

**Was there a Nazi Genocide of German Gypsies?**

by

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## Introduction

Attempting to answer the question “Was there a Nazi genocide of German Gypsies?” immediately encounters several problems. The first problem was how to approach the concept of genocide. I began with the person who coined the term, Raphael Lemkin, and his work on the topic in the early 1930s. I immediately noticed that his earlier conceptions and the official definition were clear different. This evolution of how the concept of genocide has been understood, its historical evolution from then until the 1990s, is briefly discussed in chapter I.

The second problem is attempting to critically understand how Gypsies fit into Nazi Germany; how they were perceived by mainstream German society and why. Without much sociological literature on the topic specifically I was left to use historical sources and theorize from there and apply existing theoretical literature where I thought it matched with empirical history. From there I attempted to construct evidence that would perhaps answer the question of genocide in chapter II.

After evaluating genocide as a concept and the history of Gypsies from 1933-1945 I attempt to finally answer the question of whether or not genocide took place. But first, as it may be obvious, to ask the question is to presuppose that there has been considerable doubt about the topic. Therefore chapter III begins with a brief analysis of the debate surrounding the violence that Gypsies endured in Germany during the Nazi regime. It is the testament to the importance of empiricism that illuminates the logic that when new evidence comes to bear understandings of concepts change and with it our perceptives of historical events. In light of this evolution of our understanding of genocide and historical research on the Gypsies during the Nazi regime, I will review the elements of the Nazi persecution in Germany concerning the Gypsies in Germany between the years 1933-1945.

## Chapter I

### Changing understandings of genocide

The term genocide is of recent origin. Created in 1943 by international jurist Raphael Lemkin to describe Nazi policy, the word was introduced in his book *Axis Rule in Occupied Europe*. He combined the Greek prefix “genos” meaning tribe, race or nation, and the Latin suffix “cide” meaning killing. The history and evolution of Lemkin’s concept, that has now reached immense usage by scholars and in public alike, does not begin and end in 1943. How did Lemkin create the term genocide and what was its intended purpose?

In 1933 Lemkin attended the Fifth International Conference for the Unification of Penal Law in Madrid. There he presented a paper entitled “Acts Constituting a General (Transnational) Danger Considered as Offences Against the Law of Nations.” In it he discusses how some actions taken against individual human rights, individuals and a collectivity, two or more collectivities or combinations of the last two examples, in one nation may have effects in other nations.<sup>1</sup> Offences of such importance “that they interest the entire international community,” especially offences that combine the individual and the collectivity which he terms “*acts of extermination*,” constituting of massacres, pogroms, and “actions undertaken to ruin the economic existence of the members of a collectivity, etc.” specifically ethnic, religious or social collectivities.<sup>2</sup> In the presentation of the last section of his paper, a time when representatives from Nazi Germany and the Soviet Union walked out,<sup>3</sup> we see the roots of the concept of genocide beginning to formulate. He attempts to include “all sorts of [other] brutalities” that “attack the dignity of the individual” when these brutalities “have their source in a campaign of extermination directed against the collectivity in which the victim is a member.”<sup>4</sup> Lemkin attempts to take all of these crimes as a whole, which “constitute an offense against the law of

nations” an offense he names “*barbarity*,” and should be of international concern since these actions are concerning collectivities; in short, they “constitute a *general (transnational) danger*.”<sup>5</sup> As we will see Lemkin’s concept of “*acts of barbarity*” is the categorical antecedent of genocide. Throughout his report he consistently emphasizes the interconnectedness of states and nations. Due to this interconnectedness he justifies and reinforces the importance of why “*acts of barbarity*” should concern all of those in the world, not to be seen in isolation by a small population in a single nation-state.<sup>6</sup> In addition to the crime of *barbarity*, Lemkin articulated another crime, that of *vandalism*. Lemkin asserts the crime of *vandalism* is another way of attacking a collectivity that takes the form of a “systematic and organized destruction of the art and cultural heritage in which the unique genius and achievement of a collectivity are revealed in fields of science, arts and literature.”<sup>7</sup> At the end of his report, Lemkin sets out various articles that legally constitute *acts of barbarity*.<sup>8</sup> Ten years would go by before Lemkin would coin his neologism; meanwhile, his original conception of *acts of barbarity* would continue to be an idea that he would keep in mind as he experienced the horrors of World War II and sat to write his seminal book *Axis Rule in Occupied Europe*.

*Axis Rule* was published during the global chaos of World War II. Its appearance in November of 1944 portrayed that Lemkin seemingly was convinced that had a venerable idea and had made a large intellectual “discovery.” The concept, not created in a vacuum, took evidence from the German government’s policies and actions in occupied Europe. His discussion of genocide begins by making two very crucial distinctions: that “by ‘genocide’ we mean the destruction of a nation or of an ethnic group” and the coining of the word is meant “to denote an old practice in its modern development.”<sup>9</sup> In this inaugural conception, genocide does not mean the complete destruction of a human group, but instead refers to a “coordinated plan of different

actions aiming at the destruction of *essential foundations* [my emphasis] of the life of national groups, with the aim of annihilating the groups themselves.”<sup>10</sup> Couched in these terms, Lemkin conceived of genocide as opposed to the Nazi form of denationalization, or Germanization in Europe. The oppression of national or ethnic groups, in various forms, was undermined, and at its root, were the essential foundations of the groups in question. From this vantage point he outlines political,<sup>11</sup> social,<sup>12</sup> cultural,<sup>13</sup> economic,<sup>14</sup> biological,<sup>15</sup> physical, religious,<sup>16</sup> and moral<sup>17</sup> techniques of genocide.

The physical technique of Lemkin’s original conception of genocide included three aspects: racial discrimination in feeding, endangering of health, and mass killing. First, racial discrimination in feeding referred to a process of distributing food according to the racial hierarchy imposed by Nazi Germany.<sup>18</sup> Second, endangering of health at the time that Lemkin was writing, and perhaps largely due to what knowledge was available at the time, was expressed as the occupiers intentional deprivation of “elemental necessities for preserving health and life” such as the deliberate withholding of firewood in winter and medicine for the sick.<sup>19</sup> The last technique of physical genocide, one that has had a lasting impact on subsequent genocide scholars, was mass killing. Here Lemkin identifies mass killings directed toward Poles, Russians, and Jews; intellectuals in Poland, Bohemia-Moravia, and Slovenia, would be targeted mainly due to the assumption and fear that they would harbor national ideas and promote resistance.<sup>20</sup> Furthermore, as in 1933, Lemkin concludes his discussion of genocide in *Axis Rule*, with prescriptions for international law and the criminalization of genocide. He suggests, perhaps with some frustration in light of the earlier response a decade before, that it would be “advisable” that genocide takes its place in international law.<sup>21</sup> The international nature of genocide, its genesis in the 1933 Madrid report, came to theoretical fruition for Lemkin in *Axis Rule* when he advocated

for an international multilateral treaty and the introduction of its an integration into the criminal code of each signatory country for his now revised, reformulated, and somewhat clearer conception of genocide.<sup>22</sup> Undoubtedly the publication of his book at this pivotal historical moment aided his cause in calling for the criminalization of the crime of genocide.

In 1945 Lemkin published “Genocide: A Modern Crime” which presented, again, a more polished and confident version of his concept. In it he discusses, and rightly so, that genocide does not necessarily have to mean killing. What he does place greater emphasis on in this formulation is the aspect that genocide refers to a plan “aimed at destruction of the essential foundations” of national groups (here he omits ethnic groups in this section) in such a way so that these groups cease to exist or have a difficult time doing so.<sup>23</sup> In a section, sub-titled “Philosophy of Genocide,” Lemkin again asserts that genocide is not a phenomenon that was created with the advent of Nazism in Germany. Indeed genocide is an “ancient barbarity” that the Nazis radically “transformed into a principle of government.”<sup>24</sup> One major difference between this formulation and the previous formulation in *Axis Rule* is the mention of death camps and extermination policies. By citing the War Refugee Board report of 1944, Lemkin bolsters the section on the physical technique of genocide with the presence of evidence.<sup>25</sup> In addition, he also includes specific elements of what the crime of genocide includes: the intent of the perpetrators to “destroy or degrade an entire national, religious or racial group” by attacking an individual of such group, and how the perpetrators can be a state, political or social group.<sup>26</sup> Much of what is written in “Genocide: A Modern Crime” is a reformulation of the chapter on genocide in *Axis Rule*, however in a later article he makes further specific reference to other genocides in history (Carthage, religious groups during the Crusades, Albigenses and the Waldenses, and more recently the Armenians) while noting that the Nazi genocide in Europe is

the “most deliberate and thorough.”<sup>27</sup>

In 1947 he published another article, entitled “Genocide as a Crime under International Law.” In it he again restates that he had presented similar ideas in 1933, to which they were ignored, and how critical it is that genocide be adopted as a crime under international law. It is a testament to Lemkin’s determination that he persistently made his case to the international community about the crime of genocide. Here he includes abortions and sterilizations as aspects of genocide and received a boost of legitimacy by the fact that the Nuremberg trial gave support to his concept.<sup>28</sup> Lemkin drafted a resolution that was to go before the United Nations Assembly but instead was sent to the Legal Committee.<sup>29</sup> There it was sent to the General Assembly which then approved the resolution on December 11, 1946 under the title of 96-I.<sup>30</sup> At this point the political and cultural references to the definition had steadfastly maintained themselves although it is considerably hard to recognize from the inaugural formulation of Lemkin’s in *Axis Rule*.<sup>31</sup> From here the resolution was to be taken to the Economic and Social Council of the United Nations. The resolution in the Economic and Social Council, after the General Assembly of the U.N. reported it to continue in November of 1947, set up an Ad Hoc committee where the earlier draft was jettisoned and a new proposal was taken up, upon China’s request.<sup>32</sup> After the committee accepted the new draft, it was sent to the third session of the General Assembly and was then referred to the Assembly’s Sixth Committee. Perhaps representing a pattern when complex ideas are institutionalized, during the two months the draft was in the hands of the committee, and during its previous shuffling, it was subject to various debate and alterations.

Among some of the largest controversies were the groups of humans that would be subject to protection, the notion of intent, cultural genocide, the nature of genocide itself, and how much destruction of said human groups would have to occur for genocide to be

considered.<sup>33</sup> Notably, Russian representatives, according to lawyer and sociologist Leo Kuper, began their assault on the inclusion of political groups as early as the spring of 1948 in the Ad Hoc Committees.<sup>34</sup> It is quite possible, considering the nature of the Soviet political system, that one of the driving reasons behind the objection of the Russian representatives could be an explicit self-indictment of genocide. According to Kuper this may not be the case considering that representatives from other countries (Iran, Egypt, and Uruguay) reopened the issue on November 29 of 1948 in a Legal Committee, and that the inclusion of the political dimension of genocide unavoidably raised questions of national sovereignty; questions that representatives and thinkers of the time may not of had answers for.<sup>35</sup> On the other hand, as we learn from Anton Weiss-Wendt, the General Assembly of the United Nations in 1946 was going to vote against the resolution, and that the Soviet representatives were concerned about the implications of the criminalization of genocide from the perspective of their own national interests. In a move of diplomatic skill, Lemkin suggested to the Soviet delegation, through the Czechoslovak Foreign Minister Jan Masaryk, that the resolution was not directed toward them in any way, resulting in the unanimous adoption of the resolution in December.<sup>36</sup> Nevertheless, this pressure did not let up and the political aspect of genocide would eventually be omitted.<sup>37</sup> Cultural genocide would also not make it to the final convention however this may not have been as politicized as the former debate. It is important to remember that the Universal Declaration of Human Rights was also debated and passed on December 10, 1948 and there was talk to include cultural genocide on the convention of human rights, and yet, it still would have put western democracies in a somewhat awkward position due to their colonial legacy and contentious practice of cultural genocide.<sup>38</sup>

On December 11, 1948 The Convention on the Prevention and Punishment of the Crime

of Genocide, otherwise known as “the Genocide Convention”<sup>39</sup> was adopted by the United Nations General Assembly. The event marked a landmark for international law and without the tireless efforts of Raphael Lemkin it is quite possible that it would not have happened. The definition of genocide that delegates finally came to a consensus on, and states all over the world ratified, would come to be the standard definition that scholars, international lawyers, and the like, would reference with both appraisal and criticism.<sup>40</sup>

What is seen thus far in the creation and evolution of the concept of genocide is the transition of a socio-historical concept, molded into a legal concept out of necessity, due to Lemkin’s understandable and admirable desire to criminalize genocide rather than merely study it.<sup>41</sup> In the process, it may be quite safe to speculate that he knew that he would have to make sacrifices to its conceptual density in order to gain the approval of the states of the world. It is important to remember that what amounts to a fifteen year process of formulation and acceptance of the concept of genocide into international law and dictionaries across the world was met with resistance time and time again but in the end it was Lemkin’s determination and confidence in his idea that eventually made the critical difference. Since 1948 many scholars and lawyers have commented on the definition of genocide and how well its framework fits in legal practice and historical reality. In fairness, it would be difficult to judge Lemkin, his work and activism, on the tragic events in many parts of the world that genocide scholars vociferously and intellectual debate. Such analysis could easily fall under the rubric of anachronism and do not do the “father” of genocide studies proper justice.<sup>42</sup>

Among the varieties of criticism of the Genocide convention perhaps the most controversial is how genocide as a crime was defined. Subsequently the definition, sets of words, and even a single word itself, have been scrutinized and subject of scholarly debate. Since, sadly,

genocidal acts have continued since the end of the Second World War, the legal definition has been applied in courts and judgments, with it a body of accumulated literature from a legal perspective has accumulated, as well as legal precedents regarding specific and unforeseen obstacles in the understanding and application of genocide.<sup>43</sup> I will not comment on the definition of genocide in its entirety at length. Instead I will focus on several key points of contention of the definition that has been the standard point of departure for those interested, including “as such,” “in part or in whole,” and notion of “intent.”

### *As such*

The words “as such” as found in the Genocide convention can be taken to mean a national, ethnical, racial and religious group as they presently and continually exist. Generally these groups of humans inaugurate new members by birth or socialization on an individual level, usually as a child grows to adolescence. This leaves little individual choice, if at all, of membership. Even if some choice exists it is still quite likely that a onetime membership will leave an indelible mark, latent or manifest, on an individual. In terms of genocide these groups of humans, understood as a *community of fate*,<sup>44</sup> are targeted on the sole and primary basis because they are members, whether *real or imagined*, of the group in question that is being subjected to genocide as according to the Genocide Convention.

### *In whole or in part*

Under the standard international definition of genocide it is necessary that members of the national, ethnical, racial and religious group who are victims of genocidal acts, in minimum, constitute a part of the group.<sup>45</sup> Controversially, the two words “in part” leave open an obvious problem since no specification is made as to what qualifies in part. If a percentage of the group of genocide victims is used to clarify this it could make matters considerably worse. While it may be an uncomfortable thought, it is perhaps necessary to consider that if the a “threshold” of victims were established to, say, 30% to qualify for “in part” status, then we must ask: what would stop a perpetrator from annihilating 29% of the groups’ population to avoid an accusation and indictment of genocide? How are we allegedly supposed to rely on *numbers* of victims, which seemingly are assumed to have pinpoint accuracy, especially when we are dealing with a crime on the likely scale of genocide?

The trials that took place to persecute military and political leaders from the former Yugoslavia set precedents for the interpretation of this aspect of genocide. The ICTY utilized three criteria to partially resolve the issue of what is meant by “in part:” first, the part of the human group must relatively represent large numbers of the whole group; second, the destruction must aim for a “qualitatively significant part of the group,” such as elites, which then would be considered “substantial;” and third, *the geographical zone that the group resides (a region or municipality), may perceived by the perpetrator as a group, or perhaps sub-group.*<sup>46</sup> This was the decision made by the Trial Chamber in the case of Srebrenica where roughly 7,500 male persons of military age were killed out of roughly 30,000 Bosnian Muslims living in Srebrenica, resulting in the decision that the perpetrators intent was to destroy a “substantial” part of a sub-group of Bosnian Muslims.<sup>47</sup> A “substantial” part of a group was taken to carry a qualitative, rather than a quantitative, connotation, giving a richer meaning of the “importance of the ‘part’ for the

continued existence of the ‘whole.’”<sup>48</sup>

This additional layer to the phrase “substantial part of a group” is critically significant because it explicitly states that the prominence of the targeted victims within the group, even smaller than one could imagine, could constitute genocide. In addition to this layer, the ICTY has also contributed to the complexity of the meaning of the term group. Since the victims of Srebrenica that are in question were all male Bosnian Muslims of military age they were a part of a larger group of Bosnian Muslims in Srebrenica and in Bosnia as a whole. The ICTY resolved this by noting that members of the group of a territory are to be considered members of the larger group. The genocidal intent found in the conclusion of the Trial Chamber was that the attackers in Srebrenica had the goal of destroying a partial group of Bosnian Muslims, and that the likelihood was great that the community would “[n]ever re-establish itself on that territory” and deemed it genocide.<sup>49</sup> This decision prompted two understandings: one that the victims were partial members of a single group within a single community (approximately 2.9 percent) and considering the viciousness of the act the Chamber deemed it genocide.<sup>50</sup> The second, and tightly connected understanding, referred to the fact that those killed, men of military age and the deportation of women, could bring about the physical disappearance of the population in Srebrenica.<sup>51</sup> This referred to the how the perpetrators attempted to prevent the propagation of the next generation of Bosnian Muslims. It was the fact that those killed and removed from Srebrenica were targeted due to their religious/ethnic characteristics that provided one of the foundations for intent under the genocide convention. In short, both the men and women, through different means, were targeted primarily due to their religion/ethnicity.

*Intent*

In all of Article II of the Genocide convention perhaps the word intent is most important. It is intent that makes genocide unique. Its complexity, unlike other crimes such as murder, is due to the assumed scale, potential or not, of the crime. Under the standard definition for a crime to be classified as genocide the intent must be to annihilate the human group, in part or in whole, *because* of its nationality, ethnicity, race or religion. Interpretations of the meaning of genocidal intent range in historical scope and legal depth. What is meant by intent in the international definition of genocide? How are we to understand intent for the crime and phenomena of genocide?

