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Genocide and Transitional Justice

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Genocide and Transitional Justice

Courts in Conflict: Interpreting the Layers of Justice in Post-Genocide Rwanda by Nicola Palmer
New York: Oxford University Press, 2015

Making and unmaking nations: War, leadership, and genocide in modern Africa by Scott Strauss
Ithaca: Cornell University Press, 2015

A History of the Armenian Genocide by Ronald Grigor Suny
Princeton: Princeton University Press, 2015.

The protection of the right to life of a human person has been one of the most influential political and legal norms that seemed to have gained so much traction since the end of the Second World War, particularly seen in the invocation of such norm in many national constitutions as well as various documents in international law. While contemporary empirical social science research is still primarily engaged in investigating the causes and factors that contribute to human rights violations (particularly, extrajudicial killings, torture, enforced disappearances), analysts and scholars tend to treat the plausible causes of genocide as distinct from those “regular” human rights violations. Notably, it appears that much of the recent scholarship focuses on a wide range of plausible causes and conditions that facilitate the state agent’s *episodic* commission of those human rights violations, while the general causes of *genocide* tend to attract lesser scholarly and policy attention especially among social scientists. Yet, the empirical puzzle pertaining to the causes and conditions of genocide is an extremely important topic not only for social scientists but also to policy-makers; for a more reliable social scientific understanding of genocide could potentially help states and global governance institutions in preventing such phenomenon.

Thus, the three books reviewed here contribute towards a better understanding of genocide: Nicola Palmer’s *Courts in Conflict: Interpreting the Layers of Justice in Post-Genocide Rwanda*; Scot Straus’ *Making and unmaking nations: War, leadership, and genocide in modern Africa*; and, Ronald Grigor Suny’s *A History of the Armenian Genocide*. This review essay is structured as follows. First, it inquires into the definition and historical background of genocide as well as the methods employed by those three authors in their own empirical and conceptual analyses. Second, I discuss the plausible causes of genocide in conversation with those three books’ distinctive diagnoses of the causes of genocide implicitly and explicitly articulated. Third, the essay examines the complicated dynamics of post-genocide transitional

justice processes. Finally, I explore how Suny's own historical account of the Armenian genocide contributes to our broader understanding of the causes of genocide.

The structure of my review essay reflects the scope of analytic concerns of the authors of those three books. Particularly, aside from providing a clear conceptualization of genocide, Straus is primarily interested in exploring the causes and conditions that facilitate the emergence of genocide across geographical space and historical time. To that extent, Scott Straus, as a comparative politics scholar, employs a carefully controlled qualitative comparison of genocide and non-genocide cases across the African continent, including those in the Ivory Coast, Mali, Senegal, Sudan, and Rwanda. In contrast to Straus' book, legal scholar Nicola Palmer in *Courts in Conflict* is interested in the ways various political actors in the post-genocide context generate and sustain a sense of transitional justice, with a particular focus on Rwanda's three post-genocide courts and how various judicial and political actors contribute to justice-making. In addition to careful legal and conceptual analysis, *Courts in Conflict* marshalled its analysis using empirical evidence based on Palmer's multiple phases of immersion and fieldwork in the International Criminal Tribunal of Rwanda and also within Rwanda, specifically by conducting interviews, focus groups, ethnographic observation, discussions, and case law analysis. Finally, Suny's work has a narrow yet historically important empirical focus, specifically by offering a fascinating historical account of the genocide of the Armenians towards the end of the First World War. *A History of the Armenian Genocide* is perhaps the most comprehensive and well-written account on the subject, with the help of marshalling historical information from archival documents and various eyewitness accounts.

What is genocide? How do we distinguish genocide from other collective acts of violence? The origin of the term genocide is rich and conceptually intriguing. Notably, the term genocide, as a relatively recent social science concept, only emerged after the Holocaust; particularly, when Raphael Lemkin, a Polish-Jewish lawyer, used the term to describe the horrific and systematic killings of the Jews during the Second World War. For sure, similar mass acts of political violence that occurred prior to the Holocaust can also be called incidents of genocide. In *Making and Unmaking Nations*, Scot Straus sharply differentiates genocide from other manifestations of collective political violence (terrorism, rioting, violence during elections) by arguing that those limited forms of violence are only targeted towards its present targets or threats. Meanwhile, genocide is a "form of future-oriented, anticipatory violence in which perpetrators imagine a recurrent threat from, or permanent incompatibility with, a specific social category" (p. 10). By aspiring to eliminate a particular civilian group in a given area, perpetrators of genocide aim to violently decimate constructed threats posed by the people of those identified targeted population but also the future generations of individuals emanating from such group. In normative terms, such distinctive feature makes genocide perhaps the worst macro-social form of human rights violation and collective political violence. Indeed, such unique feature of genocide as a form of political violence implies the political and scholarly significance of *Courts in Conflict*'s main area of inquiry: the interactions between local (*gacaca* courts), national/domestic (Rwandan national courts), and transnational transitional justice and judicial institutions (particularly the United Nations International Criminal Court as they concurrently exact justice in post-genocide Rwanda. As such, Palmer rightly argues that the rise of the International Criminal Court, as one of the foremost institutions for transitional justice, facilitated the increasing focus on the "exceptional" nature of violence which includes acts of genocide. This sense of uniqueness of genocide as a form of macro-political violence legitimizes the desire for multivalent forms of transitional justice — ranging from local to international judicial remedies. Conceptually, *A History of Armenian Genocide* appears to agree with the two other books under review, to the extent that any form of mass murder should *not necessarily* be equated with genocide. Suny, however, distinguishes genocide from ethnic

