change bears an importance to both fields of study, since words tends to be adapted after a specific event, such as describing the socio-political change.¹⁸³ Furthermore, the study of parallel or opposing concepts is necessary to develop a full understanding of the studied concept and the context it is studied within¹⁸⁴, or for the socio-political meaning behind multiple concepts for similar experiences. But mostly, the short way of describing “Conceptual History” in relation to sociology is that it is the study of a word within a time of socio-political change, which does present some difficulties in terms of studies concerning “Cultural Genocide” and Australia. One of these is that the study of “Cultural Genocide” is based on the “space of experience” of the scholars, whom all write

¹⁸¹ Koselleck, *Futures Past*, p. 78

¹⁸² Koselleck, *Futures Past*, p. 75

¹⁸³ Koselleck, *Futures Past*, p. 79

¹⁸⁴ Koselleck, *Futures Past*, p. 88

around the early 2000's and upwards. But the events their study cover, and upon which they apply the concept of "Cultural Genocide" is a period of years mostly prior to the birth of "Cultural Genocide", and so there was no actual perception of the concept during the acts of the analysed period. "Cultural Genocide" has therefore had no part of the discussions concerning the intentions, goals or consequences of the acts committed in Australia in the early context, instead becoming a later tool in an effort to explain the cultural consequences of the aborigines. The concept have also found its way into later discussions, where the aborigines have sought acknowledgement for the acts committed against them, as will be discussed later in this section. We therefore face a discussion concerning acts of "Cultural Genocide" committed against the Australian aborigines and in regards to a later discussion concerning consequences. This is based upon post-modern work and definition of the concept of "Cultural Genocide", the definition of which was changed within this field.

First off, a short introduction to Australian colonialism is needed. In the late 18th and early 19th century Britain build several colonies upon Australian land, the first being Sydney. The early colonialists were inmates from overcrowded British prisons, and later other people found their way there, without a trip to prison prior to the long boat trip. All this is basic knowledge and fairly well known. What is also considered basic knowledge is the fact that upon their arrival, the English colonists were not the first to set foot upon the Australian continent. In fact, the country was already inhabited by an indigenous group of peoples, which are mostly addressed as aborigines. As what often happens when western cultures meets foreign cultures, two different cultures/peoples meet, conflicts broke out, leading to the acts which have later been classified as acts of "Cultural Genocide".

The acts which have been described as actions of "Cultural Genocide" are mostly limited to one category; the forcible transfer of children from their parents and their people¹⁸⁵. This focus does have different attainments though, such as why it is the transfer of children which obtains focus, how culture and "Cultural Genocide" have been applied to the subject and what later role the concept of "Cultural Genocide" has in later debates. In terms of the sociologic aspect, in recent years the discussion has changed from re-addressing the definition of "Cultural Genocide" in hopes of including it within International Law or Human Rights. Instead, sociologists focus on the original presentation of the concept by its creator

¹⁸⁵ The forcible transfer of children makes an appearance in every article used for this section, often being the main studied event. Therefore the assumption of sociologic research upon the subject of "Cultural Genocide" being based mainly on the acts of child removals seems plausible, and will be backed up throughout the later analysis.

Raphael Lemkin, and in a greater part on the surviving piece of “Cultural Genocide” within International Law, namely the article concerning forcible transfer of children. The forcible transfer of children exists today as part of “Physical Genocide”, or purely “Genocide”, within International Law and is thereby a recognised crime. But as has been explained in the section covering the Genocide Convention, transfer of children through force was originally a part of “Cultural Genocide”, which was omitted from the final draft; that means the only part of “Cultural Genocide” to be publically accepted was a re-written form of one of the concept’s points, a point which in turn was given a physical attribute rather than a cultural. The change did seem justified, as the article concerns forcible transfer, and thereby indicates an enforcement of power over unwilling victims. But, as “Physical Genocide” is normally understood as killing or physically harming, there are still some difficulties when addressing the forcible transfer of children. Mostly since its placement within the realm of “Physical Genocide”, or again purely “Genocide” since “Genocide” has been mostly recognised through its physical form, thereby indicates that the transfer of children is a physical act. One of the reasons why transfer of children became part of “Physical Genocide” during the Genocide Convention was two-fold and results of each other, as stated in an earlier section; the concept of “Cultural Genocide” created confusion amongst the delegates and this confusion spread to the use of “forceful” when addressing the transfer of children. Since it mentioned a physical action enacted through forceful methods, should it not rightly be classified as a physical phenomenon? What is the actual cultural effect? And so, the forceful transfer of children became part of International Law under the scope of “Physical Genocide”, as the only surviving part of “Cultural Genocide”. However, it also poses the problem concerning whether physical injuries need to be apparent for prosecution? If children are removed without any harm to either them or the parents, how does it then apply to “Physical Genocide”? And what are the consequences of such a transfer, that it might be considered to have a physical effect? All of this is what have created debates in later years, since the answers to these questions either are insufficient to explain a physical aspect, or moves within the sphere of cultural loss.