The answer to this question has caused a great deal of debate among scholars. Before delving into specific case studies it is important to make a few conceptual differentiations. What are known as “special intent” (or “specific intent”) and “general intent” are two mental elements necessary preconditions for a conviction of the crime of genocide.<sup>52</sup> General intent refers to the use of material elements that deliberately cause inflicting conditions of life to bring about destruction in part or in whole.<sup>53</sup> Special intent requires the perpetrator act with the particular intent to destroy the group, in whole or in part that is in question.<sup>54</sup> In his essay “Rethinking Genocidal Intent: The Case for a Knowledge-Based Interpretation,” Alexander K.A Greenawalt in principal agrees but adds the concept of specific intent may be redundant, considering that the group targeted is targeted for the purposes of their existence as such. Perhaps it is the context in which the crimes were committed that illustrate the mental attitude of specific intent “toward the collective survival of the group as a distinct unit.”<sup>55</sup> We can merely think of the colonialist context behind initial creation of the term genocide.<sup>56</sup> In addition, Greenawalt suggests that criminal law’s distinction between “intent” and “motive” can aid in clarifying the ambiguity of

intent by dissecting the means of ends of such acts.<sup>57</sup> Seen in this way, the mental state of the wished end or motive in one context can transform itself into specific intent once the definition of the crime is applied.<sup>58</sup>

Another conceptual difference that should be made is difference between collective and individual intent. Legal theorist Claus Kreß argues that genocidal intent “means that the perpetrator committed the prohibited act with the knowledge to further thereby a campaign targeting members of a protected group with the realistic goal of destroying that group in whole or in part.”<sup>59</sup> Here the perpetrator in effect has to have knowledge of the goal of attempted annihilation of the targeted group, in whole or in part, and with that knowledge willingly takes part in genocide. The empirical fact of attempted group destruction is without question important. However establishing empirical individual intent is no easy task. According to political scientist Scott Straus, the intent inside to the thoughts of individual perpetrators may be difficult to reveal if no proof of such thought exists or is found. This leads him to argue in favor of a concept of intent that emphasizes the institutional and organizational aspect of intent.<sup>60</sup> This additional objective understanding of intent would fall first on the collective level, for example a bureaucratic state. Cécile Tournaye, legal officer of the ICTY, would agree with this understanding of intent in terms of a collective organized fashion where the individual “...motive of one particular participant is irrelevant to a finding of persecution or genocide.”<sup>61</sup> Accountability then would first direct itself to the collective level and turn inward from there.

Shifting from the collective to individual level, Kreß understands the jurisprudence of the ICTY and the ICTR as expressing the likelihood of existence for some purpose or desire to destroy a part of a protected group, but if such a desire or purpose is lacking it does not necessarily mean that individual responsibility of genocide is wavered.<sup>62</sup> It only means that the

individual is not the “principal perpetrator” and that the desire or purpose may be inferred where the accused individual “does not confess to his or her mental state and there are no prior statements expressing that desire.”<sup>63</sup> The conceptual separation of collective and individual intent is useful when attempting to understand how the former can “acquire an impersonal objective existence,” as in a state bureaucracy, and where the individual intent refers to the irrelevance of the individual’s desires vis-à-vis the collective plan while still emphasizing how the individual furthers the collective goal through their knowledge of it.<sup>64</sup> Under international criminal law, Article 8 of the Nuremberg Charter, the ICTY, ICTR and the Rome Statute, there is a clear understanding that those subordinates who carry out orders of superiors are still responsible for their actions.<sup>65</sup> With these precedents to support his argument he shows caution about the virtue of the assumption of “specific intent” by the perpetrator’s participation when it is connected to a bureaucratic structure with a seemingly endless supply of superior orders; at the same time, critically questions the applicability of specific intent on an individual.<sup>66</sup> In fact, Lemkin himself anticipates this problem, writing in *Axis Rule* that it is important to institute and enforced laws in respective countries to “prevent the invocation of the plea of superior orders, the liability of persons who *order* genocide practices, as well as of persons who *execute* such orders.”<sup>67</sup> It is in the *knowledge* of the genocidal end that can justify either the superior or subordinate can be found guilty of complicity regardless of either’s actions.<sup>68</sup> An illustration of this all-encompassing subordinate liability, to use Greenawalt’s, would mean that a soldier would have to refuse any order that furthers the overall genocidal plan from a superior officer not be held liable for genocide. How to understand how the alleged perpetrator interprets the collective plan, and how far it will go, is still debated in international law and difficult to surmise.<sup>69</sup>

In addition to legal theorists, historians and social scientists have also analyzed and

interpreted the meaning of intent as stated in Article II of the Genocide Convention. In Günter Lewy's<sup>70</sup> essay "Can there be genocide without the intent to commit genocide?" he argues that if "criterion of intentionality" are abandoned then guilt is harder to establish, assuming, following his logic, that "one cannot punish a social system" to the extent that structural violence may lead to the establishment of a guilt-free social context.<sup>71</sup> The relationship between structure and intent may not be as simple as we would like to think,<sup>72</sup> however it is important to remember that structures, bureaucratic or not, are not natural objects to be found in nature, but are created and controlled, albeit in an impersonal way by human beings.<sup>73</sup> Henry R. Huttenbach expresses a different view, claiming that since legal evidence of intent is rarely articulated in governments, (assuming the state is the genocidal perpetrator) genocide should be understood from the "actual fate experienced by the group."<sup>74</sup> In an attempt to apply his theory, Lewy argues that Franciscan missionaries in what is now the U.S. state of California, in contrast to the Nazis, were unaware of the medical dangers of diseases they were unintentionally passing on to Native Americans, while Nazis were intentionally inflicting life-threatening suffering on Jews in the ghettos.<sup>75</sup>

Another debate which continues among legal, historical and sociological scholars alike is the connection between mass killings which some argue constitute genocide without an overall plan to do so. Greenawalt mentions that complicity does not adequately address this kind of situation "in which a group falls prey to discriminatory extermination in a campaign of persecution" without "a clear objective to destroy the group in its collective sense."<sup>76</sup> Presumably no intent to commit genocide exists in such a situation. Or does it? It is important here to remember the difference between intent and motive<sup>77</sup> and what could be called a kind of *secondary intent*<sup>78</sup> during a campaign of persecution. The predictable consequences of the actions of perpetrators, most commonly states, may be more important than the official requirement of desired group annihilation. Greenawalt argues that in these cases "genocidal

liability should not depend on the contingencies of ideological or political motives,” but rather intent should be fulfilled if “the perpetrator acted in furtherance of a campaign targeting members of a protected group” and had knowledge that the goal “or *manifest effect* [my italics] of the campaign was the destruction of the group in whole or in part.”<sup>79</sup> This “knowledge-based” approach is strong on emphasizing the concluding annihilation of the group “instead of the specific reasons that move particular individuals to perform such acts.”<sup>80</sup> Returning to Huttenbach’s point, it is perhaps the fate of the group that may tell the genocidal story, pointing to where one is to look first when beginning to question whether or not genocide took place. Since this approach does not regard the perpetrators particular motive or desires toward the group as a whole it can hold accountable “subordinate actors and ambiguous goals by unhinging the question of genocidal liability.”<sup>81</sup> Specifically, his suggestion attempts to make a more objective “principled standard of liability” for subordinate perpetrators in contrast to the specific intent interpretation; which relies on a framework of “liability for acts that are far beyond the direct responsibility of the particular perpetrators.”<sup>82</sup> This logically assumes a level of perception among those involved to empirically see what kind of project they are contributing to. Subordinate action in a foreseen destructive persecution of a group does, on some level, presuppose that a plan exists, albeit in an informal and implicit way. However it is important to remember that ignorance and secrecy should be taken into account as well when making judgments on subordinates. The “knowledge-based approach” necessitates that the “perpetrator be aware that the campaign of persecution poses a very serious threat to future survival of either the group as a whole or clearly defined segment of the group.”<sup>83</sup> Tournaye is right to point out that the crux of the matter is not whether or not the aim is to destroy the group or “whether it is enough that the underlying crime(s) be perpetrated in full knowledge that it will *inevitably* result

in the destruction of the group” or the “knowledge that it will *probably* result in the destruction of the group.”<sup>84</sup> In short, she poses the question: “can genocide be committed by recklessness?” To which the answer, supported by Chambers and Appeals Chambers decisions, was that genocide is a crime “characterized by the fact it [consciously] *aims* to destroy a human group” not by recklessness.<sup>85</sup>

One such example of what is considered by many to be genocide without a planned genocidal end is the unfortunate case of the Aché Indians of Paraguay.<sup>86</sup> From the 1950s to the 1970s the Aché of Northern Paraguay were hunted, enslaved and robbed of their culture “...by a deliberate Government policy of genocide disguised as benevolence.”<sup>87</sup> Mark Münzer, who lived with the Aché, compares their physical suffering, along with the deprivation of “their folkways and religious comforts” from not having the right to live in their forests.<sup>88</sup> Aché were hunted by organized groups, some of whom included “tamed” Aché, who have traded in slavery or death for hunting other Aché, participated in the murder of parents and then taking their children in an action comparable to hunting animals.<sup>89</sup> What was the intent behind these actions?

The reason behind such treatment was caused by a relationship between the Paraguayan government and international corporate interests. Together they were developing land in Paraguay, installing roads constructed right through the forest of the Northern Aché.<sup>90</sup> The Office of Indian Protection attempted to help by passing protective decrees in 1957 and 1958.<sup>91</sup> These acts, according to Münzer, were merely cosmetic, an attempt to “liquidate the remains of colonial treatment” of the Aché, for the preparation of foreign investment and international roads “as was the government’s *intention* [emphasis added], the anachronism of slavery had to be eliminated” so as to make the country more presentable.<sup>92</sup> Mentioning the events in Paraguay, Greenawalt comments that it arguably “...constituted genocide on the theory that genocidal

purpose can be a means and not an end.”<sup>93</sup> In contrast Tournaye argues that the “intent to discriminate...persons *on account of* their ethnic, racial, or religious characteristics” is the most critical aspect of understanding genocidal intent *not* intent to “physically destroy a group, in whole or in part, to the extent necessary to gain a piece of land for instance” which, would not constitute genocide.<sup>94</sup> Following this logic Tournaye would have to submit that what happened to the Aché in Paraguay does not constitute genocide even if the Aché were completely annihilated as a means toward economic development. Indeed this position had an advocate in 1974 when the Paraguayan Minister of Defense, General Marcial Samaniego:

“Although there are victims and victimizers, there is not the third element necessary to establish the crime of genocide—that is ‘intent.’ Therefore, as there is no intent, one cannot speak of ‘genocide.’”<sup>95</sup>

If Greenawalt’s position is taken seriously, than the sheer knowledge of the *plan*, seen in its connection to intent and motive, to oust the Aché from their forest-homes, the killings and enslavement, is enough to suggest that genocide did indeed take place; the indictment falling on the Paraguayan state and international corporations involved as complicit. In this case it could be argued, from the point of view of the Paraguayan state and its partners, that the Aché were a group of people in the “wrong” geographical space, victims of genocidal means not a genocidal end. This has created a space for the Paraguayan government to kill *roughly half of the Aché* and claim that it is not genocide “because the killings in question allegedly were based on politics and economics,” not on the basis of an intentional persecution.<sup>96</sup> A similar point is made by Tournaye, that since the destruction of the Northern Aché “was not motivated by hatred” but by the claim put forth by the Paraguayan state that the “motive behind the destruction sought was not discrimination, but economical gain.”<sup>97</sup> However it is indeed difficult to accept that such violence could be committed upon a well-liked population with a history good relations with the

rest of the Paraguayan population. In the last analysis however both economic development and intentional persecution are still *aims*. This then begs the question: who or what decides such aims?

The bureaucratic state is the most widely regarded “agent of annihilation” for committing genocidal crimes or suspected genocidal crimes.<sup>98</sup> Who controls and should control state actions and motives are long debated issues within modern political theory. Here Barta’s application of the Marxist principal on the way that perceptions, actions and relationships can shape historical realities “independent of individuals’ intentions” can be crucial to help understand the complex interrelatedness of intentions, orders, actions and accountability.<sup>99</sup> Or in Mao’s Great Leap Forward, an example of “social engineering,” where the utopian goal required a strong element of persecution and permanent polarization of society.<sup>100</sup> Many felt lucky to even survive the catastrophe known as the “greatest organized program of mass destruction in human history;” a catastrophe which never intended to be.<sup>101</sup> However the thousands, perhaps millions, of victims of the social engineering of the Great Leap do not constitute as victims of genocide under the definition of the genocide convention.<sup>102</sup> The Great Leap, perhaps a kind of “genocide of civil society,” attempted to solve the problem of economic development through disastrous humanitarian means. However, plausible moral connections between means and ends are uncommon phenomena in how states attempt to solve problems.

During the post-American Civil War period of Reconstruction various legal measures were taken to reinforce racial inequality, instead of radically confronting racism and the past history of slavery. As a result power relations between blacks and whites were effectively maintained in the former Confederate states. A defining pattern of bureaucracy, the problems of racism and emancipated slaves were solved through compromise, with the “solutions” provided

uniformly copied by southern states.

Shortly after the end of the American Civil War, social movements posturing for the segregation of peoples on the basis of race, by blacks and whites alike, began to gain popularity.<sup>103</sup> In the former Confederate states, legislation was passed by former officers in the war, a move that was conceded by some parts of the Northern states that administered the life of blacks and excluded them from public space.<sup>104</sup> This was justified by legislators of former slave states as a means of *protection* from the now free former slaves. During this period, the North was pushing and prodding the South to institutionally empower black people, while simultaneously Southern leaders were considering how to accomplish just the opposite. Bureaucratically, the passing and application of Jim Crow's predecessor, the "Black codes," was uniform throughout the former Confederacy, copied by the states legislator.<sup>105</sup> The worst of the Black codes were legally made obsolete the by the Fourteenth Amendment of the Constitution but in practice discrimination could still go on in various forms on the local and state level.<sup>106</sup> Exclusionist practices could exist due to the lack of enforcement of the legal progress toward equality in 1867. This is also the same period where customs, like segregation of schools, were practiced, eventually manifesting into what came to be known as Jim Crow laws.<sup>107</sup> Congress attempted once again to stamp out such practices in 1875 with the Civil Rights Act, however failed when it was later deemed unconstitutional by the Supreme Court.<sup>108</sup> Customs of racial segregation in the south continued to grow and reached its bureaucratic culmination in the "separate but equal" Supreme Court case of *Plessy v. Ferguson* (1896). Interestingly, what can be taken from this example are two things: first customs can *precede* and then *manifest* themselves in legal institutions which are commonly copied; and second, that even if a state declares laws the customs that exist may supersede such laws in practice. In this case, it was

*prejudice* that both circumvented law declared from the state and ideologically informed customs that later became Jim Crow laws. Bureaucratically, compromise was made by *both* political and social leaders from the North and the South; and the “Black codes” and Jim Crow laws, supposed “solutions” to social problems, were copied locally throughout the region

## **The Gypsies<sup>109</sup> in Nazi Germany: bureaucratic logic, intent, in part and as such**

### *Intellectual context*

“Race science” or “racial hygiene” has its modern intellectual origins in eighteenth century Europe. This tradition can be traced back to founding figures like Dutch anatomist Pieter Camper (1722-1789) and the German physician Franz Joseph Gall (1758-1828).<sup>110</sup> The concept of creating a scientific hierarchy to understand humanity was furthered by Göttingen philosopher Christoph Meiners (1747-1810) in his 1798 work *Outline of the History of Humanity*.<sup>111</sup> In it he wrote that “fair” peoples were superior to the “ugly darker colored peoples” who were “semi-civilized.”<sup>112</sup> With this argument the new tradition began to root itself in a fusion of sociological and biological concepts of scientific legitimation, but also deeply entrenched a connection of the individual and “racial group.” The racial hierarchy of humanity was further purported by Count Joseph Arthur de Gobineau (1816-1882). By asserting the centrality of the unequal relationship between “white,” “yellow,” and “black” “races,” Gobineau attempted to argue that race was the key to the rise and decline of civilizations.<sup>113</sup> More importantly for our purposes it was here that Gobineau argued that the greatest contributions to world history were the product of the “Aryan” race of human beings.<sup>114</sup> The introduction of the concept of evolution in the work of Charles Darwin and the social Darwinist ideas of sociologist Herbert Spencer further charged the intellectual environment. Heinrich von Treitschke’s 1862 introduction of a “racial struggle” between Germans, Prussians, Lithuanians, and Poles, would later be appropriated by Francis Galton.<sup>115</sup> Galton (1822-1911) provided a synthesis of the notion of a “racial struggle” and social Darwinism. Coining the term “eugenics” in 1883 and *nature versus nurture* in 1872, he was primarily interested in improving the health of the human race biologically through the use of

improved controlled breeding and consistently suggested that talent, intelligence and distinction of any kind “ran in families.”<sup>116</sup>

Racial paranoia, a recurring theme in “race science,” was thematized by Alfred Ploetz (1860-1940) who attempted to argue how the “West Aryan” or Germanic race” was threatened by the protection of what he perceived as the weak in *The Efficiency of our Race and the Protection of the Weak* (1865). Conception of children would have to be controlled according to principles of science; and, if those principles failed, and a deformed child resulted, then there existed a chance that the child would be killed via morphine injection. In addition, Ploetz is also known for creating the concept of “race hygiene” (1865) which integrated aspects of public health and sanitation, maternal and child care, bacteriology, hygiene, physical culture, and “racial” improvement.<sup>117</sup>

The theme of racial hierarchy, power and domination, is continued in the work of Ernst Haeckel. Evidenced in *History of Natural Creation* and his 1904 book *The Riddle of Life* where he promotes administering a dose of morphine to the “thousands of cripples born each year,” the deaf and dumb, cretins, and those with what are perceived as incurable hereditary defects.<sup>118</sup> The social and political consequences of ideas like Haeckel and common racist thinking in early 20<sup>th</sup> century Europe would begin to radically take shape in the following decades. This is evidenced in Wilhelm Schallmeyer winning essay in response to the paper competition: “What can we learn from the principles of the theory of evolution for application to domestic political development and the laws of the State?,” eventually published as *Heredity and Selection in the Life of Nations: A Study in Political Science on the Basis of the New Biology*.<sup>119</sup> A firm biological-sociology underpinned the understanding of “race science” and “racial hygiene,” beginning to transform itself into a more sophisticated intellectual discourse that was now applied directly to

the policy of nations or what Schallmeyer called the states responsibility “to secure the biological capacity of its people.”<sup>120</sup> The cost of such security however would result in the insecurity of those excluded from the nation. Schallmeyer advocated sterilization and isolation of the perceived “hereditarily lesser value” which would improve the “racial quality” of nations by increasing the birthrate.<sup>121</sup>

The importance of eugenics and “race hygiene” in Nazi political ideology indeed played an important role in the persecution of both Jews and Gypsies, but, importantly this was one of a plurality of racisms that existed in early 20<sup>th</sup> century Europe. Nevertheless, eugenics and “race hygiene” was influential in the field of criminology by outlining methods of detecting “inherent criminal behavior” that would later inform and justify Nazi state policy.<sup>122</sup> All of these theories, irrational as they may be, were seemingly uncritically accepted and perpetrated, by a groups of intellectuals, forming a context that promoted the racial targeting of Gypsies in Germany and was popularized publically, making it more acceptable with the Nazi rise to power.<sup>123</sup> The main purpose of racial hygiene in German eugenics was to promote superiority and to increase the “Aryan” population in relation to the “lesser races.” Identities of all kinds: ethnic, religious and social became racialized in this context due in large part to the plural racial worldviews that were present and German and Europe at the time. All of these factors contributed to a radicalization of segments of German society that put theories of hierarchy of human lives into practice. The eugenics movement and “racial hygiene” movement supplied the “scientific” legitimation to the domination, discrimination and murder of so-called “inferior” peoples, like the Gypsies, during the Nazi regime.<sup>124</sup>

*Bureaucratic logic*

Bureaucratic logic often times than not results in instrumental logic, grasping for the most efficient and quickest means to reach the desired end. As in the case of the Aché in Paraguay, the stated end was economic development and by their presence in their forests the Aché were impeding developmental “progress.” The most efficient way to deal with the problem, from the actions of the Paraguayan state, was to hunt, kill and enslave the Aché. Similarly, what can be taken from the uniformity of the “Black codes” and Jim Crow laws are how state “solutions” are copied locally and regionally. In this case, the German government perceived its Gypsy population as a “problem” and attempted several solutions, including: incarceration, revoking licenses’ to conduct itinerant trade, regulating sexual reproduction and sexual relations, freezing mobility, deportation to the General Government and finally deportation to Auschwitz.