cleansing (as it was in the case of American Indians or Australian aborigines); whereas ethnic cleansing results to killing with the primary intention of systematic displacement and resettlement of an ethnic group, while genocide makes the targeted population “impotent, politically and possibly culturally” (351). In other words, the distinction is on *intention*, whereby genocide’s ultimate goal is total elimination, while ethnic cleansing aims only at “displacement and deportation” of the targeted population (351). Thus, in Suny’s words, genocide must be conceptualized in a way that is “not the murder *of people* but the murder *of a people*” (italics mine, p. 351). That only means that the targets were clearly and systematically identified as belonging to a specific and self-identified group of people, as it was the case of the Armenians.

Ultimately, both Suny and Straus rightly maintain that cases of genocide usually begin with the construction of a supposed existential threat posed by the target population. While Suny focuses on the dynamics of genocide that occurs within a crumbling *Empire* (as in the case of Armenians within the Ottoman Empire), Straus focuses on cases of genocide in *post-colonial states* in Africa. Despite the difference in temporal focus, both works are relatively successful in marshalling evidence that threat construction — or the *non-material, ideational* macro-social processes of framing the targeted populations as fundamentally dangerous to the existence of the majority — effectively shapes how *material* conditions and resources will be used in the employment of coercion and violence towards the extermination of a given civilian category.

Moving on, one of the most important research questions in human rights and the comparative politics of violence refers to the causes and conditions that facilitate genocide. What causes genocide? Under which conditions can we expect for genocide to occur in a specific territory and temporal period? Under which conditions can we expect for genocide to least likely to occur? Those questions comprise perhaps the most important puzzle in empirical social science research on genocide, and Straus’ book is ambitious, methodologically sophisticated, and relatively successful in offering a satisfactory explanation for such puzzle. In *Making and Unmaking Nations*, Straus argues that genocide is an outcome of the interaction between strategic and ideological conditions. While supporting the mainstream view that material considerations such as coercive capacities and battlefield conditions do matter, Straus highlights “founding narratives” or prior ideological or ideational frameworks as the quintessential element in the causal story that underpins cases of genocide. Particularly, founding narratives that embrace tolerance, inclusivity, and non-hierarchical sense of community; more importantly, genocide needs to be conceived as a multi-stage process with factors contributive to escalation or restraint. Quite similarly, *Courts in Conflict*’s analysis of the causes of Rwandan genocide, though not the primary aim of the book, underscores how central state policies and local politics shape the processes leading to genocide. That means that the very early state-building processes in Rwanda facilitated the concentration of power in a very small ruling class, who in turn, sustainably deployed ethnic identity politics into the public sphere and the legal framework as a basis of state-society interaction. Suny’s analysis, however, offers a more historically nuanced set of causes that are specific to the Armenian genocide. Particularly, *A History of the Armenian Genocide*, through a holistic historical interpretation, attributed the Armenian genocide to a confluence of several transnational causes and factors that include “the increasingly radical attitudes of Turkish national imperialists...the imposition of the European reform plan; the breakdown of CUP [Committee of Union and Progress] – Armenia relations...the colossal losses at Sarikamis...and the rapid reconstruction of Armenians as an imminent internal danger”. Thus, the Armenian Genocide can be historically understood as a derivative outcome of an emerging trend across Europe and the Ottoman Empire in state-building through “ethnic homogenization” of nations — which, unfortunately,

in policy terms, also meant the systematic killings of selected communities of peoples and minority populations. Suny's impressive work should not be read as a "positivist" work that explicitly offers a set of generalizable causes that lead to instances of genocide. Rather, it is a wonderful piece of sophisticated, evidence-based, and analytically astute historical work that seeks to imbibe *Verstehen*, rather than *Erklärung* — that is, to understand the motivations of key political actors as well as the long-historical and emerging socio-political and economic trends across Europe and the Ottoman Empire that jointly facilitated the emergence of the Armenian Genocide.

Indeed, both *Courts in Conflict* and *Making and Unmaking Nations* emphasize the transnational and holistic analysis of genocide (and its aftermath, as in the case of transitional justice for Palmer), specifically by employing historical interpretation using various interpretive frames of various actors and at varying levels of analysis. Those two books also bring how various factors endogenous and exogenous from the formal territorial limits where acts of genocide occurred might have facilitated such a catastrophic outcome. Straus' account, on the other hand, emphasizes the endogenous and intra-national factors within African countries as his cases, which, by implication, also undermines the plausibility in which transnational factors beyond Africa could have contributed to the perpetration or prevention of genocide.