Originally Lemkin defined the forcible transfer of children as a consequence of “Cultural Genocide”, which has been stated earlier, prior to its re-definition. Although discussions were made in later years concerning “Cultural Genocide” and its position within International Law and the understanding of “Genocide”, at the millennium change the forcible transfer of children were still considered part of “Physical Genocide”. The cultural effect has however

also gained further study, especially in terms of the sociologic studies. Since the forcible transfer of children is the only surviving part of “Cultural Genocide”, although redefined, it is also the only part containing some legal and general acknowledgement. It therefore seems logical that socialist around the 2000’s and up have focused most of their work upon transfer of children and the cultural ramifications, exploring the original definition of forcible transfer of children as part of “Cultural Genocide” as Lemkin first meant it to be understood.¹⁸⁶ And so, there seems to have occurred, some form change in the paradigm surrounding “Cultural Genocide”. In the years leading up to the early 2000’s the aim by discussing “Cultural Genocide” was to find a suitable definition that would allow for inclusion within International Law and/or Human Rights. The discussions have therefore been focused on legislation disputes, drafting discussions and likeminded things. The “horizon of experience” seems changed therefore, since the main goal of the latest sociological discussions revolving “Cultural Genocide” is not focused on legitimising the inclusion or exclusion of the concept in a legal sense. Although the legal sphere is still explored, the concept is now applied to actual events and contemporary discussions about the effects of “Cultural Genocide” and the wish for acknowledgement for these actions and their consequences. As such, sociologist seems to have focused on specific events that resembles “Cultural Genocide”, exploring the acts committed, the consequences hereof and the acts the afflicted cultures have since taken up to enlighten their society of the harm the cultural groups suffered. Canada and Australia are prime examples of this process, and have both been subjects of sociological study in the effort of understanding, and applying, “Cultural Genocide”. This analysis will however mostly focus on the situation in Australia.

The sociologist scholars writing about Australia use a lot of their time discussing the cultural ramifications of forcible transfers of children, as mentioned before, in an effort to grant the acts higher cultural meaning, as opposed to the physical aspects they have been defined as containing until now. This means trying to answer some of the questions presented before, which held some difficulties in terms of a physical application: whether physical injuries need to be apparent for prosecution? If children are removed without any harm to either them or the parents, how does it then apply to “Physical Genocide”? And what are the consequences of such a transfer, that it might be considered to have a physical effect? Or, are the most hurting effects of a transfer in fact cultural?

¹⁸⁶ Krieken, *Cultural Genocide Reconsidered*, p. 78

Payam Akhavan claims that while some acts of “Genocide” fit the definition of the concept beautifully, as the extermination campaigns in Guatemala, some other acts does not.¹⁸⁷ This refers to the forcible transfer of children, especially in case of Canada when addressing Akhavan’s work, where there seems to be some ambiguity present according to Akhavan. She claims that most discussions about forcible removal of children, seems to bring about a distinction in the differences between physical and cultural genocidal acts;

“Physical genocide is the mass killing of the members of a targeted group, and biological genocide is the destruction of the group’s reproductive capacity. Cultural genocide is the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next.”¹⁸⁸

This quote not only sums up what Akhavan focuses on, but also what discussions within the post-modern society have dwelled upon, and what most other sociologists researching the concept of “Cultural Genocide” and forcible transfer of children touches upon. The quote opens the most basic and important modern problem when discussing the forcible transfer of children; how it does not fit within the understood parameters of “Physical Genocide”, as has been mentioned earlier in the analysis. Furthermore, through the quote Akhavan presents the goal of sociologists of once again returning, and understanding, the forcible transfer of children to the sphere of “Cultural Genocide”. This could explain why most scholars, Akhavan, Krieken and Short as examples, start off their research by discussing the earliest introduction of “Cultural Genocide” and the discussion of the concept throughout the Genocide Convention. And the quote up above deepens the reason for this, as it tries to break the link between the forcible transfer of children and “Physical Genocide”. Akhavan clearly states that “Physical Genocide” was, and still is, meant as mass killings of a specifically

¹⁸⁷ Akhavan, p. 246

¹⁸⁸ Ibid.