In 1933 the Nazi party took control of the German government. The “Gypsy problem” or “Gypsy question” from the vantage point of the local German bureaucratic apparatus was precisely that: a problem that should be solved and a question that should be answered. Long perceived negatively, Gypsies from 1933 onward were further targeted large in part to local pressure from the public and a racist intellectual and social climate popular at the time. Politically the Gypsies in Germany were weak and vulnerable, without strong leadership or an organized resistance to mount a defense against the increasing societal pressure and exercise of arbitrary power that was increasing against them.<sup>125</sup>

In late November 1933 The Law against Dangerous Career Criminals was passed. This permitted a policy of “preventative police custody” for individuals twice convicted of a crime.<sup>126</sup> This aggressive change in approach was met with the approval of Arthur Nebe, who in 1935 became the head of the Prussian Kripo and was awarded a medal at the 1936 Olympics for his

preventative criminal measures taken in preparation for the games.<sup>127</sup> The 1933 law perhaps can be seen from a broader conceptual understanding of crime itself.

Crime or criminal acts can be theoretically understood as violating what is deemed socially and morally unacceptable, reflected in the establishment of legal institutions. Flexibility is possible with what is considered criminal and legal only if it is demanded or accepted by civil society. In this case a bulk of German society no longer wished to stand idle and accept what they thought was unacceptable: whether real or imagined the Gypsies were not productive members of German society.<sup>128</sup>

The problem of crime, the new government promised, would be attacked at its so-called “root” which more than often was translated into a racial-biological assumption.<sup>129</sup> This notion, incorporated into Nazi ideology, was used as a means toward perceiving their enemies. Collective and essentialist thinking produced an atmosphere of intense prejudice, polarizing German society into various “loyal” and “disloyal” camps. This prevailing nationalist mentality toward enemies of the Nazis was primarily concerned with maintaining the “health of the German body.”

The many answers to the “Gypsy question,” mostly ad hoc and local, were legally stricter on the local level in the *Länder* (states) than earlier along with tightening police harassment and abuse of power.<sup>130</sup> In 1934, the local government in Baden began to treat *Zigeunermischlinge* and travelers like Gypsies, whose dwellings were searched and population counted, a policy that would soon be copied in many places throughout Germany.<sup>131</sup> The Kripo began to become synonymous with the Gestapo due to its heightened powers, largely arbitrary, of arrest and detention.<sup>132</sup> A camp was formed in the summer of 1937 in response from complaints from the population of Frankfurt and local Nazi leaders.<sup>133</sup> 122 persons were living in the camp by

January 1938, poor and needy, and unable to earn past forms of income and who were now receiving welfare even though it was lower than what a German would receive.<sup>134</sup> Gypsies were occasionally forced into centralized camps that were intermittently guarded or fenced.<sup>135</sup><sup>136</sup> In short it was insignificant for authorities to demand action, like ad hoc camps against Gypsies between 1933 and 1939.<sup>137</sup>

In 1936 Heinrich Himmler was appointed head of the German police. In a critical bureaucratic decision he centralized the institution, now be comprised of two departments: the Order Police (*Ordnungspolizei*), and the Security Police (*Sicherheitspolizei*) which included the Gestapo and Kripo.<sup>138</sup> This would make it possible to target the “Gypsy problem” as well as the “Jewish question” under one centralized force. Arthur Nebe, reflecting on this re-organization in 1939, stated: “In the national socialist German state it is obvious that the struggle against the political enemy and against the asocial criminal must be directed by one authority.”<sup>139</sup> He also was keen on the Kripo taking on “asocial” individuals that would “operate in the spirit of genuine National Socialism.”<sup>140</sup> Now, with a special bureau to deal with Gypsies within the preventative crime measures department and the Reich Central Office for Combating the Gypsy Nuisance (*Reichszentrale zur Bekämpfung des Zigeunerunwesens*) in Berlin, the Kripo headed by Nebe, was the central governmental apparatus that was to deal with the “Gypsy problem,” effectively consolidating power to more efficiently go after their enemies.<sup>141</sup>

The influence of eugenics and racial hygiene also played a role in how the Nazi bureaucracy attempted to deal the “Gypsy problem.” The 1935 Law for the Protection of German Blood and Honor, part of a series of laws famously known as the Nuremburg Laws, relegated sexual relations between Germans, Jews and others with “alien blood” (*artfremdes Blut*).<sup>142</sup> In 1936 an authoritative commentary on this new racial legislation published “Ordinarily, only Jews

and Gypsies are persons of alien blood in Europe” and clearly they would no longer be eligible to become citizens or retain German citizenship.<sup>143</sup>

On June 20, 1941 the minister of the interior decreed that “Gypsy blood endangered the purity of the German blood to a marked degree” and instructed marriage registrars to be vigilant in those cases that contained “Gypsy blood.”<sup>144</sup> He also voided the January 3, 1936 decree that permitted marriage between Germans and Gypsies with a quarter or less “alien blood.”<sup>145</sup> The *Landrat* of Hechingen (Baden) prevented a marriage on August 11, 1941 and the Ministry of the Interior, on December 24, 1942, stated that “marriages between *Zigeunermischlinge* are undesirable and are to be prevented.”<sup>146</sup> On March 3, 1942 the Minister of the Interior declared that exemptions for “alien blood” from the Law for the Protection of German Blood would no longer be acceptable due to the “war-imposed need to limit administrative work.”<sup>147</sup> Six months later on September 25 this was extended to include marital unions between Gypsies and *Zigeunermischlinge* not to mention that sterilization was still an option for those that wanted to marry or stay married.<sup>148</sup>

The decree “Preventative Crime Fighting” was issued on December 14, 1937 Minister of the Interior Wilhelm Frick. Under the decree, police now had the arbitrary authority to supervise professional criminals and repeat offenders, attempting to keep them from: leaving their residence without permission, driving a car, using certain public transportation or owning weapons.<sup>149</sup> Additionally the police were given the right to place individuals under preventative custody. While it may not have been the *primary intent* of the decree, the provision also included individuals who “endanger the general public by their asocial conduct.”<sup>150</sup> Further internal bureaucratic moves were made in a decree by Himmler in May 1938 where he announced that the Central Office for Gypsy Affairs (*Zigeunerzentrale*), that dealt with preventative crime

measures, be moved from Munich to Berlin where it would be recast as the Reich Central Office for Combating the Gypsy Nuisance (*Reichszentrale zur Bekämpfung des Zigeunerunwesens*).<sup>151</sup>

Once the office was resettled in Berlin it contained 33,524 files on individuals, categorized as:

1. 18,138 Gypsies and Gypsy *Mischlinge* (persons of mixed ancestry)
2. 10,788 Gypsy-like itinerants (*nach Ziguenerart umberziehende*)
3. 4,598 others, including sedentary persons conducting an itinerant trade<sup>152</sup>

In 1937, the Gypsy population was further administered when the chief of the rural police in the district of Esslingen in Württemberg wrote a letter to the *Landrat* which stated that the city of Stuttgart, by issuing its Gypsies itinerant licenses with the intention to get rid of them, actually “served as a cover” for begging and made it difficult to control the population.<sup>153</sup> He argued that this “parasite,” in an attempted justification can never “be educated to become a useful person” and should be “exterminated [*ausgerottet*] by way of sterilization or castration.”<sup>154</sup> Arguing the efficiency of a solution in the law to combat the “Gypsy plague,” he continued, would not “cost the state very much money, and within a short span of time the Gypsy plague would be eliminated.”<sup>155</sup> A draft that would combat the “Gypsy plague” was dated March 24, 1938 and circulated in April.<sup>156</sup> The Office of Gypsy Affairs of the Munich Kripo agreed in the consensus that the Gypsy problem had to be approached by the “inner characteristics of that race [*aus dem Wesen dieser Rasse heraus*].<sup>157</sup>

On January 26, 1938 the order for Operation Work-Shy came from Himmler. He directed the Gestapo to go after the work-shy, a heterogeneous population in character, and place them in “protective custody” in a concentration camp.<sup>158</sup> A work-shy individual was defined as a man who was able to work as determined by a medical exam but refused to work without proper justification.<sup>159</sup> Work-shy individuals were selected by local labor exchanges, the Gestapo itself

and welfare offices.<sup>160</sup> In Magdeburg and Stuttgart, only men who were able and willing to work were instructed to be selected instead of “...drinkers, old vagrants, professional or habitual criminals, Gypsies and similar elements.”<sup>161</sup> Perhaps as many as 1,500 “asocials” were taken into custody in the first wave of Operation Work-Shy.<sup>162</sup> This was unsatisfactory to the SS leadership and, using the December 1937 preventive crime fighting decree as a precedent, argued that more rigorous measures be taken.<sup>163</sup> This time, Gypsies and Gypsy-like itinerants who “...have not demonstrated a readiness to take up regular employment or have a criminal record” were specifically targeted along with pimps and others with violent criminal records.<sup>164</sup>

In summer 1938 yet another wave of arrests came primarily for two reasons: a labor shortage and a tactical move by the Kripo not to be held accountable for contributing to a failed Four Year Plan.<sup>165</sup> This now third wave of arrests a cumulative total of some 10,000 individuals categorized as “asocials” in the camps.<sup>166</sup> Inside, “asocials” were subjected to various brutalities and had a higher mortality rate than political and criminal inmates.<sup>167</sup> Paradoxically, physicians still were required to certify that the health of those inmates were fit to work, however, if one considers the role of many physicians who aided and supported such policies it comes as no surprise how this profession, whose pledge it is to make humans healthier, was effectively supporting their destruction.<sup>168</sup>

In Himmler’s December 8, 1938 decree titled “Fighting the Gypsy Plague” Gypsies were furthered classified for purposes to be effectively administered. Alleging to penetrate “the Gypsy question based on its essentially racial nature” (*die Regelung der Zigeunerfrage aus dem Wesen dieser Rasse heraus in Angriff zu nehmen*) it declared that all Gypsies above the age of six be required to be classified to fit three racial categories: *Zigeuner*, *Zigeunermischlinge*, and nomadic persons behaving like Gypsies.<sup>169</sup> On March 1, 1939 Heydrich implemented the December 8

decree against the “Gypsy Plague” which stated that, while the German people respected foreign races, the state has a responsibility to the unity of the national community which requires further action toward the “Gypsy question.”<sup>170</sup>

German nationalism and arbitrary power continued to play a significant role in policy making. In the implementing instructions for Fighting the Gypsy Plague the RKPA was told the decree would aid in a “...comprehensive Gypsy law prohibiting miscegenation and regulating the life of the Gypsy race in German space.”<sup>171</sup> Among those proposed further actions in this direction included “the racial separation of the Gypsies from the German people, the prevention of racial mixing” and “the ordering of life of racially pure Gypsies and the *Zigeunermischlinge*.”<sup>172</sup> A law enacting this never was never realized, as solutions to the “Gypsy question” steadfastly maintained to be ad hoc.<sup>173</sup> However the attempt at the creation of a “racial caste state,” as Lemkin called it in 1943, was in the making; however, as he knew then, it would not be able to form the utopian society that it wished for but “could accomplish only organized annihilation.”<sup>174</sup>

Frustration at the lack of administrative power over the Gypsy population partly caused tougher measures due to the ineffectiveness of state regulations.<sup>175</sup> Now it was to be answered by the RKPA in Berlin through the Kripo, which included the responsibility of determining who was to be considered to be a Gypsy.<sup>176</sup> Importantly, a centralized database of the Gypsy population, together with police reports, civic registers and departments of health, now created for the primary purpose to control and administer the population, which included racial classifications by “experts” headed by the Robert Ritter’s institute.<sup>177</sup> A Gypsy affairs specialist was now appointed in every local Kripo office and a department for Gypsy affairs in every regional Kripo office effectively consolidating power.<sup>178</sup>

Collectivist thinking continued to influence Heydrich and Himmler in April 1939 as they discussed an “aliens to the community law.”<sup>179</sup> The RKPA prepared a draft on such an issue suggesting these “aliens to the community” would be sent to concentration camps and sterilized to prevent “undesirable offspring.”<sup>180</sup> The definition proposed in the draft resistance from the Ministry of Justice that rejected it on the grounds that it was too vague.<sup>181</sup> The “aliens to the community law” was set to take effect on April 1, 1945 but the events of the war took greater precedence.<sup>182</sup>

Once the war began policies became harsher and the plight of the Gypsies worsened. Heydrich issued a decree on September 2, 1939 that established a border zone where the “roaming of Gypsies and in the manner of Gypsies in the border zone is forbidden” which was further reinforced on September 9 to tighten the criteria for issuing itinerant trade licenses.<sup>183</sup> As a result, applications for such licenses were routinely rejected and many Gypsies lost the means of their livelihood.<sup>184</sup> Further bureaucratic webs were spun when on October 11, 1939 a decree of Himmler stated that working papers (*Arbeitsbuch*) would be available for Gypsies, *Zigeunermischlinge* and Gypsy-like itinerants once the Kripo “established the applicant’s identity.”<sup>185</sup> In November 1939, Heydrich banned fortune-telling by “Gypsy women” which was vague enough to entail “...persons with little Gypsy admixture.”<sup>186</sup> The decree apparently was formulated due to complaints from the public and prescribed Gypsy women, who were convicted or under serious suspicion of fortune telling, be taken into preventative custody.<sup>187</sup>

A new solution to the “Gypsy problem” was now sought in the newly conquered territory in Poland. The plan was to transfer undesirable populations in Germany, and on September 21, 1939 Heydrich, with the confirmation from Hitler, issued an order to task forces for special missions (*Einsatzgruppen*) and police officials, that Jews and “the remaining 30,000 Gypsies,”

the whole population, from the Reich would be expelled.<sup>188</sup>

In a move to prevent possible flight Heydrich ordered a freeze on Gypsies' mobility (*Festsetzungserlass*) on October 17, 1939.<sup>189</sup> Gypsies and *Zigeunermischlinge* (Gypsy-like travelers were omitted from the decree) were not to leave their residence, with acts of disobedience resulting in imprisonment in a concentration camp.<sup>190</sup> On October 25, 26 and 27 they would be counted for the purpose of determining (among other things): their work history, permanent residence and if one of the marriage partners was "Aryan."<sup>191</sup>

The planned solution for the "Gypsy problem" however was met with obstacles. On October 19 Himmler ordered a stop to deportations due to the large task of absorbing ethnic Germans (*Volkseutsche*) from the Baltic States.<sup>192</sup> Nebe was probably disappointed to hear this as he wanted Gypsies in Berlin to be deported.<sup>193</sup> This did not mean however that the plan to deport *all* German Gypsies to the General Government disappeared<sup>194</sup> and the freeze on movement that was instituted by Heydrich remained in effect.<sup>195</sup> This had serious negative consequences for Gypsies who made a living from an itinerant trade.<sup>196</sup> After requests, permission was granted to those who requested with proper justification but only for limited mobility; the authorities would not relinquish control over their surveillance.<sup>197</sup>

Plans resurfaced in early 1940, not long after Himmler's nationalist responsibilities were reaffirmed on October 7, 1939 when he was appointed Reich commissioner for the strengthening of German nationhood (*Reichskommissar für die Festigung Deutschen Volkstums*, or RKF).<sup>198</sup> Himmler was charged to bring ethnic Germans back to the Reich and purge the "alien" populations inside the Reich.<sup>199</sup> In January 1940 Heydrich met with forty-two SS functionaries to discuss the expulsions.<sup>200</sup> Internal resistance to the plan was met by Hans Frank, the new governor of the General Government in the eastern part of Poland, who was not comfortable with

the idea of his territory becoming a place for undesirables, but interestingly was still in favor of radical policies toward both Gypsies and Jews.<sup>201</sup> Resistance was also met by Dr. Leonardo Conti. His intentions clearly stated in a letter dated January 24, 1940, arguing that sterilizations of Gypsies and *Zigeunermischlinge* are the only real solution to the prevention of the mixture of Gypsy and German blood.<sup>202</sup> Deporting these unwanted populations would not solve the problem, which was the fear of the *blood* of the Gypsies. Dr. Robert Ritter also shared a similar view in the sense of a long-term goal of preventing the propagation of the “asocial” *Zigeunermischlinge*.<sup>203</sup>

Concrete planning began on the expulsions in April 1940.<sup>204</sup> On April 27 Heydrich stated in a decree titled “Resettlement of Gypsies” that some 2,500 Gypsies from the western and north-western border areas were to be deported in the middle of May.<sup>205</sup> The lists that were prepared after the October 17, 1939 decree were used and Kripo offices set to work.<sup>206</sup> In May 1940 some 2,500 Gypsies and *Zigeunermischlinge* were deported to the General Government in railroad cars. With no single destination many were left to simply fend for themselves.<sup>207</sup>

The last proposed solution to the “Gypsy problem,” the culmination of almost a decade of proposed solutions, decrees and forcible control, came on December 16, 1942. An implementation of what is known as the Auschwitz Decree was sent out by the RKPA on January 29, 1943 which stated that *Zigeunermischlinge*, Rom-Gypsies and members of Gypsy clans from the Balkans were to be put into “preventive custody” and sent to a concentration camp.<sup>208</sup> The planned deportation, an official secret, was to begin in March and to last approximately one month.<sup>209</sup> Three days before the implementation instructions were sent, the topic of what to do with the property of the Gypsies was decided to be confiscated on the grounds that they had been “hostile to the [German] people.”<sup>210</sup> The RKPA, taking the cue from

Himmler's order, drafted implementing regulations the content of which reflected the thought of both Ritter and Nebe.<sup>211</sup> The Kripo was granted much freedom in the selection of who would be deported or exempted, free to apply social criteria when racial criteria was lacking.<sup>212</sup>

Some local authorities had been persistently attempting to deport the Gypsies in their own jurisdiction. Since March 1941, the mayor of Breitscheid was trying to deport the thirty-eight but was notified that the Gypsy camp in Frankfurt was too full to take them.<sup>213</sup> Two years later he was pleased when twenty-one Gypsies were deported to Auschwitz.<sup>214</sup> This soon was changed when the Frankfurt Kripo informed the mayor that fifteen persons were "racially pure" and therefore were exempt from deportation.<sup>215</sup> Upon return the *Landrat* wrote to the Kripo arguing that the Gypsies were a burden, did not engage in work that supported the war effort, and the local employment office voiced no opposition to expulsion and that he was suspicious of whether or not they were "racially pure" based on their conduct.<sup>216</sup> Eventually, on May 10 the local officials finally won and the remaining Gypsies were expelled to Frankfurt.<sup>217</sup> The *Landrat* happily commented that "the district is thus free of Gypsies."<sup>218</sup>

### *Intent*

One of the pillars of Nazi ideology was a total restructuring of German society. What was meant to be German was simplified and contrasted with what it meant not to be German. A subjective and imaginary value was placed on what was considered to be "non-German," with an objective means of analysis inherited from the scientifically established field of eugenics which supplied "criteria of assessment, categories of classification and norms of efficiency."<sup>219</sup>

Collective and essentialist thinking manifested itself into a serious intention to "solve" the

“problems” against “non-German” elements of the population. These ideas, in order for them to be effective and influential, had to be disseminated from intellectuals and professional classes, as well as from the public, to pressure those that make decisions on governmental policy. How can we understand the influence of “race science” and eugenics and the motives behind actions taken toward Gypsies in Nazi Germany from 1933-1945?