In terms of epistemology and analytical approach, the three books under review carefully applied the most effective combination of methods and analytical approaches that suit the way they framed their primary research puzzle. In *A History of Armenian Genocide*, the puzzle is clear and modest: to tell a history of the genocide of the Armenian people during the Ottoman Empire's rule. Its goal was not to tell generalizable causes that facilitate genocide, but to tell a story based on meticulous investigation presented on an evidence-based narrative and sophisticated analysis "of what is possible to know" (p. xii). *Courts in Conflict*, which investigates Rwanda's post-genocide justice system, as well as *Making and Unmaking Nations*, which inquires into the causes of genocide in Africa, both marshalled evidence and extracted data from intensive fieldwork, interviews, ethnographic observation, secondary materials, and archives — all of which were crucial in successfully reinforcing the explanatory power of their central arguments. The three books under review exemplify the highest standards of scholarship on human rights, for they offer a fair-minded, careful, and comprehensive deployment of empirical evidence in order to build their theoretical arguments that advance our knowledge about human rights and genocide.

Surely, the books under review generate several important theoretical and political implications. The first implication refers to the ways in which we, as part of the public sphere, could prevent genocide in the future. Extrapolating from Suny's analysis of the Armenian genocide, governance entities that are faced by extreme crises of political decay and challenges of consolidation — particularly those high-ranking state officials and societal elites that are harboring extreme nationalist and ethnicity-oriented discourses — are more likely to incite genocide. Although not explicit in Suny's work, it appears that extremist nationalist discourses, coupled with ethnocentric biases in the face of extreme crises are the key macro-structural factors that ferment the seeds of genocide. Suny's work also highlighted the importance of regional trends of ethno-homogenization in Europe and Ottoman Turkey at that time, and one may wonder if the current anti-immigration discourses in crisis-ridden United States and Europe — most especially those discourses surrounding the "Brexit" vote that was fuelled by the refugee and anti-immigration debates in the United Kingdom or even the exclusionary political rhetoric of US Republic Presidential Candidate Donald Trump — could lead to potentially disruptive acts that might seem unimaginable in post-Second World War societies

in the West. On that regard, *Making and Unmaking Nations* contends that states with “founding narratives” that build on inclusivity and multi-culturalism are less likely to foment genocide, in contrast to those states that highlight the primacy of a particular ethnic majority above minority populations. The United States, following Straus’ argument, seems unlikely to have those preconditions considering that its dominant founding political narrative is built on open immigration. One should note, however, that founding narratives are not static — a point that Straus apparently missed. They can be manipulated by political actors to suit their political interests, and they can be strategically reframed depending on the context and social milieu. In other words, questions about race, religion, gender, among others — as categories of identity politics — can be instrumentally undermined by leaders even in cases when the initial preconditions of the state’s founding narrative are hinged on political inclusivity. Straus in his book, however, seems reasonably cautious that his arguments about the conditions for genocide are somehow probabilistic rather than deterministic.

Second, our scholarly endeavors should not be limited to studying the preconditions and factors that trigger and sustain genocide; instead, we should also invest our analytical energies in examining the ways in which we can promote effective transitional justice in countries or territories that are just recovering from the disastrous aftermath of genocide. Hence, *Courts in Conflict* demonstrates that the promotion of justice in the aftermath of genocide is not an easy task, and it shows the bureaucratic and paradigmatic conflicts amongst the multi-level courts starting from the United Nations International Criminal Tribunal for Rwanda (ICTR), the national-level courts of Rwanda, and the sub-national level *gacaca* community courts. *Courts in Conflict* recommends that when such different transnational and domestic courts are existent in one country, “there must be direct, equal, and continued contact between the judicial and legal officers in each of the institutions”. The book by Palmer, however, did not specify exactly how such “contact” will be implemented in policy terms so as to promote a harmonious bureaucratic implementation of justice across various judicial levels.

As shown in the rich empirical investigation on Rwanda, there are two general ways that the work of such courts could be harmonized and be complementary. The first step deals with standardizing their operational goals and bureaucratic processes and protocols, to the extent that all those three courts would have clear jurisdiction on which cases need to be tackled by each of them. The joint training in terms of workshops and seminars of judicial workers of all those three branches could also help in promoting collective understanding of transitional justice that needs to be implemented by all courts involved. The second issue deals with resource optimization. Indeed, societies in the aftermath of a genocide need considerable time in rebuilding their institutions, and such situation poses severe challenges in the optimization and coordination of judicial policies and processes pertaining to transitional justice. The effective coordination of domestic resources as well as foreign assistance in the transitional justice system is crucial.

In sum, the three books under review advance our knowledge about genocide and human rights. The current generation might think that genocide is now inconceivable amidst the global appetite for liberal democratization. Yet, it is our moral duty to undermine conditions that foster political exclusivism, domination, and existential elimination — and such conditions are prevalent in today’s public discourses worldwide. The success of genocide studies as a field of inquiry depends not only in its analytic rigor; indeed, the scholarly community can also be judged by how far our work contributes to the improvement of welfare of all human individuals regardless of their differences — in other words, translating knowledge into concrete emancipatory politics.