targeted group¹⁸⁹, and thereby meant to describe physical violence mostly resulting in the death of a significant number of people, often in one instance instead of a slow gradual killing. Akhavan, and many other sociologists, opposes the idea that the forcible transfer of children fits within these parameters, as was also discussed briefly during the discussion of the 1970's and up. The difference is that as many sociologists seems to sort the forcible transfer of children within "Cultural Genocide", due to them believing the consequences have a much greater cultural effect rather than physical, just as Lemkin had first intended for it to be understood. This also allows the scholars to broaden the acts they perceive as a part of "Cultural Genocide", since they already have broadened the concept by returning the transfer of children to its fold.

This also leads to another discussion that the sociologists focus upon, when they try to justify returning the forcible transfer of children to the sphere of "Cultural Genocide"; namely how broadly or narrowly the concept of "Genocide" is meant to be understood.¹⁹⁰ Through this discussion the continued debate for the relevance of "Cultural Genocide" is also addressed. Krieken describes the narrow and broad understanding of "Genocide", and how these oppose each other, thus;

*"A narrow conception restricts itself to the various forms of killing and physical annihilation, whereas the broader definition addresses a wider variety of ways in which human groups can be 'eliminated', including the destruction of their distinct cultural identity. A central element of this broader approach is the concept of 'cultural genocide', and it is around this idea that much of the debate between the two understandings revolves."*¹⁹¹

Here Krieken sums up the deepest part of the discussions previously made concerning "Cultural Genocide". If one clings too much to a narrow understanding of "Genocide", one will expect mass killings in every instance where the concept is used. Trouble is, when Lemkin originated the concept it had several facets, some not reliant on physical destruction but rather a killing of culture or essential structures of a peoples lifestyle. So the broader understanding embraces this view, and concerns itself with the different ways human groups can face annihilation, and not only the physical version. Trouble is, as was hinted at in the previous analysis, most narrow their understanding. This means they view "Physical

¹⁸⁹ Akhavan, p. 246

¹⁹⁰ Krieken, *Cultural Genocide in Australia*, p. 128

¹⁹¹ Ibid.

Genocide” and “Genocide” as the same, which then of course causes some confusion as to how one would culturally murder a people, so that they cease to exist physically. That a people can cease to be without their culture seems farfetched is therefore the more rare perception and means shifting ones understanding, as the perception today is that “Genocide” is a physical act. This is then what sociologists like Krieken and Akhavan tries to do, by broadening the understanding of “Genocide”, and especially “Cultural Genocide”, to show what insight a broader perspective might yield. It also means that one must observe culture as a physical bond connecting people and being an essential part of them. Not only through their language, religion, traditions and such, but also in the values, stereotypes, gender roles and jargon they grew up with, which all formed their personality and perception. It binds the group together as a part of something, and the loss of culture is highly damaging, according to Lemkin’s original definition and Krieken¹⁹². Krieken further states that “*The essential point made by those who reject the concept of cultural genocide is that destroying people’s culture doesn’t destroy them as people.*”¹⁹³ This further supports the idea that most scholars focuses on the genocidal part of “Cultural Genocide”, finding it hard to validate the concept without physical destruction. And so, the role of sociologist debating “Cultural Genocide” is not only validating the loss of culture as harmful, but most do so in spite of often missing physical destruction and killings.

The case of colonialism in Australia differs somewhat from other colonies of the time. First off, the colonialists were mostly English prisoners, poor people and other unwanted company. Another difference was that, unlike in the United States, Canada or New Zealand, the budding colonialism in Australia entailed no formal settlements, obtained through treaties with the indigenous peoples, in this case the aborigines.¹⁹⁴ This means that no open dialogues were formed between the two cultures, and left the aborigines with no real protection or rights in the eyes of the English settlers, which one can imagine made room for open racism, discrimination and injustice. The tense relationship between the parties and lacking rights of the aborigines soon came to light in the form of a newly formed policy. This policy was made in 1886, in order to enable a possible removal of children bearing mixed blood. These children were of mixed aboriginal and English heritage, and according to Krieken, it was precisely because the children’s genetics were half aboriginal that the policy was created, as