When the Nazis came to power the concept of “race” became institutionalized in a novel way. A racial discourse became discussed bureaucratically to a point of obsession. The socio-biological foundations of “race science” and “racial-hygiene” can be evidenced as early as 1934 in the Nazi Racial Policy Bureau (*Rassenpolitisches Amt*) and Gestapo’s “asocials catalog.”<sup>220</sup> Cataloging of Gypsies and other so-called “asocials” understood as “potential criminals [and] genetically defined” through methods of eugenics was a process that began well before 1933.<sup>221</sup> However now was used for a different intention.<sup>222</sup>

Institutions provided allegedly legitimate knowledge of the Gypsies as an “inferior people.” Anthropologically and genealogically registered as “racially inferior asocials and criminals of Asiatic ancestry,”<sup>223</sup> institutions like the German Research Foundation financed studies and *intent and motive* in the hereditary health of groups including the Gypsies with the aid of anthropologists, psychiatrists, physicians and geneticists.<sup>224</sup> Officials began to openly speak about sterilization and extermination with proposed solutions coming from local officials, academics, publicists, and ordinary citizens.<sup>225</sup> These groups, citing both racial and social reasons for their dislike of Gypsies, reinforced a system of conformity of social norms to administer social behavior which was buttressed by a structure of the concept of race.<sup>226</sup> The intention was clear: those of “alien blood” either are not biologically able or incorrigibly unwilling to “fit” into German society. Furthermore, individuals and social groups, categorized

as “educable,” “educable with difficulty,” to the “ineducable” deduced from assumed hereditary characteristics could only be determined “on the basis of the observation of everyday behavior” meaning that the “racial character” and their social behavior were mutually exclusive.<sup>227</sup>

Nationalist sentiment in parts of Germany began to grow and manifest itself in a more radical way. Accusations that the Gypsies were a harmful presence lead the Nazi bureaucracy to rationalize administering the population. In 1935, Munich police began to call for a radicalization of policy toward Gypsies that should be extending throughout the country which included the “foreign element” be expelled from the country.<sup>228</sup> After a decree intended to “fight against the Gypsy plague” in 1936, Gypsies were further included with travelers and the *primary target* of beggars. Here the *primary intent* was not to target Gypsies specifically in this case there clearly was some kind of *secondary intent* predicated off social behavior and race. In a report to the Minister of the Interior of Württemberg on April 13, 1937, the *Landrat* of Esslingen, upset about an April 3 raid that did not “net” any Gypsies due to their legal right to “conduct itinerant trade,” suggested that these licenses be revoked; the motivation being “to stop the Gypsy plague, [with] the ultimate aim being the extermination of these parasites.”<sup>229</sup>

Other justifications for mistreatments included espionage against the German nation-state. On July 4, 1936 the Prussian Gestapo began to distribute a report by the Bavarian political police that mentioned Gypsies near military construction sites and “suspected that these Gypsies work for foreign intelligence services.”<sup>230</sup> About two years later Ministry of the Interior von Pfeffer’s banned roving Gypsies from the left side of the Rhine, resulted in local authorities’ banishment of *all* their Gypsies, both sedentary and nonsedentary.<sup>231</sup> Hesse even tried to banish Gypsies on the right side of the Rhine.<sup>232</sup> A similar accusation of espionage was mentioned about some Gypsy musicians talking to soldiers in Halberstadt and the Gestapo Düsseldorf reported in

October 1939 that “suspicion of espionage cannot be excluded.”<sup>233</sup> The assumptions behind these accusations seemingly was social behavior but could also have been a mixed with of racial paranoia.

The creation, however real or imagined, between other social groups and the German national community, as then defined, had to constantly be articulated and reinforced. The German government and its “pseudo-intellectual racists” perhaps began to officially establish an anti-Gypsy ideology in 1937 with the Ministry of Interior Dr. Hans Globke's theory of “foreign” blood “running exclusively through Gypsy and Jewish veins” and the foreign Asiatic origins of Gypsies and Jews alike by Dr. Robert Körber.<sup>234</sup> This was partially appropriated by Dr. Emil Brandis, who argued this “alien” presence surrounded by a Nordic (Aryan) population made the Gypsies an unclean and anti-social element, thus connecting them with historical prejudice toward the Jews.<sup>235</sup> Anti-Gypsy measures heightened in the national police as evidenced discussed at various Interpol meetings and academic journals began to write open polemics against Gypsies, highlighting their perceived danger to Germany and the Ostmark.<sup>236</sup> For example, Adolf Würth, a colleague of Robert Ritter, presented an argument in an anthropological journal that called for a solution to the “Gypsy question,” emphasizing how the *Zigeunermischlinge* were a serious danger to the German people and that they have to be prevented from “further mixing with those of German blood.”<sup>237</sup> Similar paranoia of the danger of German blood caused by the presence of this “alien race,” which motivated the mayor of Berleburg, a physician in his own right, to publish a 1937 article that called the Gypsies of Berleburg a “degenerate group” and clutched to the hope that Germany would find “effective means and ways in order to rid the native, German-blooded population of the Gypsy-plague.”<sup>238</sup> An article in *Volk und Rasse* (People and Race), published by the German Society for Racial Hygiene, argued for harsher

measures to be taken against Gypsies (especially the *Zigeunermischlinge*) who, “as a result of too much kindness and indulgence” were “parasites spread among our people who are a constant threat to our national purity [*völkische Sauberkeit*].”<sup>239</sup> More explicit intentions were provided in an article in *Deutsches Ärzteblatt*, a publication for physicians, that cast Gypsies as “asocial” who continually provided “...for themselves by being masters in lying, stealing, defrauding, and begging...they exploit nature and humans.”<sup>240</sup> The solution to the “Gypsy problem” in this case was to prevent them from procreating, with the ultimate aim being “...merciless elimination [*rücksichtslose Ausmerzung*] of these defective elements of the population.”<sup>241</sup> The pattern of an irrational justification of self-defense for actions taken against the Gypsies is seen with Public health official Dr. Carl-Heinz Rodenberg’s emphasis on their “alien” character which should be dealt with the same intensity and severity as the Jews. After all this “...biologically foreign body...has a destructive influence on our body politic” which exhibits a similar danger from the “mixing with Jews.”<sup>242</sup> These policy decisions and recommendations by *physicians*, it should not be forgotten, are part of a tradition of thought back to the 19<sup>th</sup> century that sought to preserve the meaning of “being German” from so-called lesser peoples.<sup>243</sup> The influence of reputable professionals, physicians and writers should not be overemphasized though. What is important is that a pattern of arguing that Gypsies were a threat to German society and the German people, through no known serious provocation, accumulated in both localities in civil society and Nazi state bureaucracy, creating a context of malicious intent, be it *primary* or *secondary*, toward the Gypsy population.

It was the “hate-image” of the “alien culture” and the incorrigible, hereditary “asocial” that was associated with the idea of the Gypsies that was embedded into much of the social consciousness.<sup>244</sup> The intellectual tradition of “race science” and eugenics, compounded with the

political ideology of Nazism used the social and biological, in what Peukert calls the two major features of Nazi racism: using biological categories for targeting deviant social behavior and “systematically extending the classification of types of behavior from descriptions of small, excluded groups to include norms which could cover practically everyone.”<sup>245</sup> This process created not only the foundational ideological justification for governmental policies and acts toward Gypsies; it helped form the intent in between ideology and action.

*In part*

One of the central features of how the Nazi state and its functionaries approached “solutions” to the “Gypsy problem” was how to define the population popularly known as Gypsies. The category of “asocial”<sup>246</sup> was perhaps easier large in part to the availability and use of objective criteria to make judgments. Gypsies, who were primarily seen as “asocial,” had a racial element to be dealt with that differentiated them from other “asocials.” It is perhaps the twin purpose of the utopian aspect, according to Peuker, of the *Volksgemeinschaft*: the internal idea of turning German society into “an achievement-oriented community primed for self-sacrifice” and the external purpose to “segregate and eventually eradicate (*ausmerzen*) so-called aliens, incurables, political opponents, asocials and of course Jews” that aids in a theoretical understanding of the dynamism of collectivized thinking.<sup>247</sup> The force of this thinking was, if we accept Peuker’s insight, complicated when it crashed into specifically trying to classify and understand Gypsy identity, which is where and eugenics resolved this tension with a methodology.

Distinctions would have to be made when Himmler announced the decree for Combating the Gypsy Plague on December 8, 1938. Aided by the research of Robert Ritter and the Research Institute for Racial Hygiene and Population Biology, the decree stated that it had to deal with the “inner characteristics of the race” but there was an important and revealing delineation in what actually constituted the “Gypsy Plague.” “Racially pure” Gypsies were to be treated differently than the *Zigeunermischlinge*: “It is therefore necessary that in the final solution of the Gypsy question [*bei der endgültigen Lösung der Zigeunerrage*] racially pure Gypsies and *Mischlinge* be treated differently.”<sup>248</sup> This decision to choose a *part* of the Gypsy population rather than the *entire* population was supported by the scientific research of Ritter and his colleagues. It required the registration of all sedentary, non-sedentary and Gypsy-like itinerants with the decision on who was understood as Gypsy or Gypsy-like itinerant in the hands of the RKPA and expert opinion [*Sachverständigengutachten*].<sup>249</sup> A racial-biological examination was thus required and carried out by Ritter and his research team.<sup>250</sup> Distinctions were further made in the policy. Germany would no longer allow foreign Gypsies to cross the border and Gypsies, *Zigeunermischlinge* and Gypsy-like itinerants were prohibited to be in areas near the border.<sup>251</sup>

During the 1940 expulsions into the General Government only a part of the Gypsy population was chosen. Exemptions were made for the frail, those over seventy, women seven or more months pregnant, Gypsies married to a German, those who had sons or fathers in the military and those that owned substantial real estate and those of a foreign nationality.<sup>252</sup> In Frankfurt, persons were seemingly arbitrarily arrested without consultation to the racial-biological examinations conducted by the Ritter institute thus calling into question whether or not those being held at Württemberg state prison of Hohenasperg were Gypsies or *Zigeunermischlinge*.<sup>253</sup> Interestingly, the racial distinctions governing the categorizations of the

Gypsy population were serious enough in this situation that it merited a visit from Dr. Adolf Würth, a member of the Berlin-based Ritter Institute, who brought files and conducted examinations to find that several persons did not classify under the institutes categorical definitions and were released along with others who had fathers or sons in the military.<sup>254</sup> The definition of who constituted a Gypsy or *Zigeunermischlinge* was still not objectively clear inside the Kripo since they conducted the arrests that Würth had to correct. Clarity was also a problem in a collection camp in Cologne where 938 Gypsies were deported to the east in May 1940 without using the results from the Ritter institute, which led to more mistakes.<sup>255</sup> The problem was hoped to be resolved with the creation of a standardized racial assessment issued by the RKPA on August 7, 1941, that fit this schema:<sup>256</sup>

1. Z pure Gypsy (*Vollzigeuner* or *stammechter Zigeuner*)
2. ZM+ *Zigeunermischlinge* with predominantly Gypsy blood
3. ZM *Zigeunermischlinge* with equal parts German and Gypsy blood
  1. a ZM degree I is a person who has one German and one pure Gypsy parent
  2. a ZM degree II is a person who has one German and one ZM degree I parent
4. ZM- *Zigeunermischlinge* with predominantly German blood
5. NZ non-Gypsy

These assessments were critical in enforcing the plethora of decrees that would come from the Ministry of the Interior and other officials like Himmler and Heydrich. Defining who was a Gypsy had been an obstacle stretching back to the Nuremburg Laws and more recently in the proposed deportation of 1940. The problem did not go unnoticed and in July 1942 the RKPA stated that persons identified as Gypsies were so until otherwise proved by a racial assessment.<sup>257</sup> Several months earlier in November 18,922 racial assessments existed and by March 1943 Ritter reported that 21,498 assessments were complete on Gypsies from Germany and Austria.<sup>258</sup>

Such a schema was also used for exemption purposes the Auschwitz decree.<sup>259</sup> The

determination for racial status was to be in the responsibility of the assessments done by the Ritter institute or if none existed than by the RKPA.<sup>260</sup> The percentage of local Gypsy populations that were deported to Auschwitz ranged from nearly all of the Gypsies in the Magdeburg area, to fourteen of twenty-five *Zigeunermischlinge* deported in Giessen, to the deportation of the vast majority of prosperous sedentary (interesting how class did not make a difference) Gypsies in Munich.<sup>261</sup> In addition, the former possibility of exemptions of frail persons over the age of seventy and women pregnant into their third trimester that were made in 1940 were no longer applicable in 1943.<sup>262</sup>

*Robert Ritter, eugenics and the Research Institute for Racial Hygiene*

At a young age Robert Ritter came to the conclusion that laws of character and disposition determine the course of peoples' lives, not reason, upbringing and experience.<sup>263</sup> As a student he had a "compulsion to combine scholarship with practical experience" by working in clinics, psychiatric centers and reformatories.<sup>264</sup> An avid learner, in the early 1930s he attended lectures on social hygiene and in the same decade his thought shifted from sympathy toward the young to preventative measures for the "abnormal" or "incurably sick."<sup>265</sup>

In 1936, Ritter took the head position of the Research Institute for Racial Hygiene and Population Biology, a part of the Reich Ministry of Health. Established with the purpose of solving the problem of who counted as a Gypsy and to collect information on Gypsies and *Zigeunermischlinge* to hand to the Kripo.<sup>266</sup> One of his goals was to attempt to classify and

“clarify” the problem of the “asocial.”<sup>267</sup> Or as, he put it in 1940, the purpose of the Institute was “to provide scientific and practical data for the measures taken by the state in the areas of eugenics and racial hygiene.”<sup>268</sup> He would apply his formal training in philosophy and medicine with the intent to control the “asocial” and criminal population by attempting to “...investigate whether through preventing [reproduction of] offspring infected with hereditary diseases.”<sup>269</sup> Acting as a bridge between state policy and eugenics in 1937 Ritter and his research team began to select data at the request of the Ministry of the Interior on Gypsies across Germany.<sup>270</sup> They conducted interviews with Gypsies, occasionally coerced by the threat of incarceration, took photographs, measurements and blood samples from the population around Germany.<sup>271</sup> His research claimed that Gypsies, caused by a biological disposition, could never become sedentary.<sup>272</sup> The social behavior of some Gypsies, combined with the eugenic assumption of heredity, provided a framework for Ritter to claim that *all* the “asocial” *Zigeunermischlinge* was unable to assimilate and integrate into productive individuals.<sup>273</sup> An illustration of his practical use of eugenics and “race science” can be seen in his ideal type characterization of the “pure-race Gypsy”<sup>274</sup> Those that did not meet his criteria would be classified as *Zigeunermischlinge* and “asocial.” Ritter’s research conformed nicely to what the Interior Ministry wanted to hear: most Gypsies are *Zigeunermischlinge*, who are a danger to the German *Volk* and should be incarcerated or sterilized.<sup>275</sup>

“Racially pure” Gypsies

Aryan legend and racial fascination combined in Heinrich Himmler's interest in the "racially pure Gypsies." Himmler had a serious interest in Aryan Mythology and in early May 1939 this specific interest was allegedly aroused due to a lecture by the curator of *Ahnenerbe* (Ancestral Heritage) on the "unadulterated Aryan thinking" in Gypsy fairy tales.<sup>276</sup> In 1942 he ordered that this portion of the German Gypsy population (about 10% of the total population) be researched.<sup>277</sup> Nebe sent the orders to the *Ahnenerbe* to "establish closer and very positive contact with the Gypsies still living in Germany in order to study the Gypsy language and learn about Gypsy customs."<sup>278</sup> Himmler did indeed receive internal criticism for such a policy that saw his interest as "an eccentric idiosyncrasy" with Bormann and Thierack attempting to undermine it when they could.<sup>279</sup>

Of all the classifications of Gypsies the "racially pure" received the most lenient treatment. Those included the "racially pure Gypsies" and the *Zigeunermischlinge* who were "accepted into the ranks of the 'pure Gypsies.'"<sup>280</sup> The RKPA issued new orders on October 13, 1942 that empowered nine Gypsy spokesmen to propose the inclusion of "good *Mischlinge*" into the protected "racially pure" group of Gypsies.<sup>281</sup> There was a stipulation made by the RKPA on January 11, 1943, that "good *Mischlinge*" with a criminal record would not be included.<sup>282</sup> Months after the March 1943 deportation applications were still be recommendations and processing were still being made for "good *Mischlinge*."<sup>283</sup> *Mischlinge* who enjoyed this new protection were also exempt from the December 1942 ban on marriages between *Zigeunermischlinge*.<sup>284</sup> For research purposes the "pure race" Gypsies were supposed to be free to live an itinerant way of life, practicing their traditional customs, under supervision of course, however this plan never actually was put into effect.<sup>285</sup> And in November 1942 the RKPA gave

the number of “racially pure” Gypsies as 1,097 and about 3,000 “good Mischlinge” would be added, raising the number to about 4,000 protected Gypsies.<sup>286</sup>

### *The Gypsy family camp at Auschwitz*

On February 26, 1943 the first large numbers of Gypsies arrived in Auschwitz.<sup>287</sup> Upon arrival the first prisoners found that the “Gypsy family camp” was not ready. Instead they were placed in wooden barracks, intended for horses, with an earthen floor, unreliable and contaminated water, no windows and ventilation slits in the roof.<sup>288</sup> Hunger was common and the food was poor, not providing sufficient enough in calories, even though they were not required to work.<sup>289</sup> Dr. B<sup>290</sup> called the Gypsy family camp an “extraordinary filthy and unhygienic even for Auschwitz, a place of starving babies, children and adults.”<sup>291</sup> Often overcrowded and cramped, the hygienic conditions were terrible and disease soon broke out.<sup>292</sup> The initial two barracks that were hospitals lacked sufficient equipment, food and medicine; and even when it occasionally had these resources it was still inadequate to keep the Gypsy community healthy.<sup>293</sup>

