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Genocide

A Legal Concept for the Social Sciences?

Scott Straus

BEYOND A CONTESTED CONCEPT

Is genocide a useful social science concept? Like other core concepts, genocide is contested in the classic way that W. B. Gallie (1955) described: a normatively charged concept that is multidimensional. Many contested concepts signal a positive valence. To be a democracy is a good thing. To be a work of art is, generally, admirable. "Genocide," of course, flies in the other direction. Assigning the term to a case communicates something quite terrible. To invoke genocide is to denigrate, to equate with evil. Many activists, scholars, and politicians invoke the term with that imperative in mind. To be sure, sometimes the concept is employed for a normatively more desirable end. Nationalists sometimes claim their people suffered genocide to boost their case for a nation-state; that is, they seek to gain recognition and establish group boundaries based on an enormous harm having been committed against them. With both the negative and the positive valence, and this is the point, the normative stakes of the concept are immense, and that is one reason for contestation. Genocide is not a value-neutral term; it is an exemplar of a contested concept (Straus 2001).

The importance of the normative dimensions of concepts is showcased in multiple excellent analyses of concepts and measurement (Collier, Hidalgo, and Maciuceanu 2006; Goertz 2020).[1] Many scholars live with and manage both normative and multidimensional qualities in their concepts. Democracy is a contested concept, as is the state. Yet scholars find ways to work productively with these and many other core concepts in the social sciences. The same *could* be true for genocide. Scholars could agree to disagree. They could specify their usage, identify the characteristics, recognize the normative aspects, and apply their chosen definition to cases. In other words, were the conceptual

[1] See Chapter 10, this volume.

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challenges limited to these dimensions, "genocide" would have an easier life in the social sciences than it currently does.

But genocide has an additional barrier – two really – which limit its utility in the social sciences. The issue is the intersection with the law and how an international legal standard shapes the concept used in nonlegal domains of research. This specificity – of potential limits legal constructs place on nonlegal research – has received less attention in the scholarship on conceptualization and measurement, and hence that specificity is the focus of this chapter. My argument, in short, is that (1) academic scholarship on genocide generally defers to a legal standard and (2) the legal definition, while arguably appropriate for legal and political applications, is inherently problematic for the core social scientific enterprise of using concepts to distinguish between different types of empirical phenomena.

The issue at stake pertains to, but goes beyond, the question of using concepts across multiple communities. Activists marshal concepts for different purposes than scholars do. Concepts in the popular domain often have loose meanings that resist scholars' efforts to make their terms precise. The same is true for concepts used in legal and scholarly domains. The legal definition of a child might be different from a scholarly one. These problems are manageable. The specificity of the problem for genocide is that the legal definition dominates academic scholarship and that the legal definition is problematic for the purpose of making careful, logically consistent distinctions between patterns of action in the world.

Many scholars of genocide know this. Yet some insist on the legal definition because it remains the principal tool for prevention and accountability. Further, the legal definition is beholden to a history that many scholars want to respect, namely the history of the Holocaust. Relatedly, they do not wish to move away from the legal definition because they do not want to dilute the political progress represented in an international treaty criminalizing genocide and committing states to its prevention and punishment. In other words, scholars have in mind a normative purpose for the use of the concept: it is a practical tool for accountability and prevention, and the concept achieved rare consensus in that states agreed in 1948 on an international treaty to outlaw genocide. Understandably, scholars want to respect that political reality, and so they wish to maintain consistency in working with a legally codified concept.

Other scholars effectively throw up their hands and argue that genocide is too conceptually flawed for scholarship, and they advocate for the adoption of other terms. There are many in use, such as "mass killing," "mass homicide," "mass atrocity," "crimes against humanity," and "democide." As with the adherence to the legal concept, this position is also understandable. If the concept of genocide is flawed for research purposes and is primarily a legal concept applied both in courts and politics, why not chart a different conceptual terrain so as to be precise and specific to the research enterprise at hand?

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In this chapter, building on previous work (Straus 2001, 2015, 2022), I argue that genocide is a useful social science concept because it accurately describes a specific phenomenon in the world and that alternative concepts, while good umbrella concepts or concepts that are part of genocide's semantic field, do not capture the specificity of the empirical phenomenon that genocide describes. In short, the concept of genocide should be retained, but clearly distinguished from its legal homonym.