¹⁹² Krieken, *Cultural Genocide in Australia*, p. 128

¹⁹³ Krieken, *Cultural Genocide in Australia*, p. 131

¹⁹⁴ Short, *Australia: a continuing genocide?*, p. 53

the Australian state wished to “*address the dangers of the hybridity of mixed-bloods*”.¹⁹⁵ The dangers, as they were described, were a growing fear that these children could become a threat to the balance between the aborigines and the colonisers.¹⁹⁶ As such, these children were to become wards of the state, where their upbringing could be monitored. But, by making the state the legal guardians of “all children of Aboriginal descent”, expanding beyond the children of mixed heritage, the guardianship of the actual parents was overridden, due to them being of aboriginal ancestry and race.¹⁹⁷ By removing the children, the aboriginal parents were essentially deemed unfit for raising their children, which would result in two things: one, the parents and children would have very little relationship, since they had no bonding time and as such the parental/offspring-relationship would shift. Secondly, the children would grow up away from the influences of the aboriginal culture, meaning they would not share in that part of their cultural heritage. While Krieken explains that this policy was rather weakly upheld in the years 1886-1909¹⁹⁸, the policy still caused some families to undergo this treatment, and some children were removed. At this time it was mostly focused on children of mixed heritage however, “*who were to be removed at official will and sent to a mission or a child welfare institution, or to be fostered with a white family if sufficiently light-skinned.*”¹⁹⁹ Again, there seems to be a racial prejudice based on skin colour. Children removed from their families went to institutions controlled by the state, where the situation must have been much more institutional than homelike. Being taught the “civilised” ways of the white people and their culture, means a secured enforcing of the culture held by the white Australian population over the aborigines. Automatically one can assume this education held none of the teachings of aboriginal culture, instead focusing on western education and white ideals. The cultural enforcement would have been even greater for a light skinned child, as they were placed into a white family. Emerged in the way of a white family, the aboriginal child would become totally surrounded by the white culture. At least in an institution the supervision is lacking as there would be few to supervise many children, and one would be surrounded by other aboriginal children, which in turn could help upholding a bond to one’s aboriginal past. In a white family, provided only one child was placed in the family, the only playmates were white children. And with ever present “parents” the culture the aboriginal child grew up in would be totally void of aboriginal influences.

¹⁹⁵ Krieken, *Cultural Genocide in Australia*, p. 132

¹⁹⁶ Ibid.

¹⁹⁷ Krieken, *Cultural Genocide in Australia*, p. 132

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

As earlier stated, the policy in Australia was rather weakly upheld in the years between 1886 and 1909, but in 1915 the policy was strengthened, and even further reinforced in the 1930's.²⁰⁰ At this time the state had legal custody of virtually every aboriginal child despite them being of mixed blood or not, although the actual number removed from their aboriginal parents are unclear.²⁰¹ As Krieken explains it²⁰², there are multiple reasons for why the number of aboriginal children removed is unclear. First, the records of removal were inconsistent; secondly there are many missing records for children sent to homes that were not meant to actually foster aboriginal children.²⁰³ An idea of the reason for this could be light skinned children sent to orphanages or placed in white families, or children placed in homes for white children or un-authorized homes. These are however only musings over possibilities, and not actual facts. Third possible reason for inconsistent paperwork concerning aboriginal child removal, according to Krieken, is un-official removals of aboriginal children. Krieken explains how some children were removed and "placed in the care of church agencies or individuals."²⁰⁴ And then there were the other events which presented another difficulty in locating sufficient paperwork; "Also difficult to quantify, as Peter Read reminds us, were 'those who went away to white people for a 'holiday' and did not return'."²⁰⁵ This does evoke a whole other discussion, when considering the "vacation-children": why were these children removed in this way, considering there was a state approved and sponsored removal present already? One is removing children through an acknowledged policy, in this case the process was controlled and the white population had a "right" to remove the children, no matter how unfair and devastating for the aboriginal parents. Furthermore, there would have been some expectation that through the state, the children were protected, observed and might one day return. An official removal would have given the parents and children some knowledge of the situation; less so if the child disappeared while on "vacation". There is a certain degree of skulduggery in the fact that the white population could (perhaps) freely arrange for an aboriginal child to spend a holiday with the white people and simply never return the children again. And without proper papers, tracing the children would be next to impossible. And what would this mean for the aboriginal culture? Without enough young to carry on the cultural traits, the aboriginal