In May 1943 typhus broke out in the camp due to poor nutrition and terrible hygienic conditions.<sup>294</sup> The camp was quarantined and the mortality rate was roughly 30-40 percent.<sup>295</sup> Diarrhea and scabies also lead to secondary infections.<sup>296</sup> Brutalities by the Kapos and SS guards were also common.<sup>297</sup> Many German Gypsies who ended up in Auschwitz did so in bewilderment. Military men, on leave from the front, were placed in the camp “simply because their father or mother or grandfather had been a gypsy or gypsy half-caste.”<sup>298</sup> Understandably the dismal and desperate life in the camp caused some Gypsies to attempt escapes, however they

were met with little success; the consequence if caught was being worked to near death or death or simply being shot.<sup>299</sup>

The first mass killings took place on March 23, 1943. Upon arrival just a few days before a group of 1,700 Gypsies from the Bialystok region were isolated and not registered. They were gassed due to allegations they had typhus.<sup>300</sup> Two months later 1,035 Gypsies were sick with typhus or suspected of having typhus were also gassed.<sup>301</sup> It seems that the Nazis intended to gas those infected with typhus and suspected of having typhus rather than treat the problem efficiently with medicine, assuming they wanted to keep the Gypsies alive. In spring some 3,500 Gypsies were transferred out to work in other concentration camps due to a serious labor shortage.<sup>302</sup> On May 16 an attempt to liquidate the camp was thwarted by the Gypsy prisoners who resisted the Nazis successfully.<sup>303</sup> In late May, after the resistance about 1,800 Gypsies were transferred to Auschwitz I, mostly young adults.<sup>304</sup> The RKPA perhaps had a role to play in the decision for liquidation of the Gypsy camp due to the inclusion of decorated veterans in the transfer and the requirement of sterilization that was used in January 1943.<sup>305</sup> In July healthy Gypsies and veterans of the war were further transferred to Auschwitz I.<sup>306</sup> Those who remained in the camp were told that they would be moving to a new and better camp.<sup>307</sup> On July 31 some 1,600 Gypsies were loaded into a train and left for Germany.<sup>308</sup> On August 2, the SS surrounded the barracks with some 2,898 inmates mostly consisting of older men, the sick and women and children. According to Dr Nyiszli the inmates were taken outside, given rations, presumably to calm their fears and reassure their security, then sent to the crematoriums.<sup>309</sup> About 23,000 Gypsies were put into the camp of whom 5,600 were killed in the gas chambers, 3,500 moved to other camps leaving close to some 14,000, some 85%, who died in the camp from disease medical experiments, and poor treatment.

*Medical experiments: Josef Mengele*

Josef Mengele received his doctorate in anthropology in 1935 and another doctorate in medicine in 1938 from the Frankfurt Institute for Hereditary Biology and Racial Hygiene under Otmar von Verschuer.<sup>310</sup> It was here where he accepted the racial and genetic assumptions of social behavior and contributed to “race science.” In May of 1943 Mengele became the chief physician of the Gypsy family camp. Mengele, along with his regular duties as chief physician, conducted research on identical twins and the “physiology and pathology of dwarfism and children born with other abnormalities.”<sup>311</sup> Free to arbitrarily conduct humiliating examinations of Gypsy children, many who were killed by injections of phenol in the heart, administered by either Mengele or his assistants and then dissected.<sup>312</sup> Mengele also conducted his experiments on twins, and according to one clerk, who was prisoner, roughly sixty pairs of twins were alive at the beginning of the Gypsy camp and when it was liquidated on August 1, 1944 only seven pairs were still living.<sup>313</sup> According the registries the camp had 6,000 children under fourteen, with 363 babies born inside the camp. A 1943 outbreak of noma, a water cancer caused by malnutrition, peaked his interest, who initially assumed the racial root of the disease but was forced to come to the conclusion that it was the conditions of the camp that were the cause.<sup>314</sup> This knowledge was overlooked when Mengele was awarded a medal for his work on the “racial origins of the Gypsies” in February 1944.<sup>315</sup> In May 1944, Himmler asked Dr. Ernst Grawitz, the SS-Obergruppenführer Grawitz, who carried the title of Reichsarzt SS und Polizei to provide him with who he thought would be the best subjects for some medical experiments that he

wished to be undertaken in Dachau. Grawitz, assumedly unsure himself, sought the counsel of three persons, one of which was Nebe. On June 28, Grawitz wrote to Himmler that Nebe recommended “the asocial *Zigeunermischlinge*” in Auschwitz.<sup>316</sup>

### *Sterilizations and specific intent*

Racial categories began to fuse further with the social categorization of “asocials” toward genocidal acts. The targeting of *Zigeunermischlinge* for sterilization goes back to the 1930s with calls made by citizens and Nazi party officials<sup>317</sup> Gypsies were of course not the only target for sterilizations.<sup>318</sup> As briefly discussed in the beginning of this paper, the sterilization of humans had long been part of the tradition of “racial hygiene” and eugenics. Theory became state policy in The Law for the Prevention of Genetically Diseased Offspring, adopted on July 14, 1933 and put into effect on January 1, 1934.<sup>319</sup> Individuals were to be sterilized that were medically determined to pass on a serious physical or mental disorder to their offspring, including: schizophrenia, mental retardation, epilepsy, blindness, deafness, and other serious bodily deformities and severe alcoholism.<sup>320</sup> The cases would have to be reported and an application for sterilization would have to be made to a genetic health court (*Erbgesundheitsgerichte*).<sup>321</sup>

Physicians and academics continued to play a prominent role in the study of Gypsies in particular concerning sterilizations. In 1937, Otto Finger, an assistant of Wilhelm Kranz, published a study on two Gypsy clans. He found that the vast majority of these clans were “asocial” and since they were parasitical perhaps be sterilized, but, he wrote that “under existing legislation it was all but impossible.”<sup>322</sup> The categories of what it meant to be “asocial” and race collide in Finger’s study. He writes: “It is unacceptable that work-shy and asocial conduct is

sanctioned by the state by rewarding racially unsuitable persons for their lack of suitability with public welfare.”<sup>323</sup> The role of physicians radicalized over time as their recommendation became more explicit and confident. The concern moved from the “asocial” to the *Zigeuner* and *Zigeunermischlinge*. In a study published in 1941, Wilhelm Kranz and Siegfried Koller included *Zigeunermischlinge* in their call for “asocials” be sterilized.<sup>324</sup>

In January 1943 the Auschwitz decree declared that all Gypsies above the age of twelve who are exempted from deportation be sterilized for reasons of social adjustment. This in effect, would halt the next generations’ further propagation and can be seen as a substitute for potential death in the concentration camp.<sup>325</sup> One of the following regulations stated that consent should be given to Gypsies above the age of twelve, and if parents did not comply, the RKPA would make the final decision.<sup>326</sup> In contrast to the sterilization law of 1933, “health courts” no longer were required to issue sterilization. Instead the RKPA was the main authority, draining its legitimacy from Reich Committee for the Scientific Processing of Serious Hereditary and Genetic Diseases (*Reichsausschuss zur wissenschaftlichen Erfassung von erb- und anlagebedingten schweren Leiden*).<sup>327</sup> In addition sterilization was recommended for those Gypsies who were married to a person of “German blood” or for those who had a record of meritorious military service.<sup>328</sup> Sterilizations, as stated by the RKPA, were to be administered by the same hospitals and physicians that began performing such acts since the introduction of the Law for the Prevention of Genetically Diseased Offspring of 1933.<sup>329</sup> Gypsy specialist Robert Ritter and Fred Dubitscher, researcher in the racial hygiene division of the Reich Department of Public Health, both created “scientific” concepts to justify sterilization. Ritter created “disguised mental retardation” which was vague enough to easily diagnose “asocials” and recommend sterilization. And Dubitscher formed a mental disorder called “moral mental retardation,” which

prevented an individual from adhering to and exhibiting complete indifference to moral values. These individuals too were recommended to be sterilized.<sup>330</sup> Of all the reasons cited to justify sterilizations “hereditary mental retardation” seems to be the most popular.<sup>331</sup> What is just as alarming, and just as revealing, is that both physicians and researchers were *aware* that a diagnosis of “hereditary mental retardation” was not a certainty, but that the time constraints would be too lengthy to discern whether or not the “condition” was present in an individual. In short, “hereditary mental retardation” was used as a scientific justification to sterilize individuals for other reasons.<sup>332</sup>

In August 1939 the Ministry of the Interior ordered that sterilizations should only be conducted if they were seriously urgent. The official reason given was that medical manpower must be conserved but the unrest among the population, especially Catholics, surely had to do with this decision.<sup>333</sup> After the war began the previous institutional measures that required medical reasons for sterilization, however defunct, were no longer necessary to sterilize the German Gypsy population.

Eugenics and state policy were further established with the decision by the Reich Committee for the Scientific Processing of Serious Hereditary and Genetic Diseases, established in 1939, which permitted sterilizations for “special cases” outside the realm of the law.<sup>334</sup> This power was used to sterilize *Zigeunermischlinge* in the summer of 1943.<sup>335</sup> To give consent to be sterilized brought its social privileges. Those Gypsies who agreed would be transformed into a “socially adjusted” individual who receive permission to marry; but this did not translate into a guarantee that this wish could be granted.<sup>336</sup> Examples like this, seen from a conceptual perspective, are interesting because they show how the racial category of *Zigeunermischlinge*, only after biological action was taken against the existence of future generations, would then

fade and the behavioral category of “asocial” would take prominence. There are successful cases where Gypsies refused to be sterilized.<sup>337</sup> The actual number of Gypsies who were sterilized and who escaped sterilization following the Auschwitz decree is still unknown and perhaps will never be known.<sup>338</sup> We do know that some several thousand Jews and Gypsies were sterilized by Carl Clauberg in Auschwitz by injecting a corrosive liquid into the uterus of female inmates without the use of anesthesia.<sup>339</sup> In addition, in March of 1944 Robert Ritter wrote that “a larger part of the asocial *Zigeunermischlinge* classified have been sterilized,” which is relatively reliable information considering Ritter’s role.<sup>340</sup>

## Chapter III

### Was this Genocide?

#### *The problem*

Long neglected, the persecution of Gypsies during the Nazi regime now is a subject of interest and controversy. More recently, leading scholars in the field have been debating whether or not what occurred to the Gypsies in Europe under Nazi domination should or should not constitute genocide. The debate took a turn when Günter Lewy wrote the now definitive history *The Nazi Persecution of the Gypsies*.<sup>341</sup> A gifted historian, Lewy sifts through endless documents of Nazi officials and local histories to give us a narrative of the persecution: mainly localized, ad hoc without a central teleology of a national law, policy or practice that unified the persecution and annihilation. It is the last point that Lewy controversially takes issue with. Under the Genocide convention, as I have already shown, intent is required for the crime to be classified as genocide. The argument that Lewy attempts to make in his book is since no overall plan existed to annihilate *all* of the Gypsies, the persecution cannot be called genocide under the definition of the Genocide convention because it lacks genocidal intent vis-a-vis a plan.

Other scholars in the field have offered criticism to his position. Historian Gilad Margalit disagrees with Lewy's, what he calls "formalistic claim," that the Gypsies were not victims of genocide at the hands of the Nazis. Without providing a critique of Lewy's argument, Margalit states that even if a lower estimate of 90,000 Gypsy men, women and children were to be accepted "[s]uch an atrocity *should* [my emphasis] be defined as genocide—if not in the strict legal sense then surely by the common use of the term."<sup>342</sup> Historian Michael Zimmermann agrees that genocide did take place, citing the gassings in Auschwitz-Birkenau "count as genocide."<sup>343</sup>

Holocaust historian Yehuda Bauer, on the other hand initially wrote in 1994 that “[i]f there had been a plan to murder” the Gypsies the SS would have done so much earlier when they arrived in Auschwitz instead of keeping them alive with men and women together and physically with their families.<sup>344</sup> In a correspondence with Sybil Milton, sparked by Milton’s essay which claimed the similarities of the genocide of Jews and Gypsies,<sup>345</sup> Bauer stating that the, with the available evidence, the Holocaust was a unique event and that the persecution of Gypsies was a different case, with only a part of the population targeted.<sup>346</sup> Milton responded strongly by claiming the central thesis in her essay is that Nazi genocide was the mass murder of biologically defined human groups, drawing on the racial aspect of intentions behind the violence.<sup>347</sup> However it was perhaps not until Lewy published his book that presented historical evidence that Bauer reevaluated his assumptions. Recently he wrote that genocide of Gypsies did take place “at the hands of Nazi Germany,” supporting his claims by taking the definition of the Genocide Convention seriously.<sup>348</sup> From this position, Bauer argues that it is clear that genocide took place by the Nazis because they intended to annihilate “the Gypsies as a separate ethnicity, in part.”<sup>349</sup> Raul Hilberg, who thought the Gypsies were victims of genocide, showed caution over the debates on “definitional problems” of genocide, which he thought lead to an “unavoidable situation,” where historical revisionists like Lewy can argue that genocides did not take place.<sup>350</sup> And while all of these scholars make convincing arguments they have all for the most part neglected the evolution of the concept of genocide and its most important parts, intent, in part and in whole, and as such.

*Was this genocide?*

With the archival evidence presented in *The Nazi Persecution of the Gypsies* it is possible now to ask and attempt a better answer to the question of whether or not genocide of Gypsies took place in Germany during the Nazi period.<sup>351</sup> How was the annihilation of Gypsies carried out? What kind of intent can be established? How were the Gypsies, as such, targeted for annihilation in part or in whole?

When the Nazi party took power in 1933 the German Gypsy population was approximately 26,000 to 35,000 persons.<sup>352</sup> Steadily, German states approved policies that would garner the loss of rights for Gypsies as German citizens. At the same time, law enforcement institutions, which were familiar with Gypsies, were slowly centralized and increased their autonomy from courts. Steadily, repressive policies escalated to the construction of concentration camps. Institutions like the RKPA and Kripo headed by Arthur Nebe in 1935 and 1937 played a central role for committing the acts of persecution: arrests, detentions and decisions on exemptions. On lower levels some cases illustrate intentions much clearer. All of the Magdeburg Gypsies were not expected to return once deported. In Munich a high percentage of the Gypsy population were deported to Auschwitz. The mayor of Breitscheid, on his second attempt, deported Gypsies to Auschwitz. The decree for Combating the Gypsy Plague provided the means of an accumulated racial intent over years of incremental change from casting Gypsies as “asocials” to racial threats. Nebe and Heydrich were now the major authorities on Gypsy policy with the advent of the decree, not the states. It was Nebe who in October 1939 pressured Eichmann to include Berlin Gypsies in transports of Jews to Nisko in the amassing of plans for the deportations into the General Government.<sup>353</sup> The method of annihilation was local police working in concert with party officials, of whom Nebe is an illustration, and research institutes in the genocide of Gypsies.

The establishment of “race science” and eugenics provided an epistemologically legitimated framework that was used to construct the genocide. First deemed to be “asocial,” Gypsies, along with much of the German national context became racialized over time and a “racial plan” was mounted against the “alien blood” present in Germany. However this is not to suggest a dogmatic clear causal relationship between the “asocial” category and racial categories: confusion was a consistent theme on how to define the Gypsies. From the late 1930s onward it was Ritter and his research team that had authority, along with the RKPA, to define who was a Gypsy presently and in the future. The Gypsies, as such, existed from the definitions of the perpetrators: local officials, Ritter, Nebe and the RKPA. “Race science” and eugenics contributed to establishing intent and motive against those of “alien blood,” a category that included others than Gypsies and was not a voluntary group, permitting members to come and go as they leave unscathed without an indelible mark.<sup>354</sup>

Intent of any kind implies justification. The Gypsy population was persistently cast as a “danger” to the German people, further justifying governmental action toward the population. Some justifications that were used in the persecution included: Gypsy blood was a threat, they were a danger to the German nation, and they were parasitical and “asocial.” All of these justifications can perhaps be summed up with one underlying theme: self-defense. As irrational as it may sound it may perhaps be true and is not without precedent. As Benjamin B. Ferencz, Chief Prosecutor of the Nuremberg Trials, mentions that “most genocides are committed in presumed defense of some particular ideal” including religion, ideology, race, self-determination or nationalism.<sup>355</sup>

Lewy admits that there are clear limitations in the definition of genocide according to the convention, mentioning “in part.” He asks the question: “What percentage or part of a group

must be affected by the various destructive acts enumerated in the convention in order to trigger the crime of genocide?”<sup>356</sup> As I discussed in Chapter I under the section of “in whole and in part,” the ruling in Srebrenica, to a degree, has provided an answer to his question. A substantial part, a qualitatively understood sub-group of the group in question, must be annihilated for it to be considered genocidal.<sup>357</sup> Lewy argues that those who were exempted from deportation could do so if they conformed to socially acceptable behavior, however what he fails to mention in his concluding remarks is that Gypsies who were currently serving in the military, an act of nationalist social behavior, were deported via the use of racial criteria to Auschwitz.<sup>358</sup> Even though a substantial part of Gypsies were exempted from Auschwitz a clear part of Gypsies were deported to the concentration camp.

*Specific and general intent: sterilization and extermination*

In addition, specific intent can be established if the Gypsies were targeted on the basis of their ethnicity partly caused by a racist world-view that existed at the time. General intent can be established by the material means of the conditions of Auschwitz and there intended effect upon the population.

*Did the living conditions in Auschwitz encourage life?*

The Auschwitz decree issued by Himmler is the most explicit order of genocidal acts toward the Gypsies from a high ranking Nazi official that is known. Lewy argues that genocidal

intent was not present when Gypsies were deported to Auschwitz. Instead he proposes that the Gypsies were deported to Auschwitz “...not out of an intent to destroy” but rather “...to expel large numbers of this widely despised minority from Germany.”<sup>359</sup> Indeed the Gypsies were deported in large numbers and despised by much of the German population. However what Lewy fails to see is what expulsion or deportation meant in terms of genocidal intent. Again, in one of the two overarching patterns that he sees in Nazi Gypsy policy is to get rid of the “bad *Zigeunermischlinge*” by “sending them away or putting them into work camps.”<sup>360</sup> That the “liquidation” of the Auschwitz Gypsy camp was done to get “rid of a long-standing annoyance” and not much thought was given “to the ultimate fate of the deported Gypsies.”<sup>361</sup> The gassings in Auschwitz did not take place “in order to annihilate the Gypsies as a defined group” thus deeming it unqualified of genocide.<sup>362</sup> He continues this logic by asking why, if the Nazis wished to annihilate the Gypsies, did they wait to implement such a wish while providing special rations to pregnant women and children for a short period during wartime?<sup>363</sup> In short, why keep them alive when they could just be killed immediately? What he assumedly forgets or consciously omits is that killing of Gypsies immediately upon arrival was done to those Gypsies from Bialystok who may or may not had typhus.