BACKGROUND

Before the 1940s, genocide was a crime without a name, as Winston Churchill famously said (Waller 2016). That is, genocide existed across centuries, but there was not yet a word to characterize the phenomenon. The change came in the 1940s from Raphael Lemkin, a Polish jurist who fled the Holocaust and meticulously documented Nazi atrocities (Irvin-Erickson 2017). Lemkin combined the Greek word *genos*, indicating kin, nation, and descent group, and the Latin *cide*, indicating killing. For Lemkin, genocide was "the destruction of a nation or an ethnic group" and "a coordinated plan of different actions aiming at the destruction of the essential foundations of the life of national groups, with the aim of annihilating the groups themselves" (Lemkin 1944: 79). The core meaning of genocide for Lemkin, reflected in the term's etymology, is intentional group destruction, in particular groups that have some purported descent-based attributes (*genos* groups).

Lemkin believed in the power of the law to create political change. In the wake of the Holocaust, he lobbied tirelessly to include genocide in the indictments of former Nazi officials at the International Military Tribunal in Nuremberg. He also pushed the newly formed United Nations to create an international treaty that would criminalize genocide and commit states to preventing it (Power 2022; Irvin-Erickson 2017). The result of the latter is the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide, one of the earliest human rights treaties.

From a political viewpoint, and from Lemkin's in particular, the Convention is a remarkable achievement. For the first time, genocide was codified as an international crime; the Convention further obligates state parties to "undertake to prevent and to punish" the crime, which, while complicated – and not the subject of this chapter – is a mandate for marshaling the law to hold perpetrators accountable and a mandate for taking action to stop genocide. Today, 153 countries have ratified the Convention. It remains a core human rights treaty and a standard for mobilizing actors in international politics to act to prevent and punish genocide. The Convention has been the foundation for multiple, high-level indictments of war criminals since the 1990s, and the definition was incorporated into the 1998 Rome Statute, the international treaty that establishes the International Criminal Court (ICC), which is the preeminent international criminal tribunal today and the only permanent, standing one.

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The definition of genocide embedded in that Convention subsequently became the benchmark for determining whether a pattern of violence is genocide. While many scholars recognize limitations to that definition, most default to the Convention as the consensus definition that also creates the foundation for legal and political action to halt and account for the crime. However, while there may be some good legal reasons for defining genocide the way it is in the Convention, the definition remains problematic for identifying a logically consistent pattern of action that scholars may call "genocide," to be distinguished from other forms of violence. The definition is inherently limited for a basic, Sartorian social scientific purpose of conceptualization: to isolate characteristics that allow for classification of phenomena.

THE CONVENTION DEFINITION AND ITS PROBLEMS

The wording of any international treaty is the product of political negotiations. The Genocide Convention is no exception. Between 1946 and 1948, delegates from states haggled over the precise language that would be embodied in a final legal document (Schabas 2000). Lemkin was part of these discussions, and while he had his own preferences, he was also a pragmatist who above all sought an international law against the crime of genocide (Irvin-Erickson 2017).

While there are many dimensions to underline in this negotiation process, I point to one example to demonstrate how the outcome language was a political product. What kinds of groups should be included in the definition of genocide? If genocide is directed against groups, should it be all groups included in the definition? Should it be ethnic and religious groups? Political, associational, gender, and regional groups? Or any group with descent-based qualities, according to the perpetrator committing the violence? This is not an idle question, in that the answer directly shapes which cases the term will be applied to – and thus ultimately the universe of cases that are considered genocide or not.

There are different possible answers to the question based on scholarly analysis. But in the end the Convention definition reflects the compromises made in the drafting process. Most relevant to this discussion, the Soviet Union opposed the inclusion of political groups in the definition. The Soviet Union had a history of political persecution against dissidents, landowners, and others; it further sought to distinguish itself from fascist states. Thus, the Soviet Union fought and succeeded in limiting the targets of genocide to four identity-based categories, specifically national, ethnic, racial, and religious groups (Weiss-Wendt 2017). The point is that the definition adopted reflects politics and negotiations.