²⁰⁰ Krieken, *Cultural Genocide in Australia*, p. 132

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

culture would stagnate and start to die out, which the scholar Mako remark was the intention of the Australian state. She describes that “As with Canada, Australia's child removal policy was part and parcel of the civilizing project, which was inherently ethnocidal in character.”²⁰⁶, which sought to kill the aboriginal race by assimilating them into the white ideal and cultural beliefs. This leads to another discussion that modern sociologists have debated; the discussions of whether the forcible removal of children does not fit within the parameters of “Physical Genocide” has also lead to a debate as to whether the act might belong within “Biological Genocide”. The concept was discussed alongside “Physical Genocide” and “Cultural Genocide” during the Genocide Convention, but never achieved the support of its physical counterpart, nor sparked the same heated debate as “Cultural Genocide”. Nevertheless, “Biological Genocide” has held some importance within genocidal debates, and also in regards to the forcible removal of children. Some scholars, one being Akhavan, has discussed how the forcible removal of children might fit within “Biological Genocide” but claimed the connection is inferior to that of “Cultural Genocide”. Akhavan claims that there is a;

*“substantial difference between the forced transfer of children with the intention to “destroy” a group biologically as opposed to culturally. In the case of biological destruction, children are permanently separated from a group, with the intention to destroy the group’s capacity to physically reproduce itself. In the case of cultural destruction, however, children are separated from a group temporarily or for a prolonged period with the intention to “destroy” the group’s cultural identity rather than its reproductive capacity.”*²⁰⁷

So to explain, the act of “Biological Genocide” would mean physically prohibiting the aboriginal tribes in procreating and biologically maintaining their tribes. By controlling the birth of aboriginal children the tribe would slowly die of, as its members would grow up and die with no young to uphold the race and tribal group. And the removal of children would be permanent, in order to mix the blood and thereby thin out the race, or to enable a prohibition of the children later procreating in a way to strengthen the tribal survival by: one, having children born outside the tribe, perhaps mixed, who would shun the tribal ways, or secondly ensuring no new children would be born at all. This does not suit the situation in Australia.

²⁰⁶ Mako, p. 178

²⁰⁷ Akhavan, p. 264

From the scholar Robert van Krieken we know that “*that in the period 1912-1962, ‘probably two out of every three part-descent children spent some of their lives away from their parents as a result of the policy of removal’*”.²⁰⁸ While the number is high, it also indicates that the children spent time away from parents and tribe, but returned later in their life. The removal was therefore not permanent, and the children could return to their tribe where they could start their own families. And this fits the observations of Akhavan who herself describes the removal as temporary and therefore claims the consequences more cultural in nature. This is what most sociologist describes when discussing “Cultural Genocide” and the removal of children; how the acts had a cultural effect and how later generations have realised this cultural attack. This is also exactly what Akhavan describes, as she claims the intention behind the removals were to destroy the cultural identity of the aboriginal tribes.²⁰⁹ The cultural effect of the removal could present itself in things such as:

- 1) a language barrier as the children would have been taught English
- 2) A lack of aboriginal customs
- 3) Having grown up with western ideals, examples and structures. This means that the children would have been presented with the western cultural influences, rather than that of their tribe. This could have caused some later confusion and difficulties when the child returned to its parents.²¹⁰

And these are only my own observations based on the presented material; the actual effects could easily be even greater. And they have certainly been observed so, as the policy of removal undertaken by the Australian state has been grounds for later criticism and lamented by the aboriginal descendants and their supporters. The most recent work within the field of sociology concerning “Cultural Genocide” supports this notion that the cultural effects of child removal are great. As mentioned briefly prior, the “horizon of expectation” has changed for moderns scholars; where before the intention of research and discussions concerning “Cultural Genocide” were whether or not the concept should be included within International Law and/or Human Rights. Now, there seems to have been a shift of intention, instead trying to return the understanding of “Cultural Genocide” to its original definition presented by Lemkin. As a result of this, the research and debates places much importance on the act of forcibly removing children; because while the act is included within “Physical Genocide”, or

²⁰⁸ Krieken, *Cultural Genocide in Australia*, p. 132

²⁰⁹ Akhavan, p. 264

²¹⁰ Ibid.

just “Genocide”, the intention is to explain the cultural effect of the act and how it once again should be observed as an act of “Cultural Genocide”. By shifting this paradigm of thought, the scholars hope at the same time to strengthen the understanding and application of “Cultural Genocide”, and the potential of the concept. They do not however focus on an immediate inclusion within recognised law, such as the legal debates had hoped. Perhaps there is some recognition that “Cultural Genocide” is not broadly enough understood for it to be applied within law and/or Human Rights.