There are also the conditions in Auschwitz. A proper place for Gypsies to live was not constructed when they arrived in Auschwitz. If there was a concern about the lives of those in the barracks then the water would have been cleaner, the conditions more hygienic thus preventing the spread of disease and necessary nutritional and medical requirements would have been met. Life in the camps can be put into perspective when it is realized that “the average lifespan between 1934 and 1944 was one or two years, and for some years it was shorter.”<sup>364</sup> Lewy admits that “conditions in the camp were atrocious, causing an extremely high rate of mortality”

but that forced stay in the camps “was not tantamount to a sentence of death nor was it meant to be such a sentence.”<sup>365</sup> As quoted in Lewy’s book, Kenrick and Puxon state that “at least 85 percent of the Gypsies sent to Auschwitz died there owing to their incarceration.”<sup>366</sup> In all, about 90 percent of the some 13,000 Gypsies deported to Auschwitz from the Reich did not survive life in the camp.<sup>367</sup>

### *Jews and Gypsies*

Following David Moshman’s understanding of the genocide of Jews as a “prototype” that can potentially cause a “conceptual constraint” when attempting to understand and judge other genocides it may be appropriate to temporarily bracket the Jewish narrative in Nazi Germany. Simultaneously it is important to remember that the persecutions of both peoples were entwined but for different reasons: Anti-Semitism and anti-Gypsyism were two qualitatively different phenomena. To suggest that the persecution of Gypsies was similar in its racist motivations would be committed anachronism.<sup>368</sup> A plurality of racisms existed in Europe at the time, the example of the difference between prejudicial assumptions and their logical worldviews are seen in how Gypsies and Jews were perceived differently.<sup>369</sup> Gypsies were not seen as conspiring toward global domination or responsible for the ills of capitalism. There is no evidence comparable to the Gypsies in a similar way to the Final Solution for the Jews.<sup>370</sup> Indeed, Margalit is correct to state that it is the political dimension found in the Jewish persecution that one does not find in the Gypsy persecution.<sup>371</sup> 372 They were seen as an “inferior” people, a classification that included Jews, Slavs, Africans, homosexuals and the handicapped.

However bracketing does not mean ignoring. An act of anachronism would also be

committed if we were invalidate and ignore how the two persecutions were related to one another. There were parallels in racial ideology, regulations and deportations.<sup>373</sup> Interest in writing a narrative of the plight of Gypsies from 1933-1945 is important however it is also just as important not to isolate it to the extent that the persecution of the Jews is completely left out of the historical context. This does not take away from the “uniqueness” of the persecution but rather suggests that similarities be taken in to consideration because both persecutions occurred at the same time.<sup>374</sup>

### *Secondary intent*

I would like to suggest that the genocide of the Gypsies at times was caused by primary intent, in both general and specific ways, but was also perhaps caused by a secondary intent. This is taken to mean that since no central teleology existed, as we see in the case of the Aché, the Gypsies found themselves caught in a “tightened net” of racial paranoia and anti-Semitism that pushed their own persecution to genocidal ends. The two persecutions were two different contexts; the Gypsy context was overpowered by the Jewish context, thus subsumed into the larger genocidal framework. For example Auschwitz was not primarily constructed and planned for Gypsies but rather for Jews.

Gypsies: “asocials,” – racial thinking 1938 first mention in a decree > expel, deport, genocide		
Intent	motive	
Means	ends	
	Means	ends
	Anti-Semitism, and Jews	> genocide
	Intent	motive

Racist understandings of Gypsies also contributed to the most uncontroversial aspect of the genocide: sterilizations. Ritter's proposed solution to the problem was to sterilize the "asocial" *Zigeunermischlinge* was done with the intention to eliminate the German Gypsy population in part. To sterilize as much of the population that resides in the Reich with the intention to halt their propagation and to retain the "purity of German blood."<sup>375</sup> It was race too that attracted Mengele to conduct medical experiments on Gypsies in Auschwitz.

## Chapter IV

### Conclusion

The hypothetical discussion of this has attempted to apply concepts established in the criminalization of genocide to a historical event. Genocide is perhaps most powerful in its legal form due to the existence of *accountability* in law. Simultaneously, contributions from psychology, sociology, anthropological and history aid in *comprehending* the complexity of genocide. Contributions from all fields are needed when attempting to comprehensively understand, prevent and punish genocide. Law is important for the goal of punishment. Sociology, political science, psychology, anthropology and history can all be considered to be a means for understanding the phenomena *but not without a purpose*, which Lemkin understood, admirably, to be punishment and prevention through criminalization.

From a historiographical point of view, this paper has attempting to understand how past genocides or what many consider to be genocides and mass murders functioned and how they are conceptually different. This is a luxury that lawyers do not have. Lawyers have the presumption of innocence and social scientists do not have such constraints or direct responsibility over the freedom of individuals lives. Social scientists and historians can speculate: lawyers cannot afford the luxury of “inference and imagination” for if they did “they might rightly be ruled out of order in a court.”<sup>376</sup> Indeed, Greg Grandin may be closer to the truth than it may seem at first read when he writes that:

“Just as lawyers often fear an appeal to history will be used to exonerate individuals from the consequences of their actions, a search for motive can dilute the racial content of a crime, *for race is never just race*. Racial, ethnic and religious identities intertwine in all aspects of social life and national history.”<sup>377</sup>

Groups of humans that are bound by language, “race,” ethnicity, religion, nationality, “*communities of fate*,” have been driving forces in modern world history. Carving out territories and urging conformity, in some cases purity, of their communities bound by fate. Indeed, political scientist Shlomo Avineri is correct when he writes that a great extent of modern nationalism “relates to origins and is suffused with cultural determinism and racism.”<sup>378</sup> In this case, the genocide of the Gypsies, racism, fear, paranoia, contempt and intolerance seemingly construct themselves as bridges that connect nationalism and genocide; not self-determination or resources like water and energy. National-self esteem and irrational forms of “national redemption” on the world stage were built off backs of self-righteous prejudice and explicit racism. It seems that what remains is that we literally do not know enough about how to practically prosecute and apply the genocide convention to real life situations. One of the ways that seems most likely to resolve this issue is for more trials and cases of genocide and more historical research to take place on genocides of the past. Genocide is an old human problem that has occurred since antiquity however it has only been in the last six decades that humans have begun to consider how to prevent and punish it. And while progress has been made much work is still needed to be done.

## Appendix. 1.1

List of Offences against the law of nations. 1<sup>st</sup> Conference for the Unification of Penal Law, Warsaw, 1927.<sup>379</sup>

- a) piracy,
- b) counterfeiting of coins, bank notes and securities
- c) trade in slaves
- d) trade in women or children,
- e) intentional use of any instrument capable of producing a public danger [*terrorism*],
- f) trade in narcotics,
- g) traffic in obscene publications.

“Acts Constituting a General (Transnational) Danger Considered as Offences Against the Law of Nations” by Raphael Lemkin (Originally published in French, 1933)

Proposals of offences of laws of nations:

- a) acts of barbarity,
- b) acts of vandalism,
- c) provocation of catastrophes in international communications,
- d) intentional interruption of international communications,
- e) propagation of human, animal or vegetable contagions.

### Proposed Legislation:<sup>380</sup>

**Art. 1)** Whoever, out of hatred towards a racial, religious or social collectivity or with the goal of its extermination, undertakes a punishable action against the life, the bodily integrity, liberty, dignity or the economic existence of a person belonging to such a collectivity, is liable, for the **offense of barbarity**, to a penalty of . . . unless punishment for the action falls under a more severe provision of the given Code.

The author will be liable for the same penalty, if an act is directed against a person who has declared solidarity with such a collectivity or has intervened in favor of one.

**Art. 2)** Whoever, either out of hatred towards a racial, religious or social collectivity or with the goal of its extermination, destroys works of cultural or artistic heritage, is liable, for the **offense of vandalism**, to a penalty of . . . unless punishment for the action falls under a more severe provision of the given Code.

**Art. 3)** Whoever knowingly causes a catastrophe in the international communication by ground, sea or air by destroying or removing the systems which ensure the regular operation of these communications, is liable to imprisonment for a period of . . .

**Art. 4)** Whoever knowingly causes an interruption in the international postal, telegraph or telephone communication by removing or by destroying the systems which ensure the regular operation of these communications, is liable to a penalty of . . .

**Art. 5)** Whoever knowingly spreads a human, animal or vegetable contagion is liable to a penalty of . . .

**Art. 6)** The instigator and the accomplice are subject to the same punishment as the author.

**Art. 7)** Offenses enumerated in Articles 1 - 6 will be prosecuted and punished independently of the place where the act was committed and of the nationality of the author, in accordance with the law in force in the country of the prosecution.

#### Genocide: A Modern Crime by Raphael Lemkin (April 1945)<sup>381</sup>

The crime of genocide includes the following elements:

- The intent of the offenders is to destroy or degrade an entire national, religious or racial group by attacking the individual members of that group.
- This attack is a serious threat either to life, liberty, health, economic existence or to all of them.
- The offenders may be representatives of the state or of organized political or social groups.
- Liability should be fixed upon individuals both as to those who give the orders and to those who execute the orders.
- The offender, should be precluded from invoking as his defense the plea that he had been acting under the law of his country, since acts of genocide should be declared contrary to international law and morality.
- Since the consequences of genocide are international in their implications, the repression of genocide should be internationalized. The culprit should be liable not only in the country in which the crime was committed, but in the country where he might be apprehended. The country where he is found may itself try him or extradite him.
- Since a country which makes a policy of genocide cannot be trusted to try its own offenders, such offenders should be subject to trial by an international court. Eventually, there should be established a special chamber within the framework of the International Court of Justice.
- The crime of genocide should be incorporated into the penal codes of all states by international treaty, giving them a legal basis upon which they could act.

- It is also proposed that the Hague Regulations be modified to extend to captive nations the controls provided for the treatment of war prisoners by the Convention of July 1929. Attempts to rescue or alleviate the suffering of captive nations have been hampered by lack of accurate information.

“Genocide” by Raphael Lemkin (April 1946)

**VI: Proposal for an International Treaty,  
including the following principles.<sup>382</sup>**

On the basis of the foregoing considerations, the author proposes that the United Nations as they are now organized, together with other invited nations, enter into an international treaty which would formulate genocide as an international crime, providing for its prevention and punishment in time of peace and war. This treaty, basically, should include, among other things, the following principles:

1. The crime of genocide should be recognized therein as a conspiracy to exterminate national, religious or racial groups. The overt acts of such a conspiracy may consist of attacks against life, liberty or property of members of such groups merely because of their affiliation with such groups. The formulation of the crime may be as follows: "Whoever, while participating in a conspiracy to destroy a national, racial or religious group, undertakes an attack against life, liberty or property of members of such groups is guilty of the crime of genocide."
2. The crime so formulated should be incorporated in every national criminal code of the signatories. The defendants should be liable not only before the courts of the country where the crime, was committed, but in case of escape shall be liable as well, before the courts of the country where they are apprehended.
3. Persons accused of genocide should not be treated as political criminals for purposes of extradition. Extradition should not be granted except in cases where sufficient evidence exists to indicate that the requesting country will earnestly prosecute the culprits.
4. The liability for genocide should rest on those who gave and executed the orders, as well as on those who incited to the commission of the crime by whatever means, including formulation and teaching of the criminal philosophy of genocide. Members of government and political bodies which organized or tolerated genocide will be equally responsible.
5. Independently of the responsibility of individuals for genocide, states in which such a policy obtains should be held accountable before the Security Council of the United Nations Organization. The Council may request the International Court of Justice to deliver an advisory opinion to determine whether a state of genocide exists within a given country before invoking, among other things, sanctions to be leveled against the offending country. The Security Council may act either on its own initiative or on the basis of petitions submitted by members of interested national, religious or racial groups residing either within or without the accused country.

6. The Hague Convention and other pertinent treaties should be changed to the effect that in case of war, an international body (such as the International Red Cross) should have the right to supervise the treatment of civilian populations by occupants in time of war in order to ascertain whether genocide is being practiced by such occupant.

7. A multilateral treaty for the prevention and punishment of genocide should not preclude two or more countries from entering into bilateral or regional treaties for more extensive protection against genocide. In this connection it is well to note that the Allied Governments in accordance with the Moscow agreements of December, 1945, have decided to enter into formal treaties of peace with the Axis satellite countries Hungary, Bulgaria and Rumania, which practiced genocide in this war according to the German pattern. It is of impelling importance that anti-genocide clauses be included in these treaties.

## Appendix 1.2

**Convention on the Prevention and Punishment of the Crime of Genocide**<sup>383</sup>

Approved and proposed for signature and ratification or accession by  
General Assembly resolution 260 A (III) of 9 December 1948

*entry into force* 12 January 1951, in accordance with article XIII

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

**Article 1**

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

**Article 2**

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

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

**Article 3**

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

#### **Article 4**

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

#### **Article 5**

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

#### **Article 6**

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

#### **Article 7**

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

#### **Article 8**

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

#### **Article 9**

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

#### **Article 10**

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

#### **Article 11**

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any nonmember State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 12**

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

#### **Article 13**

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a proces-verbal and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article 11.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected, subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

#### **Article 14**

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

#### **Article 15**

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

#### **Article 16**

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

#### **Article 17**

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article 11;
- (b) Notifications received in accordance with article 12;
- (c) The date upon which the present Convention comes into force in accordance with article 13;
- (d) Denunciations received in accordance with article 14;
- (e) The abrogation of the Convention in accordance with article 15;
- (f) Notifications received in accordance with article 16.

#### **Article 18**

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

#### **Article 19**

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

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<sup>1</sup> Lemkin, Raphael. "Acts Constituting a General (Transnational) Danger Considered as Offences Against the Law of Nations." *Librarie de la cour d X* (1933) 14-20. 6 Dec 2008 <  
<http://www.preventgenocide.org/lemkin/madrid1933-english.htm>>.

<sup>2</sup> Ibid.

<sup>3</sup> "The Soviet and Nazi delegations walked away from the memorable 1933 Madrid conference when Lemkin's proposal to ban what he then called the crimes of vandalism and barbarism was read. Andrei Vyshinsky, Soviet Deputy Foreign Minister and Chief Prosecutor at the infamous purge trials of 1936-1938, argued that by proposing to make the crime of barbarism punishable under international law the capitalist world intended to intervene in the affairs of the Soviet Union." We could speculate that the Nazi delegates walked out of the Madrid conference large in part due to Lemkin's implicit indictment of their political and social agenda. Weiss-wendt, Anton. "Hostage of politics: Raphael Lemkin on 'Soviet genocide' *Journal of Genocide Research*, 7:4, pg. 552.

<sup>4</sup> Lemkin, Raphael. "Acts Constituting a General (Transnational) Danger Considered as Offences Against the Law of Nations." *Librarie de la cour d X* (1933) 14-20. 6 Dec 2008  
<<http://www.preventgenocide.org/lemkin/madrid1933-english.htm>>.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid. Article 1 indeed shows a resemblance to what he would later formulate as genocide. See appendix I "Proposes Legislation" in comparison to Article II in appendix II.

<sup>9</sup> Lemkin, Raphael. *Axis Rule in Occupied Europe: Laws of Occupation - Analysis of Government - Proposals for Redress* <  
<http://www.preventgenocide.org/lemkin/AxisRule1944-1.htm>>

<sup>10</sup> Lemkin, Raphael. *Axis Rule in Occupied Europe: Laws of Occupation - Analysis of Government - Proposals for Redress* <  
<http://www.preventgenocide.org/lemkin/AxisRule1944-1.htm>>

<sup>11</sup> "In the incorporated areas, such as western Poland, Eupen, Malmedy, Moresnet, Luxemburg, and Alsace-Lorraine, local institutions of self-government were destroyed and a German pattern of administration imposed. Every reminder of former national character was obliterated." Lemkin, Raphael. *Axis Rule in Occupied Europe: Laws of Occupation - Analysis of Government - Proposals for Redress* <  
<http://www.preventgenocide.org/lemkin/AxisRule1944-1.htm>>

<sup>12</sup> "The destruction of the national pattern in the social field has been accomplished in part by the abolition of local law and local courts and the imposition of German law and courts, and also by Germanization of judicial language and of the bar. The social structure of a nation begin vital to its national development, the occupant also endeavors to bring about such changes as may weaken the national, spiritual resources. The focal point of this attack has been the intelligentsia, because this group largely provides the national leadership and organizes resistance against Nazification." Ibid.

<sup>13</sup> "In the incorporated areas the local population is forbidden to use its own language in schools and in printing. According to the decree of August 6, 1940, the language of instruction in all Luxemburg schools was made exclusively German. The French language was not permitted to be taught in primary schools; only in secondary

schools could courses in that language continue to be given. German teachers were introduced into the schools and they were compelled to teach according to the principles of National Socialism.” Ibid.

<sup>14</sup> “The destruction of the foundations of the economic existence of a national group necessarily brings about a crippling of its development, even a retrogression. The lowering of the standards of living creates difficulties in fulfilling cultural-spiritual requirements. Furthermore, a daily fight literally for bread and for physical survival may handicap thinking in both general and national terms. It was the purpose of the occupant to create such conditions as these among the peoples of the occupied countries, especially those peoples embraced in the first plans of genocide elaborated by him – the Poles, the Slovenes and the Jews.” Ibid.

<sup>15</sup> “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 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. Thus in incorporated Poland marriages between Poles are forbidden without special permission of the Governor (*Reichsstatthalter*) of the district; the latter, as a matter of principle, does not permit marriages between Poles. The birthrate of the undesired group is being further decreased as a result of the separation of males from females by deporting them for forced labor elsewhere. Moreover, the under nourishment of the parents, because of discrimination in rationing, brings about not only a lowering of the birthrate, but a lowering of the survival capacity of children born of underfed parents.” Ibid.

<sup>16</sup> Lemkin cites Luxemburg as an example to illustrate this technique of genocide. Religion in Luxemburg, primarily Catholicism, has “an important role in national life, especially in the field of education” and the Nazi presence has attempted to “disrupt these national and religious influences” primarily by coercing children to renounce their religion and join pro-Nazi youth organizations. He also draws a parallel to the destruction of the religious leadership of the Polish nation. Ibid.

<sup>17</sup> Lemkin, in perhaps the most ambiguous technique of genocide, writes of the Nazi regime attempting “to create an atmosphere of moral debasement” one that weakens the “spiritual resistance of the national group.” In Poland the consumption of alcohol was encouraged (with the price affordable) while at the same time food prices rose. Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Lemkin, Raphael. *Axis Rule in Occupied Europe*. Washington, D.C.: Carnegie Endowment for International Peace, 1944, pg. 93.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Lemkin, Raphael. “Genocide – A Modern Crime,” *Free World*, Vol.4 (April, 1945), pg. 39.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Lemkin, Raphael. “The Crime of Genocide,” *American Scholar*, Volume 15, no. 2 (April 1946) pg. 227-230.