According to the Convention, genocide is "the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such." Further, genocide may be instantiated by the following acts against members of these four groups: (1) killing members of the group; (2) causing serious bodily or mental harm to the group; (3) deliberately inflicting on the group conditions

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of life calculated to bring about its physical destruction in whole or in part; (4) imposing measures intended to prevent births within the group; or (5) forcibly transferring children of the group to another group.

There are several problems with this definition. First, as noted, the legal definition restricts genocide only to four groups. One could oppose the listing of these four groups on constructivist grounds: They are artificial constructs, not real descent-based groups. Scholars have countered that what matters for genocide is how perpetrators construct groups (Chalk and Jonassohn 1991). I seek to underline a different problem: Limiting genocide to these four groups leads to measurement error. One could have the exact same character and level of violence – a mass campaign of violence aimed at destroying the groups – in two countries, yet in one country the legal criteria for genocide would be met while in the other they would not be. In country A, the violence might be directed at a political group (e.g., Communist party supporters in Indonesia in 1965) while in country B the violence was directed against an ethnic group (e.g., Tutsis in Rwanda in 1994). Under the UN Convention, in country A the violence would not be considered genocide because political groups are not a protected category, while in country B it could be.

The same could be true for a group connected by gender, sexuality, hair color, or economic class. Under the Convention, even if there was an effort to destroy these groups, a campaign of mass violence against groups that ostensibly had a foundation in gender, sexuality, physiognomy, or economic status would not be considered genocide. If one considers genocide to be a type of violence aimed at the destruction of groups, then the Convention provides an overly restrictive standard by which to identify cases of that type of violence.

Second, the legal definition is capacious as to what counts as group destruction. The legal definition identifies genocide as the destruction of groups "in part" that may be evidenced by causing serious bodily or mental harm, imposing measures to prevent births, or forcibly transferring children. Partial destruction of a group is inherently ambiguous. How much of a group must be destroyed to count as genocide? One percent, 10 percent, more than 50 percent? There is no guidance on this question in the Convention definition. In some international jurisprudence in the past few decades, that question has been addressed, and an important standard of "substantial" destruction has been put forth. Even so, that standard is still vague. How much destruction counts as substantial destruction?

More problematically, and the issue I wish to underline here, the inclusion of physical harm, mental harm, birth prevention, and child transfer means that genocide may take place, according to the Convention, even if no physical killing takes place. According to the Convention, should a part of a group's children be forcibly transferred or forcibly sterilized, as part of an intent to destroy a substantial part of a group, that would constitute genocide. Contrast forcible transfer of children with a mass campaign of murderous violence and forced removal, such as the Rohingya in Myanmar experienced in the 2010s or

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the Armenians experienced in the Ottoman Empire in 1915. These are, I would submit, sufficiently dissimilar patterns of action to warrant different terms to describe them.

In short, the legal definition of genocide is not a definition that allows scholars to make conceptually consistent distinctions among empirical cases. On the one hand, the legal concept of genocide is too narrow in that it covers only four groups, leading to arbitrary distinctions between otherwise similar cases. On the other hand, the legal concept is too capacious, including a broad range of very different acts. Under the law, a state could attempt to eliminate a million members of a political party, along with their families, but that would not be genocide because political groups are not a protected category in the law. By contrast, forcibly transferring several thousand children from one ethnic group to another as part of an effort to destroy a group's presence and culture, with no death, could be construed as genocide.

EMPIRICAL IMPLICATIONS

In this chapter, I make no claim on the legal utility of the Convention definition. I see value in a broad, inclusive definition of the acts that constitute genocide as a foundation for criminal accountability, and I respect that the final language of the Convention was the consensus that could be achieved in the mid 1940s. One big challenge for the legal application of genocide is to prove the intent to destroy, or what legal scholars consider the *mens rea*, or mental element of genocide. High-level perpetrators are not usually transparent in their intent to destroy populations. But still the idea that "intent to destroy" is what distinguishes genocide makes sense, given the etymology and original meaning of the term. The problem that troubles me and that drives this chapter is how, when applied to patterns of violence in the world, the legal definition of genocide is not a good guide for putting like things together.