This does however not mean that there is no legal discussion within the sociologist writings upon “Cultural Genocide”. The scholars discuss the legal and societal debates in regards to Australia, between the aboriginal descendants and the Australian state, where the concept of “Cultural Genocide” have been applied and discussed more than once. One of the very earliest times the concept of “Cultural Genocide” was applied in Australian context dates back to 1959²¹¹; the application was from a memo by “a *Department of External Affairs officer, Phillip Peters, on Hasluck’s address to the Anthropology section at the 1959 ANZAAS congress*”²¹². Within the memo Peter had observed a statement made by Hasluck which claimed;

*“that cultural genocide is a prerequisite of full assimilation of the Aborigines into the non-Aboriginal community’, making ‘no reference to the wishes of the Aborigines as regards their future’ and failing to ‘envisage any alternative which might allow Aborigines to preserve some of their customs and culture’.”*²¹³

Since the 1950’s the debate has however been furthered by the aboriginal peoples. Although, it is interesting how soon after the Genocide Convention and exclusion of “Cultural Genocide”, the concept was connected to the acts committed against the aboriginals by the Australian state. Especially since the removal of children still happened, as according to Robert Krieken. He refers to the work done by another scholar, Rowena MacDonald, which suggests that in the years 1912-1962 the act of removing children of aboriginal heritage afflicted “*probably two out of every three part-descent children*”.²¹⁴ Here we also meet a defining difference in the earlier writings upon the subject of “Cultural Genocide” and the

²¹¹ Krieken, *Cultural Genocide in Australia*, p. 146

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Krieken, *Cultural Genocide in Australia*, p. 132

modern that is the current focus of this analysis. While the legal approach focused on the discussions and drafts that was made, explaining in detail the different times the concept was mentioned, the sociologist approach is less legally focused. As mentioned before, the aim does not seem to be admitting “Cultural Genocide” to the realm of law, rather studying the events of a society that could be called “Cultural Genocide”, the effects of this and how the concept was later used by the affected cultural group. And therefore, while the concept crept up in major discussions concerning retribution and acknowledgement for past actions, the subject is not explained in the same detail as when the focus was legal. Rather, the disputes and debates serve as a way of observing the society at the time, and especially the aboriginal’s situation. There is however focus on one specific report, inquiring into whether the removal of aboriginal children were a product of “Cultural Genocide”.

The report is mostly referred to as the BHT report, but its full name is the Bringing Them Home report. This was the name given to the final report of a bigger inquiry, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, which was piloted by the Human Rights and Equal Opportunity Commission.²¹⁵ Starting in 1995 and continuing for two years, oral and written testimonies were conducted, from foster families, aboriginals, church representatives, state representatives and more. This resulted in the final report of 689 pages, now known as BTH (Bringing Them Home), which was tabled in Parliament on 26 May 1997.²¹⁶ One of the defining points made by the report was that *“not one indigenous family has escaped the effects of forcible removal’ and that ‘most families have been affected, in one or more generations, by the forcible removal of one or more children”*.²¹⁷ The report furthermore stated that the intention of the removing the aboriginal children was destroying the aboriginal culture, and could therefore possibly be *“labelled ‘genocidal’ in breach of binding international law from at least 11 December 1946’, when the UN General Assembly adopted its resolution declaring genocide a crime under international law.”*²¹⁸ It is however here more recent sociological writing claim there should be a bigger focus on the cultural aspect, and tries to once again reclaim the forcible removal of children as an act of “Cultural Genocide”, as has been discussed earlier in the analysis.

²¹⁵ <https://bth.humanrights.gov.au/significance/about-bringing-them-home>

²¹⁶ Ibid.

²¹⁷ Krieken, *Cultural Genocide in Australia*, p. 132

²¹⁸ Krieken, *Cultural Genocide in Australia*, p. 133

There has however also been some discussion against proclaiming the child removal as an act of “Genocide”, as the BTH report had stated. The reason being, that “Genocide” is based on an intention to completely wipe out a people, and since the legislation allowing the removal policy held no statement of this, “*the ‘crime’ of genocide could only be committed, as Hal Wootten has pointed out, by individuals*”²¹⁹, and not the state. Wootten also points out that the BTH report is fairly one-sided, offering little chance for explanation on behalf of the individuals that were part of the force removing the children or housing them, thus “*the failure to investigate individual circumstances makes problematic any finding that the removals were all carried out with intent to destroy a group, as such*”.²²⁰ The reason there is focus on the BTH report, is that it recognises the actions taken against the aboriginal peoples, while critics proclaim that the report is biased, which prompted a discussion as to the nature of the removal. Even though the report declares the removal of aboriginal children an act of “Genocide”, the two opposing camps of discussion are whether the removal should be defined as a result of “Cultural Genocide” or a result of welfare. Robert Krieken is one of the scholars that discuss the debate in his articles, describing that;