<sup>28</sup> Lemkin, Raphael. “Genocide as a Crime under International Law,” *The American Journal of International Law*, Vol. 41, No. 1, (Jan., 1947), pg. 147.

<sup>29</sup> Kuper, Leo. *Genocide: Its Political Use in the Twentieth Century*, New Haven and London: Yale University Press, 1982. pg. 23-24.

<sup>30</sup> Ibid. 148-49.

<sup>31</sup> Kuper, Leo. *Genocide: Its Political Use in the Twentieth Century*, New Haven and London: Yale University Press, 1982. pg. 23.

<sup>32</sup> Kunz, Josef L. “The United Nations Convention on Genocide,” *The American Journal of International Law*, Vol. 43, No. 4, (Oct., 1949), pg. 739-740.

<sup>33</sup> Kuper, Leo. *Genocide: Its Political Use in the Twentieth Century*, New Haven and London: Yale University Press, 1982. pg. 24.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid. 29

<sup>36</sup> Weiss-wendt, Anton. “Hostage of politics: Raphael Lemkin on ‘Soviet genocide’ *Journal of Genocide Research*, 7:4, pg. 551.

<sup>37</sup> Please see the full text of the Convention in the appendix.

<sup>38</sup> Kuper, Leo. *Genocide: Its Political Use in the Twentieth Century*, New Haven and London: Yale University Press, 1982. pg. 31.

<sup>39</sup> I will also refer to the Convention on the Prevention and Punishment of the Crime of Genocide as the “Genocide Convention” from this point on.

<sup>40</sup> See Appendix II.

<sup>41</sup> For a discussion on the conceptual complexity of genocide please see: Straus, Scott. “Contested meanings and conflicting imperatives: a conceptual analysis of genocide” *Journal of Genocide Research*, 3:3, pg. 359.

<sup>42</sup> When Lemkin introduced the concept of genocide it was much broader than the internationally accepted definition that many are familiar with today, and considering the context in which it was created, it was fair for him to claim that genocide in various parts of occupied Europe. This is opposed to “...from today’s perspective, several cases that Lemkin deemed ‘genocidal’ back in 1944 (for example: German policy in occupied Luxemburg, Alsace-Lorraine, or Slovenia) did not amount to actual genocide.” Weiss-wendt, Anton. “Hostage of politics: Raphael Lemkin on ‘Soviet genocide’” *Journal of Genocide Research*, 7:4, pg. 551.

<sup>43</sup> This point is eloquently made in the beginning of Cécile Tournaye’s article “Genocidal Intent before the ICTY,” *International and Comparative Law Quarterly* (2003) volume 52, number 2, Oxford University Press, pg. 447-462.

<sup>44</sup> Stewart, Michael. “How does genocide happen?.” *Questions of Anthropology*. ed. Astuti, Parry and Stafford. Oxford: Berg, 2007. pg. 250.

<sup>45</sup> See appendix for the Genocide convention definition.

<sup>46</sup> Tournaye, Cécile. “Genocidal Intent before the ICTY,” *International and Comparative Law Quarterly* (2003) Oxford University Press: volume 52, number 2, pg. 460.

<sup>47</sup> Ibid.

<sup>48</sup> Kreß, Claus. “The Crime of Genocide under International Law,” *International Criminal Law Review*, 6: 2006, pg. 489; The Appeals Chamber gave this analysis of “substantial part of a group:”

“The determination of when the targeted part is substantial enough [. . .] may involve a number of considerations. The numeric size of the targeted part of the group is the necessary and important starting point, though not in all cases the ending point of the inquiry. The number of individuals targeted should be evaluated not only in absolute terms, but also in relation to the overall size of the entire group. In addition to the numeric size of the targeted portion, its prominence within the group can be a useful consideration.”

*Krstic Appeals*, supra n. 4, para. 12. Accessed on 12 October 2008 <

<http://www.un.org/icty/krstic/Appeal/judgement/index.htm> >

<sup>49</sup> Kreß, Claus. “The Crime of Genocide under International Law,” *International Criminal Law Review*, 6: 2006, pg. 491.

<sup>50</sup> Ibid. 489-92.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid. 484.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Greenawalt, Alexander. “Rethinking Genocidal Intent: A Case for a Knowledge-Based Interpretation.” *Columbia Law Review* 99(1999) pg. 2287

<sup>56</sup> Barta, Tony, “With intent to deny: on colonial intentions and genocide denial” *Journal of Genocide Research*, 10:1, pg. 111.

<sup>57</sup> Greenawalt, Alexander. “Rethinking Genocidal Intent: A Case for a Knowledge-Based Interpretation.” *Columbia Law Review* 99(1999) pg. 2274-2275.

<sup>58</sup> Ibid.

<sup>59</sup> Kreß, Claus. “The Crime of Genocide under International Law,” *International Criminal Law Review*, 6: 2006, pg. 497-98.

<sup>60</sup> Straus, Scott. “Contested meanings and conflicting imperatives: a conceptual analysis of genocide” *Journal of Genocide Research*, 3:3, pg. 364.

<sup>61</sup> Tournaye, Cécile. “Genocidal Intent before the ICTY,” *International and Comparative Law Quarterly* (2003) Oxford University Press: volume 52, number 2, pg. 453.

<sup>62</sup> Kreß, Claus. “The Crime of Genocide under International Law,” *International Criminal Law Review*, 6: 2006, pg. 493.

<sup>63</sup> Ibid. 498.

<sup>64</sup> Ibid.

<sup>65</sup> Greenawalt, Alexander. "Rethinking Genocidal Intent: A Case for a Knowledge-Based Interpretation." *Columbia Law Review* 99(1999) pg. 2280.

<sup>66</sup> Greenawalt uses the example of Adolf Eichmann in a role as leader of a death camp, with the duty to kill prisoners that arrive each day. In this scenario Eichmann is performing his duty as assigned to him, but the group membership of the prisoners may be entirely irrelevant in his motivation. Because of this his specific genocidal intent seemingly can only be proved by a personally motivation to participate in the genocide, which then raises questions about whether Eichmann's own personal inclinations are a critical factor that are guiding his actions, rather than his duty. By analyzing the ICTR's trial chambers judgment of an evidential division between Akayesu's genocidal purpose and his indeterminate genocidal intent, Greenawalt suggests that the "specific intent standard" may not be compatible on the individual level. *Ibid.* 2282

<sup>67</sup> Lemkin, Raphael. *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Washington: Carnegie Endowment for International Peace, 1944. pg. 93.

<sup>68</sup> See Greenawalt's example. Greenawalt, Alexander K.A.. "Rethinking Genocidal Intent: A Case for a Knowledge-Based Interpretation." *Columbia Law Review* 2284

<sup>69</sup> Kreß, Claus. "The Crime of Genocide under International Law," *International Criminal Law Review*, 6: 2006, pg. 498.

<sup>70</sup> Lewy, as a historical revisionist, is concerned with what some consider or widely believe to be past genocides. Some of his writings that I am aware of that dispute past genocides or suspected genocides include: *The Armenian Massacres in Ottoman Turkey: A Disputed Genocide*, *America in Vietnam*, and *the Nazi Persecution of the Gypsies* in addition to an essay titled "Were American Indians the Victims of Genocide?"

<sup>71</sup> Lewy, Güenter, "Can there be genocide without the intent to commit genocide?" *Journal of Genocide Research*, 9:4, pg. 665.

<sup>72</sup> Kimura, Akio. "Genocide and the modern mind: intention and structure." *Journal of Genocide Research*. (2003), 5 (3).

<sup>73</sup> Weber, Max. *The Theory of Social and Economic Organization*. ed. A.M. Henderson and Talcott Parsons trans. Talcott Parsons, The Free Press: New York, 1947. pg. 330.

<sup>74</sup> Henry R. Huttenbach quoted in Lewy, Güenter, "Can there be genocide without the intent to commit genocide?" *Journal of Genocide Research*, 9:4, pg. 666.

<sup>75</sup> Anachronism would be committed if we were to judge those with the knowledge that we *know* now about germ theory, something that was not known, for example, by Spanish conquistadors during the siege and conquest of Tenochtitlan. A perhaps controversial example where this logic would not apply, and mass death did take place, is the deaths of the people of the Aztec Empire caused by smallpox as recorded in the Florentine Codex by the Franciscan Monk Bernardino de Sahagun. Lewy, Güenter. "Can there be genocide without the intent to commit genocide?" *Journal of Genocide Research*, 9:4, pg. 669.

<sup>76</sup> Greenawalt, Alexander. "Rethinking Genocidal Intent: A Case for a Knowledge-Based Interpretation." *Columbia Law Review* 99(1999) pg. 2286

<sup>77</sup> "Intent relates to the means and motive to the ends, but... where the end is the means to yet another end, then the medial end may also be considered in terms of intent." *Ibid.* note 77. A visual example might look like this:

means →end/

means→end

<sup>78</sup> I would like to thank Professor David Norman Smith for introducing this concept to me.

<sup>79</sup> Greenawalt, Alexander. "Rethinking Genocidal Intent: A Case for a Knowledge-Based Interpretation." *Columbia Law Review* 99(1999) pg. 2289

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> Tournaye, Cécile. "Genocidal Intent before the ICTY," *International and Comparative Law Quarterly* (2003) Oxford University Press: volume 52, number 2, pg. 450.

<sup>85</sup> *Ibid.*

<sup>86</sup> The Aché primarily live in forests throughout Paraguay and have historically been victims of violence at the hands of Paraguayans for some time. Münzel gives some unnerving examples in the beginning of his work, and also cites that the Paraguayans and other colonialists have sought to conquer their territories and use them as a cheap labor force. Aché *The Aché Indians: Genocide in Paraguay*. Copenhagen: International Work Group for Indigenous Affairs, 1973. pg. 5-8.

- <sup>87</sup> This is the three-pronged attack that Mark Münzel describes from his two years of study. Münzel, Mark. "Manhunt." *Genocide in Paraguay*. Philadelphia: Temple University Press, 1976. pg. 20.
- <sup>88</sup> Ibid. 31.
- <sup>89</sup> See the quote of Professor Miguel Chase Sardi of the Anthropology Department of the Catholic University in Asunción. Ibid. 20.
- <sup>90</sup> Ibid. 39.
- <sup>91</sup> Münzel, Mark. *The Aché Indians: Genocide in Paraguay*. Copenhagen: International Work Group for Indigenous Affairs, 1973. pg. 12.
- <sup>92</sup> Ibid.
- <sup>93</sup> Greenawalt, Alexander. "Rethinking Genocidal Intent: A Case for a Knowledge-Based Interpretation." *Columbia Law Review* 99(1999) pg. 2282
- <sup>94</sup> Tournaye, Cécile. "Genocidal Intent before the ICTY," *International and Comparative Law Quarterly* (2003) Oxford University Press: volume 52, number 2, pg. 452.
- <sup>95</sup> *ABC Color*, May 9, 1974. Quoted in Arens, Richard. "A Lawyer's Summation." *Genocide in Paraguay*. Philadelphia: Temple University Press, 1976. pg. 42. Arens rightly states that this statement should be seen in its context of creation as a response to a signed statement of the Paraguayan Bishops' Conference which charged genocide. See 42-43.
- <sup>96</sup> Stannard, David. "Three Responses to 'Can There Be Genocide Without the Intent to Commit Genocide?'" *Déjà vu all over again*" *Journal of Genocide Research*, 10:1, pg. 132.
- <sup>97</sup> Tournaye, Cécile. "Genocidal Intent before the ICTY," *International and Comparative Law Quarterly* (2003) Oxford University Press: volume 52, number 2, pg. 452.
- <sup>98</sup> For a helpful outline please see: Straus, Scott. "Contested meanings and conflicting imperatives: a conceptual analysis of genocide" *Journal of Genocide Research*, 3:3, pg. 350-355. For a critique of this position see Huttenbach, Henry R. "Locating the Holocaust on the Genocide Spectrum: Towards a Methodology of Definition and Categorization." *Holocaust and Genocide Studies*, vol. 3, no. 3, pg. 296-297.
- <sup>99</sup> Barta, Tony, "With intent to deny: on colonial intentions and genocide denial" *Journal of Genocide Research*, 10:1, pg. 115
- <sup>100</sup> Social engineering is defined as "the radical and total transformation of a society, in a fundamental and all-embracing fashion, or attempts to implement such a transformation." Makino, Uwe. "Final solutions, crimes against mankind: on the genesis and criticism of the concept of genocide" *Journal of Genocide Research*, 3:1, pg. 60.
- <sup>101</sup> Ibid. 64.
- <sup>102</sup> Ibid. 68.
- <sup>103</sup> It should be noted that this idea was resisted by the most powerful black leader at the time, Fredrick Douglas. Packard, Jerrold M. *American Nightmare: The History of Jim Crow*. St. Martin's Press, New York: 2002 pg. 212.
- <sup>104</sup> These became known as the "Black Codes." Ibid. 42.
- <sup>105</sup> For examples see pg. 42-43. For resistance to the Codes see pg. 44. Malcomson, Scott L. *One Drop of Blood: The American Misadventure of Race*. Farrar Straus Giroux: New York, 2000. pg. 208.
- <sup>106</sup> Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 48-49
- <sup>107</sup> Packard, Jerrold M. *American Nightmare: The History of Jim Crow*. St. Martin's Press: New York, 2002. pg. 48-56.
- <sup>108</sup> Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 59
- <sup>109</sup> I use the word Gypsies with no pejorative intention, and I hope interpretation, but for the sake of consistency with the German word *Ziguenen*.
- <sup>110</sup> Burleigh, Michael and Wolfgang Wippermann, *The Racial State: Germany 1933-1945*. Cambridge: Cambridge University Press, 1991. pg. 24.
- <sup>111</sup> Ibid. 24.
- <sup>112</sup> Ibid.
- <sup>113</sup> Ibid.
- <sup>114</sup> Ibid.
- <sup>115</sup> Ibid. 27.
- <sup>116</sup> Ibid. 29.; Engs, Ruth Clifford. *The Eugenics Movement: An Encyclopedia*. Westport, CT: Greenwood Press, 2005. pg. 82
- <sup>117</sup> Engs, Ruth Clifford. *The Eugenics Movement: An Encyclopedia*. Westport, CT: Greenwood Press, 2005. pg. 191
- <sup>118</sup> Burleigh, Michael and Wolfgang Wippermann, *The Racial State: Germany 1933-1945*. Cambridge: Cambridge University Press, 1991. pg. 30.

<sup>119</sup> Ibid.

<sup>120</sup> “It’s people can perhaps be taken to mean the “ethnic origins,” to use a much later term of Anthony D. Smith, of the nation-state. Burleigh, Michael and Wolfgang Wippermann, *The Racial State: Germany 1933-1945*. Cambridge: Cambridge University Press, 1991. pg. 31.

<sup>121</sup> “...notably, he did not think that “pure races” existed in Europe and that the task of such a thought or project was indeed useless to entertain.” Ibid.

<sup>122</sup> Milton, Sybil. “‘Gypsies’ as Social Outsiders in Nazi Germany,” in *Social Outsiders in Nazi Germany*. ed. Robert Gellately and Nathan Stoltzfus. Princeton: Princeton University Press, 2001. pg. 213

<sup>123</sup> Lewy acknowledges the connection but downplays the radical consequences of “racial hygiene” before 1937.

See: Lewy, Günter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 20.

<sup>124</sup> It should be noted that some of these factors however were not all-inclusive to the Nazi period in German history but became more prevalent and intensified from 1933 through until 1945. The various peoples that comprise “Gypsies” have endured, in variable degrees, a history of oppression, persecution, stigma and marginalization since their arrival in Europe. For an introduction please see: Achim, Viorel. *The Roma in Romanian History*. Budapest: Central European University Press, 2004. Frasier, Angus *The Gypsies*. Oxford: Blackwell Publishers, 1992.

<sup>125</sup> It should be noted that legal resistance was used, and at times effectively, during the deportations to the General Government in 1940.

<sup>126</sup> Lewy, Günter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 24-25

<sup>127</sup> Ibid.

<sup>128</sup> Mosse, George L. *Toward the Final Solution: A History of European Racism*. Howard Fertig: New York, 1978. pg. 221.

<sup>129</sup> Lewy Günter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 24.

<sup>130</sup> Zimmermann, Michael. “Jews, Gypsies and Soviet Prisoners of War: Comparing Nazi Persecutions.” *The Roma: a minority in Europe: historical, political and social perspectives*. ed. Roni Stauber and Raphael Vago. Budapest: Central European University Press, 2007. pg. 36.

<sup>131</sup> Lewy, Günter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 17.

<sup>132</sup> Ibid. 25.

<sup>133</sup> Ibid. 20

<sup>134</sup> Ibid.

<sup>135</sup> Zimmermann, Michael. “Jews, Gypsies and Soviet Prisoners of War: Comparing Nazi Persecutions.” *The Roma: a minority in Europe: historical, political and social perspectives*. ed. Roni Stauber and Raphael Vago. Budapest: Central European University Press, 2007. pg. 36.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

<sup>138</sup> Lewy, Günter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 26.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid. 28.

<sup>141</sup> Ibid.

<sup>142</sup> Frick would later state that this included “Gypsies, Negroes and their bastard offspring” Lewy, Günter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. Ibid. 42.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid. 97.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid. 98.

<sup>147</sup> Ibid. 99.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid. 25

<sup>150</sup> Ibid.

<sup>151</sup> Ibid. 28.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid. 50.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid. 52.

<sup>157</sup> Ibid.