Consider some recent cases. The 2015 Truth and Reconciliation Commission of Canada, in an extensive report on the Indian Residential School program from the nineteenth and twentieth centuries, concluded that the program amounted to "cultural genocide," which may "be deemed an act of genocide" under the Genocide Convention (TRCC 2015: 202). The cited article of the Convention concerns the forcible transfer of children from one group to another (TRCC 2015). This program entailed the mandatory education of Indigenous Persons at Canadian schools in order to destroy the connections to their culture and to identify with a Canadian, European-derived system of values; the program did not involve systematic murder of individuals on the basis of their group identity.

In recent years, China has imprisoned more than a million Turkic-speaking Chinese citizens in the Xinjiang province, mostly ethnic Uighurs. The government has imposed additional restrictions on religious expression and forcibly implanted birth control devices in detained Muslim women. Officials have allegedly engaged in torture and sexual violence against those in detention.

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This is a case of systematic oppression and cultural destruction, similar to the experience of First Nations people in Canada in the boarding school program. The US, first under Donald Trump and then under Joseph Biden, concluded that this is a case of genocide (US Department of State 2021). In a careful exposition, Beth van Schaack (2021), a major legal scholar in the field who served as a top human rights official in the Biden administration, supported the rationale for the determination, focusing in particular on coerced sterilization as evidence of the constitutive act of preventing births in a protected group, even in the absence of killing.

Ukrainian President Volodomyr Zelensky has accused Russia of committing genocide in its invasion of Ukraine, starting from the first days of the war in February 2022. His government brought a case on that charge to the International Court of Justice (ICJ).[2] Many officials in multiple states, in particular leaders who back Ukraine in the war, have endorsed this claim. So have scholars. In an independent report, drawing heavily on the terms of the Convention, some thirty scholars and experts concluded there were "reasonable grounds" to conclude Russia was committing genocide in Ukraine through the denial of Ukrainian identity, among other things, and a pattern of violence that was consistent with the constitutive acts of genocide (New Lines Institute 2022). Prominent scholars, such as Timothy Snyder – a historian of the region and one of the experts contributing to the report – have consistently and publicly made similar cases, again citing the Convention. In one exposition on the subject, Snyder (2022) argued that each of the five acts has occurred in the war and that each is enough to constitute genocide, including the forcible transfer of children, the prevention of their birth, and mental harm.

How many civilians have died in Ukraine is unclear as of May 2024, and while future evidence may indicate otherwise, I would say that the overall goal of violence is military victory and territorial conquest, with the punishment of civilians as a coercive measure to achieve those ends.[3] The purpose is not to destroy the group, if destruction means physical destruction. The claims of genocide represent thus another example where scholars use a legal definition to frame a case but where the pattern of violence is quite different from other cases of group-destructive violence.

Contrast these claims with the trials to prosecute the last living leaders of the Khmer Rouge in Cambodia. From 1975 to 1979, the Khmer Rouge ushered in a massive, violent transformation of society, economy, and state that resulted

[2] Ukraine's case before the ICJ has two main parts. First, Ukraine argues that Russia abused the Genocide Convention when Russia claimed, in order to justify the invasion of Ukraine, that Russia was acting to prevent genocide in Ukraine. Second, Ukraine accuses Russia of planning acts of genocide in Ukraine. See www.icj-cij.org/sites/default/files/case-related/182/182-20220227-PRE-01-00-EN.pdf.

[3] In addition to the case before the ICJ, the ICC, as of this writing, has issued arrest warrants for four Russian officials, including President Vladimir Putin; the crimes they are charged with are war crimes and crimes against humanity, not genocide.

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in 1.5 to 2 million civilian deaths. That sum amounts to some 20 percent of the Cambodian population at the time. The Extraordinary Chambers in the Courts of Cambodia, an ad-hoc hybrid court, established in the early 2000s as part of a wave of international criminal justice mechanisms, launched a series of indictments to prosecute the crimes of the Khmer Rouge. The most significant trials were of Khieu Samphan and Ieng Sary, the two highest-ranking living leaders. In the end, the prosecutors could not make the case for genocide for the hundreds of thousands of lives lost through agricultural collectivization, murder, and torture because the targets were not a separate ethnic, racial, national, or religious group. That massive campaign of violence, which was nonetheless targeted at some groups, was classified as "crimes against humanity." In the end, prosecutors developed a secondary case, focusing a genocide charge around the specific treatment of ethnic and religious minorities in the country.