*“The Commonwealth Government’s response to the Bringing them Home report (...) concentrated on contesting what proportion of the Aboriginal population was in fact removed from their families, (...) protesting that Aboriginal children were treated no more appallingly than white children and, above all, insisting that the underlying intent, and often the actual effect of child removal policies was always the ‘welfare’ and ‘interests’ of Aboriginal people.”*²²¹

A complication of the two camps is that they completely negotiate each other. Welfare is normally meant to be understood as undertaken for the good of the people. If the aboriginal parents had truly been deemed unfit for parenting the removal of children would make excellent sense. And as the analysis has earlier stated, the state had in some way deemed the aboriginals unfit parents, as the state had become the legal guardian of many aboriginal children. There is however some points worth discussing in this case; if it was a matter of welfare, why was the children of mixed heritage only removed in the beginning? If there was enough cause for concern, such as unfit living or abuse that would threaten the child’s

²¹⁹ Krieken, *Cultural Genocide in Australia*, p. 135

²²⁰ Ibid.

²²¹ Krieken, *Cultural Genocide in Australia*, p. 140

upbringing, a removal would be beneficial. But the living conditions were not explained or given as reason for the policy of removal, and it would not explain why some children were left behind. And furthermore, even though later children of sole aboriginal heritage were also removed, why were the children in some cases permitted to return to their former homes, as stated in one of Krieken's articles?²²² If however the intention was to eradicate the aboriginal culture and people by assimilating children into western standard, as would be an example of "Cultural Genocide", the concept of welfare would be sorely misplaced. As such, "Cultural Genocide" and "Welfare" denies each other's validation. The stance of most sociologist scholars is also that the events in Australia are an example of "Cultural Genocide". And furthermore, it is an example of why the removal of children should once again be defined as "Cultural Genocide", based on the strong cultural effects of the removals and lack of physical destruction. As described by Krieken; "*The Australian discussions of the 'forced transfer of children' clause in the Convention is precisely a telling illustration of (...) how problematic and unsatisfactory the distinction between 'destruction as killing' and destruction as cultural 'euthanasia' (...) actually is.*"²²³

Moreover, several scholars note that the issue of Australian aboriginals is a continuing debate, as some aboriginals claim that they are still victims of a continuing genocidal treatment; "*Yet while direct physical killing and genocidal child removal practices may have ceased, some indigenous people contend that genocide is a continuing process in an Australia that has failed to decolonize and continues to assimilate.*"²²⁴ As such it is evident that Australia and its aboriginals is part of a continuing debate as to the validation of "Cultural Genocide" in terms of societal and cultural definition. And according to the website for Bringing Them Home, a website concerned with spreading the information in relation to the BTH report and later actions, the subject is still a part of Australian Societal debate. In 2017, on the anniversary for the BTH report, a new report was made. This report, entitled "Bringing Them Home 20 years on: an action plan for healing", which focused on helping the affected aboriginal communities heal.²²⁵ Evidently, according to recent sociologist work and contemporary societal debates, there is reason to once again study the past removals of

²²² Krieken, *Cultural Genocide in Australia* , p. 132

²²³ Krieken, *Rethinking Cultural Genocide* , p. 144

²²⁴ Short, *Australia: a continuing genocide?*, p. 46

²²⁵ <https://bth.humanrights.gov.au/significance/about-bringing-them-home>

aborigines' children from the cultural standpoint, in order to further the understanding of both the removals as well as the concept "Cultural Genocide."

Conclusion

As the analysis has proven, the concept of “Cultural Genocide” can essentially be divided into four categories with each their own definition of the concept. The concept found its beginning as a part of the embracing “Genocide”, where there were multiple fractions. Lemkin’s first thoughts upon the subject were somewhat limited, focusing only on “Genocide” and its ramifications within different structures. While one of these structures was the cultural effect, and Lemkin even early on gave great importance to this, “Cultural Genocide” was still not a fully realised idea. Even the name “Cultural Genocide” was not used at this time, and even so it is where the concept has its beginnings. As established in the first analytic section, Lemkin’s thoughts upon the subject of “Genocide” were based on experiences of WWII and the Nazi forces. As a Polish Jew Lemkin had fled his country, and when in the States begun theorising upon the concept of “Genocide”, hoping to turn it into an internationally acclaimed law preventing future instances of “Genocide”. When the Genocide Convention convened in 1948, Lemkin presented three finalised forms of “Genocide” he wished to be included within International Law. One was the finalised version of “Cultural Genocide”. During the convention however, there was a change in understanding regarding the three forms of “Genocide”. As the specific analytic section showed, some country’s delegations supported the claim of “Cultural Genocide”, proclaiming that culture were to be considered an important part of an individual and its world. The loss would be substantially harming, not physically to the body as in the case of “Physical Genocide”, but to the mind of the bereft. Critiques of “Cultural Genocide” were in turn parted into two blocks: the confused and those who feared retribution. Affected by WWII as the convention were, the physical examples of “Genocide” were obvious; mass killings in concentration camps were at this time a supported fact and had been brought against the Nazi’s in trial. Physical harming was easy to measure and prevent, but how do one measure culture? As the Danish delegate had stated, how do one compare physical killing to the burning of a library?²²⁶ So, while the understanding of the physical aspect of “Genocide” grew, it begun to overtake the concept completely, and “Genocide” became almost synonymous with physical killing and destruction. The cultural aspect, alongside biological, was swept to the side almost completely, if not for one part of “Cultural Genocide” being given physical relevance; the forcible transfer of children. This was the only surviving part of “Cultural Genocide” in the final draft, and at that time it was no longer associated with anything cultural. The other