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- <sup>158</sup> Ibid. 28 footnote 17.
- <sup>159</sup> Ibid. 29.
- <sup>160</sup> Ibid.
- <sup>161</sup> Ibid.
- <sup>162</sup> Ibid.
- <sup>163</sup> Ibid. 29-30.
- <sup>164</sup> Ibid. 30.
- <sup>165</sup> Ibid.
- <sup>166</sup> Ibid.
- <sup>167</sup> Ibid.
- <sup>168</sup> Ibid.
- <sup>169</sup> Milton, Sybil. “‘Gypsies’ as Social Outsiders in Nazi Germany,” in *Social Outsiders in Nazi Germany*. ed. Robert Gellately and Nathan Stoltzfus. Princeton: Princeton University Press, 2001. pg. 223
- <sup>170</sup> Ibid.
- <sup>171</sup> Ibid.
- <sup>172</sup> Lewy, Günter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 54.
- <sup>173</sup> Ibid.
- <sup>174</sup> Stone, Dan. “Raphael Lemkin on the Holocaust” *Journal of Genocide Research* (2005), 7(4), December, pg. 547.
- <sup>175</sup> Lewy, Günter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 53
- <sup>176</sup> Ibid. 54.
- <sup>177</sup> Ibid.
- <sup>178</sup> Ibid. 55.
- <sup>179</sup> Ibid. 88.
- <sup>180</sup> This included: 1) Nonsedentary persons who could not prove a regular source of income; 2) Sedentary individuals who defrayed their living in an illegal manner; 3) The work-shy; 4) Persons whose way of life endangered the moral life of other members of society; 5) Those released from prisons or camps who could not prove a return to an orderly life; 6) Minors who had been discharged from institutions because of incorrigibility. Ibid.
- <sup>181</sup> Ibid.
- <sup>182</sup> Ibid. 89.
- <sup>183</sup> Ibid. 66.
- <sup>184</sup> Ibid. 67.
- <sup>185</sup> Ibid.
- <sup>186</sup> Ibid.
- <sup>187</sup> Ibid.
- <sup>188</sup> Ibid. 68.
- <sup>189</sup> Ibid.
- <sup>190</sup> Ibid.
- <sup>191</sup> Ibid.
- <sup>192</sup> Ibid. 69.
- <sup>193</sup> Ibid. 68.
- <sup>194</sup> Plans resurfaced in a memorandum on November 25, 1939 from the Office of Racial Policy. Ibid. 70.
- <sup>195</sup> Ibid.
- <sup>196</sup> Ibid. 69.
- <sup>197</sup> Ibid.
- <sup>198</sup> Ibid. 70.
- <sup>199</sup> Ibid.
- <sup>200</sup> Ibid. 70.
- <sup>201</sup> Ibid. 71.
- <sup>202</sup> Ibid.
- <sup>203</sup> Ibid.
- <sup>204</sup> Ibid. 72.
- <sup>205</sup> Ibid.

- <sup>206</sup> Ibid.
- <sup>207</sup> These include the Jewish ghetto of Jedrzejow; the countryside; work camps; Radom was a massacre took place; and jobs involving manual labor, which resulted in many deaths from disease, cold and hunger.
- <sup>208</sup> There is no known copy of the “Auschwitz Decree.” For a brief discussion see Lewy, Günter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 141.
- <sup>209</sup> Ibid. 142.
- <sup>210</sup> Ibid.
- <sup>211</sup> Ibid.
- <sup>212</sup> Ibid. 142-143.
- <sup>213</sup> Ibid. 144.
- <sup>214</sup> Ibid.
- <sup>215</sup> Ibid.
- <sup>216</sup> Ibid.
- <sup>217</sup> Ibid.
- <sup>218</sup> Ibid. 145.
- <sup>219</sup> Peukert, Detlev J. K.. *Inside Nazi Germany: Conformity, Opposition and Racism in Everyday Life*. London: B.T. Batsford Ltd, 1987. pg. 208.
- <sup>220</sup> Milton, Sybil. “‘Gypsies’ as Social Outsiders in Nazi Germany,” in *Social Outsiders in Nazi Germany*. ed. Robert Gellately and Nathan Stoltzfus. Princeton: Princeton University Press, 2001. pg. 216
- <sup>221</sup> Ibid.
- <sup>222</sup> Ibid. 217.
- <sup>223</sup> Ibid.
- <sup>224</sup> Ibid.
- <sup>225</sup> Ibid. 20, 30, 49.
- <sup>226</sup> Peukert, Detlev J. K.. *Inside Nazi Germany: Conformity, Opposition and Racism in Everyday Life*. London: B.T. Batsford Ltd, 1987. pg. 215.
- <sup>227</sup> Ibid. 215-216.
- <sup>228</sup> Lewy, Günter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 18.
- <sup>229</sup> Ibid. 19.
- <sup>230</sup> Ibid. 65.
- <sup>231</sup> Ibid. 66.
- <sup>232</sup> Himmler corrected the embarrassing mistake on August 26 that sent sedentary Gypsies back to their place of residence the costs of which were eventually paid by the Ministry of the Interior. Ibid.
- <sup>233</sup> Ibid.
- <sup>234</sup> Huttenbach, Henry R. “The Romani Pořajmos: The Nazi Genocide of Gypsies in Germany and Eastern Europe.” *The Gypsies of Eastern Europe*. ed. David Crowe and John Kolsti. Armonk, New York: M.E. Sharpe, Inc., 1991, pg. 33.
- <sup>235</sup> Ibid.
- <sup>236</sup> Milton, Sybil. “‘Gypsies’ as Social Outsiders in Nazi Germany,” in *Social Outsiders in Nazi Germany*. ed. Robert Gellately and Nathan Stoltzfus. Princeton: Princeton University Press, 2001. pg. 222
- <sup>237</sup> Lewy, Günter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 50.
- <sup>238</sup> Ibid.
- <sup>239</sup> Ibid. 51.
- <sup>240</sup> Ibid.
- <sup>241</sup> Ibid.
- <sup>242</sup> Ibid.
- <sup>243</sup> Peukert, Detlev J. K.. *Inside Nazi Germany: Conformity, Opposition and Racism in Everyday Life*. London: B.T. Batsford Ltd, 1987. pg. 217.
- <sup>244</sup> Ibid. 210.
- <sup>245</sup> Ibid. 216.
- <sup>246</sup> What exactly constituted an “asocial” was a person who repeatedly violated “the system of order, established by the national socialist state” whose perpetrators included: beggars, vagrants (Gypsies), prostitutes, alcoholics and those with contagious diseases, especially venereal diseases, who refused treatment.” In addition, it also included “those who chose to avoid work, did not have a criminal record and depended on the public like the work-shy and alcoholics.” Lewy, Günter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 25-26

- <sup>247</sup> Peukert, Detlev J. K.. *Inside Nazi Germany: Conformity, Opposition and Racism in Everyday Life*. London: B.T. Batsford Ltd, 1987. pg. 209.
- <sup>248</sup> Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 53.
- <sup>249</sup> Ibid.
- <sup>250</sup> Ibid.
- <sup>251</sup> Ibid.
- <sup>252</sup> Ibid. 72.
- <sup>253</sup> Ibid.
- <sup>254</sup> In total the number released was twenty-two. Ibid. 73.
- <sup>255</sup> Ibid. 74.
- <sup>256</sup> Ibid. 103.
- <sup>257</sup> Ibid. 105.
- <sup>258</sup> Ibid.
- <sup>259</sup> Exemptions included: **1)** Racially pure Sinti and Lalleri Gypsies **2)** Zigeunermischlinge who were part of the racially pure group in accordance with the decree of October 13, 1942 **3)** Gypsies who were legally married to persons of German blood **4)** Socially adjusted Gypsies who had a regular job and a permanent residence before the count of Gypsies **5)** Gypsies who had been exempted by the RKPA from the regulations for Gypsies **6)** Gypsies who were still in military service or had been discharged after being wounded or with decorations (in World War II) **7)** Gypsies engaged in work important for the war effort **8)** The spouse and minor children of Gypsies enumerated in categories 3-7 **9)** Gypsies for whom a suspension seemed indicated for special reasons as decided by the local Kripo **10)** Gypsies who could prove foreign citizenship. Ibid. 142.
- <sup>260</sup> Ibid.
- <sup>261</sup> Ibid. 144.
- <sup>262</sup> Ibid. 145.
- <sup>263</sup> Willems, Wim. *In Search of the True Gypsy: From Enlightenment to Final Solution*. Frank Cass: Portland 1997 pg. 199.
- <sup>264</sup> Ibid. 200-202.
- <sup>265</sup> Ibid. 203.
- <sup>266</sup> Ibid. 43.
- <sup>267</sup> Margalit, Gilad. "The uniqueness of the Nazi persecution of the Gypsies." *Romani Studies* 5, Vol. 10, No. 2 (2000), pg. 197. <http://www.marston.co.uk/RSPP/LUPRSV010P02A00185.pdf>
- <sup>268</sup> Lewy, Güenter. Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002 pg. 102.
- <sup>269</sup> Margalit, Gilad. "The uniqueness of the Nazi persecution of the Gypsies." *Romani Studies* 5, Vol. 10, No. 2 (2000), pg. 197. <http://www.marston.co.uk/RSPP/LUPRSV010P02A00185.pdf>
- <sup>270</sup> Ibid.
- <sup>271</sup> Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002 pg. 45.
- <sup>272</sup> Ibid. 47.
- <sup>273</sup> Ibid. 71.
- <sup>274</sup> In his search for the "pure" core of the German Gypsy population Ritter would look at physical characteristics such as the skeleton, hair and eye color, physical structure; and cultural characteristics such as the use of the Romany language and "traveling impulse" (*Wandertrieb*). 188-89
- <sup>275</sup> 189
- <sup>276</sup> Lewy, Güenter. "Himmler and the Racially Pure Gypsies" *Journal of Contemporary History*, Vol. 34, No. 2 (Apr., 1999), Sage Publications pg. 203-204
- <sup>277</sup> Ibid.
- <sup>278</sup> Ibid.
- <sup>279</sup> Ibid. 213.
- <sup>280</sup> Ibid. 181.
- <sup>281</sup> Ibid. 182.
- <sup>282</sup> Ibid.
- <sup>283</sup> Ibid.
- <sup>284</sup> Ibid. 184.
- <sup>285</sup> Ibid. 136-138.
- <sup>286</sup> Ibid. 148

- 287 Ibid. 152.
- 288 Ibid. 153.
- 289 Ibid. 155.
- 290 A source in Robert Lifton's *Nazi Doctors*. Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. Ibid.
- 291 Ibid. 155.
- 292 Ibid. 154.
- 293 Ibid. 156 ft 15
- 294 Ibid.
- 295 Ibid.
- 296 Ibid.
- 297 Ibid.
- 298 Ibid. 157.
- 299 Ibid. 158.
- 300 Ibid. 162.
- 301 Ibid.
- 302 Ibid. 162-163.
- 303 Ibid.
- 304 Ibid. 163.
- 305 Ibid.
- 306 Ibid.
- 307 Ibid.
- 308 Ibid. 164.
- 309 Ibid.
- 310 Mengele's dissertation was on the genetics of cleft palates. Ibid. 158.
- 311 Ibid.
- 312 Ibid. 158-59.
- 313 Ibid. 160.
- 314 Ibid. 160-61.
- 315 Ibid. 161.
- 316 Ibid. 207.
- 317 Ibid. 38-39.
- 318 Lewy finds the relationship between the racial category and the "asocial" category surprisingly irrelevant. Ibid.
- 40
- 319 Lewy suggests that this law "on the surface...was a eugenic measure with no racist or specifically National Socialist connotations." Ibid.
- 320 Ibid. 39.
- 321 Ibid.
- 322 Ibid. 51.
- 323 Ibid.
- 324 Ibid. 187.
- 325 Margalit, Gilad. "The uniqueness of the Nazi persecution of the Gypsies." *Romani Studies* 5, Vol. 10, No. 2 (2000), pg. 197. <http://www.marston.co.uk/RSP/LUPRSV010P02A00185.pdf>, pg. 208
- 326 Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 188.
- 327 Ibid.
- 328 Ibid. 187.
- 329 Ibid. 188.
- 330 Ibid. 40-41
- 331 University Hospital of Göttingen – 58% of women; Hamburg 46% of cases; other sources show as much as 60%. Ibid.
- 332 Ibid.
- 333 Ibid. 41.
- 334 Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 189
- 335 Ibid.
- 336 Ibid. 189-190.

- <sup>337</sup> For a discussion: Ibid. 191-192
- <sup>338</sup> Ibid. 191.
- <sup>339</sup> Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg 161-162
- <sup>340</sup> Ibid. 193.
- <sup>341</sup> Its main interest is German Gypsies the focus of this study and its main reference.
- <sup>342</sup> Margalit, Gilad. "The uniqueness of the Nazi persecution of the Gypsies." *Romani Studies* 5, Vol. 10, No. 2 (2000), pg. 197. <http://www.marston.co.uk/RSPP/LUPRSV010P02A00185.pdf>,
- <sup>343</sup> Zimmermann, Michael. "Jews, Gypsies and Soviet Prisoners of War: Comparing Nazi Persecutions." *The Roma: a minority in Europe: historical, political and social perspectives*. ed. Roni Stauber and Raphael Vago. Budapest: Central European University Press, 2007. pg. 48.
- <sup>344</sup> Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 152-153.
- <sup>345</sup> Milton, Sybil. "Gypsies and the Holocaust." *The History Teacher*, Vol. 24, No. 4 (Aug., 1991), pp. 375-387.
- <sup>346</sup> Bauer, Yehuda. "Correspondence: "Gypsies and the Holocaust" *The History Teacher*, Vol. 25, No. 4 (Aug., 1992), pg. 513-515.
- <sup>347</sup> Milton, Sybil. "Correspondence: "Gypsies and the Holocaust" *The History Teacher*, Vol. 25, No. 4 (Aug., 1992), pg. 515-520.
- <sup>348</sup> Bauer, Yehuda. "Foreword" *The Roma: a minority in Europe: historical, political and social perspectives*. ed. Roni Stauber and Raphael Vago. Budapest: Central European University Press, 2007. pg. ix.
- <sup>349</sup> Ibid.
- <sup>350</sup> Hilberg showed caution about the use of the word genocide, implicitly criticizing Lewy's books on the Armenians and the Gypsies, suggesting and stating that he considers both to be genocides. Hilberg, Raul. "Is There a New Anti-Semitism? A Conversation with Raul Hilberg." *Logos: A Journal of Modern Society and Culture* 6.1-22007 8 Dec 2008 <[http://www.logosjournal.com/issue\\_6.1-2/hilberg.htm](http://www.logosjournal.com/issue_6.1-2/hilberg.htm)>
- <sup>351</sup> "It is only after the event that genocides appear with certainty and without ambiguity to have taken place." Stewart, Michael. "How does genocide happen?." *Questions of Anthropology*. ed. Astuti, Parry and Stafford. Oxford: Berg, 2007. pg. ; Philosophically, Stephen Eric Bronner's comparable insight puts it in different terms: "Once again, using the famous phrase of Hegel, the Owl of Minerva spread its wings only at dusk: the Universal Declaration of Human Rights of 1948 came too late to help the victims of classical totalitarianism." Bronner, Stephen Eric. "Human Rights, Religion, and the Cosmopolitan Sensibility." *Human Rights Review*, vol. 5, number 3, April 2004, Springer Netherlands: 2004. pg. 33.
- <sup>352</sup> Milton puts the number of Roma and Sinti in Germany in 1933 to be 35,000, 0.05 percent of the German population of about 65 million. Lewy puts the number to be approximately 26,000 Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 15; Milton, Sybil. "'Gypsies' as Social Outsiders in Nazi Germany," in *Social Outsiders in Nazi Germany*. ed. Robert Gellately and Nathan Stoltzfus. Princeton: Princeton University Press, 2001. pg. 212.
- <sup>353</sup> Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 207
- <sup>354</sup> Milton, Sybil. "Correspondence: "Gypsies and the Holocaust" *The History Teacher*, Vol. 25, No. 4 (Aug., 1992) pg. 516.
- <sup>355</sup> Ferencz, Benjamin B. "Origins of the Genocide Convention" *Case Western Reserve Journal of International Law*, Vol 40, No. 1 & 2, 2008. <<http://www.benferencz.org/arts/96.html>>
- <sup>356</sup> Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 222
- <sup>357</sup> In addition, I attempted to give warning about setting a quantitative threshold for the understanding of in part, so as not to repeat a situation like the Aché, where a government official can publicly state that genocide is not occurring citing a technicality to effectively clear her or his conscience and wave accountability.
- <sup>358</sup> Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 157 & 219.
- <sup>359</sup> Ibid. 222-223
- <sup>360</sup> Ibid. 221.
- <sup>361</sup> Ibid. 116.
- <sup>362</sup> Ibid. 222-223.
- <sup>363</sup> Ibid. 165.
- <sup>364</sup> "Records recovered after the war show that during the second half of the year 1942 no less than 60 percent of the total number of inmates – 57,503 out of about 95,000 – died within six months. An undeterminable number of camp inmates were killed in a "euthanasia" program known as 14 f 13, which targeted those no longer able to work.

Overall, Wolfgang Sofsky estimates that ‘approximately two-thirds of the prisoners in the concentration camps did not survive.’” Ibid. 167.

<sup>365</sup> Ibid. 165.

<sup>366</sup> Ibid.

<sup>367</sup> Ibid. 199.

<sup>368</sup> Margalit, Gilad. “The uniqueness of the Nazi persecution of the Gypsies.” *Romani Studies* 5, Vol. 10, No. 2 (2000), pg. 197. <http://www.marston.co.uk/RSPP/LUPRSV010P02A00185.pdf>,

<sup>369</sup> Ibid.

<sup>370</sup> Ibid. 205-206.

<sup>371</sup> Ibid. 191.

<sup>372</sup> Margalit, Gilad. “The uniqueness of the Nazi persecution of the Gypsies.” *Romani Studies* 5, Vol 10, No. 2 (2000), pg. 193. <http://www.marston.co.uk/RSPP/LUPRSV010P02A00185.pdf>

<sup>373</sup> Milton, Sybil. “Correspondence: “Gypsies and the Holocaust” *The History Teacher*, Vol. 25, No. 4 (Aug., 1992),

<sup>374</sup> Bauer, Yehuda. “Correspondence: “Gypsies and the Holocaust” *The History Teacher*, Vol. 25, No. 4 (Aug., 1992) pg. 515

<sup>375</sup> Lewy, Güenter. *The Nazi Persecution of the Gypsies*. London: Oxford University Press, 2002. pg. 221

<sup>376</sup> Barta, Tony, “With intent to deny: on colonial intentions and genocide denial” *Journal of Genocide Research*, 10:1, pg. 111.

<sup>377</sup> Grandin, Greg. “History, Motive, Law, Intent: Combining Historical and Legal Methods in Understanding Guatemala’s 1981-1983 Genocide.” *The Specter of Genocide: Mass Murder in Historical Perspective*. ed. Robert Gellately and Ben Kiernan. Cambridge: Cambridge University Press, 2003. pg. 346.

<sup>378</sup> Avineri, Shlomo. *The Making of Modern Zionism: The Intellectual Origins of the Jewish State*. New York: Basic Books. pg. 11.

<sup>379</sup> Lemkin, Raphael. "Acts Constituting a General (Transnational) Danger Considered as Offences Against the Law of Nations." *Librarie de la cour d X* (1933) 14-20. 6 Dec 2008 <  
<http://www.preventgenocide.org/lemkin/madrid1933-english.htm> >

<sup>380</sup> Ibid.

<sup>381</sup> Lemkin, Raphael. “Genocide – A Modern Crime,” *Free World*, Vol.4 (April, 1945) p. 39- 43

<http://www.preventgenocide.org/lemkin/freeworld1945.htm>

<sup>382</sup> Lemkin, Raphael. “The Crime of Genocide,” *American Scholar*, Volume 15, no. 2 (April 1946), p. 227-230  
<<http://www.preventgenocide.org/lemkin/americanscholar1946.htm> >

<sup>383</sup> Office of the High Commissioner for Human Rights. Retrieved October 11, 2008 <  
[http://www.unhchr.ch/html/menu3/b/p\\_genoci.htm](http://www.unhchr.ch/html/menu3/b/p_genoci.htm) >