²²⁶ Krieken, *Cultural Genocide in Australia*, p. 129

critique were in turn fear of retribution, as some countries feared it would mean they would become liable for actions undertaken in their colonies years before or at this time. This, alongside the widespread confusion amongst Western countries, ensured “Cultural Genocide” was denied entry into the final draft of the Genocide Convention, and subsequently International Law as well as Human Rights.

This did, however, not mean that “Cultural Genocide” disappeared from legal debates. The concept blossomed as scholars tried to once again have the concept included within International Law, and within Human Rights. In the 70’s and throughout the 90’s had an on-going debate upon the subject of “Genocide”, where the confusion regarding “Cultural Genocide” was addressed. In the hopes of better defining the concept, multiple scholars tried to connect it to “Colonialism” and especially to the concept of “Ethnocide”. While this was done with the best of intentions, it is also clear that the confusion only became greater by doing this. As the analytical section explains, the fault was comparing the concepts, despite basic differences, without ever fully defining them. Continual comparison with no actual combined definition meant only that the less defined concept, “Cultural Genocide”, was being rewritten to fit “Ethnocide” without ever being completed or usable. Instead, the already defined points of the concept were being obscured as the understanding turned from Lemkin’s original definition and slowly lost its cultural aspect, as it took on the racially and physical definition of “Ethnocide”. Unsuccessfully it might be added, as there now were confusion as to whether “Cultural Genocide” had physical effects or not. As a result, it was still not possible to clearly define “Cultural Genocide” in a way where it might be applicable to law, and so the discussions within the legal fields stalled.

This led to a big shift, easily the biggest shift “Cultural Genocide” has undergone. When the legal discussions stalled, which goals were defining and including “Cultural Genocide” within the legal system, the concept re-surfaced in another scientific field. Within the field of sociology the concept of “Cultural Genocide” began to gain importance in relations between colonialists and the indigenous people. In terms of this paper it has been exemplified in the debate concerning Australia and its aboriginals. The authors of such research papers have then been forced to explain the evolvement of “Cultural Genocide”, before settling on the one point of the phenomenon retained in the drafts of the Genocide Convention. The forceful removal of children becomes the analysed event, leading to a discussion as to whether the removal of children should not once again be observed as a part of Cultural Genocide. It means that rather than a discussion as to the relevance of “Cultural Genocide” in term of legal

application, sociologists have decided to tackle the confusion concerning the concept. Returning the idea of the forceful removal of children having a cultural effect, the concept of “Cultural Genocide” is strengthened, and enables a fuller analysis of the events in Australia. Losing the removal of children weakened the understanding of “Cultural Genocide”, which modern research thereby tries to return to Lemkin’s original model of the concept. There is still the problem of “Genocide” being understood as a physical action, but as scholars now try to return “Cultural Genocide” to its original form, the definition and application of the concept in turn becomes better. There is also the change in “horizon of expectation”; in the three legal analytical sections of “Cultural Genocide” the discussions were meant to result in some form of actual law preventing “Cultural Genocide”, alongside the form of “Physical Genocide”. Within the fourth analytical section, the change to sociology, the intention and wish is instead to return “Cultural Genocide” to its original definition and create an opportunity for further understanding of the concept through this, together with making it possible to apply it “Cultural Genocide” as a fully understood concept to historic events. The intention of modern research is therefore simply to understand “Cultural Genocide” better and define it in a way that enables future work within the field, and not a prolonged confused discussion. And if this return to the original definition might spread to the legal field once more, it is certain that “Cultural Genocide” has found a place within sociology and the discussions concerning indigenous people.

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