In short, while the legal concept of genocide has traction in law and in criminal cases, it does not provide a rigorous social science definition of genocide as a specific type of violence. In the legal definition, the magnitude of lethal violence does not matter. In some cases (such as the Canadian boarding school or Xinjiang examples), the number of deaths may be relatively small yet the legal definition allows the cases to be construed as genocide. By contrast, in Cambodia, despite hundreds of thousands of deaths, the case is not legally genocide. In the Cambodia case, a campaign of mass violence against a political group was not considered genocide because political groups are not protected in the Convention.

Perhaps one could argue that a minimal definition of genocide could be derived from the Convention, which could be the foundation for scholarly consensus. However, the Convention does not really provide a guidepost for that. On the one hand, as the Canadian case shows, the Convention definition may be used to describe cases of forced assimilation even in the absence of homicide. The same is largely true for Xinjiang, with the added forms of mass identity-based detention and some forced sterilization. But homicide is not a chief pattern of violence. By contrast, mass homicide, as the Cambodian case illustrates, is not genocide. In other words, it is not clear what a minimal conception of genocide would be, based on the Convention definition.

This raises the question of what the semantic field for genocide is. Is genocide a case of intergroup relations instantiated by efforts to eradicate a group's identity through certain means? Or is genocide a case of political violence instantiated by the attempted physical destruction of certain groups? These are quite different conceptions of the underlying phenomenon. The Convention definition lends itself to both.

Again, the law itself is not the problem – or not the problem to which I am pointing. I have no beat on whether a narrow or broad concept of genocide is useful for constructing legal cases. I also think legal concepts can be useful social science guides. Consider a refugee. In international law, a refugee is someone who is forced from their home and crosses an international border.

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An internally displaced person (IDP) is someone who is forced from their home and remains in their country of residence. That distinction is tractable and often used in social science research (e.g., Abdelaaty 2021). A scholar may be interested in forced migration, of which refugees and IDPs represent two types. There is internal consistency to these concepts, which in turn are measurable.

But in other domains, social scientists take their distance from legal concepts. While there is no international terrorism convention, United Nations documents and resolutions have codified a concept of terrorism. There are also state definitions of terrorism, such as the US State Department's definition. Yet most scholars of terrorism recognize these as flawed, politicized definitions of the underlying concept, and they seek to establish their own (e.g., Hoffman 2006; Richardson 2006). Crimes against humanity is an analog to genocide. Defined in the Rome Statute that establishes the ICC, crimes against humanity generally refers to a broad array of acts of systematic or widespread violence against civilians, including murder, enslavement, torture, deportation, imprisonment, rape, sexual slavery, apartheid, enforced disappearances, and more. To my knowledge, there is no social science research agenda on crimes against humanity as such – the empirical space is so vast, covering so many different patterns of violence, that the concept has not had much traction in the social sciences.

For genocide studies, the problem is that the law takes precedence in social science debates. The Genocide Convention ultimately is the touchstone to which most scholars revert when they wish to settle the knotty question of what genocide is. They do so, at least in part, because of a reluctance to separate the normative imperative of "stop genocide," "never again," and "end impunity" from the scholarly imperative of inquiring what genocide is and what drives it. The Convention is an instrument that both encapsulates the enormous normative imperative and stakes, while also providing a definition.

AN INTRACTABLE MUDDLE?

What to do? Some scholars have become so frustrated with the concept of genocide, as articulated in the Convention, that they advocate replacing the term. In his influential political science research, Ben Valentino (2004) has argued that "mass killing," which denotes a threshold of civilians killed over a period of time, is both more measurable and quantifiable than "genocide." The concept of mass killing avoids the problem of which groups are the targets of genocide; it avoids the problem of having to measure "intent to destroy;" and it avoids the problem of measuring group destruction. It is a logical solution.

Dirk Moses (2021), the longtime editor of the *Journal of Genocide Research*, recently published a major broadside against the concept, arguing for replacing it with another idea. His solution is to replace genocide with the concept of "permanent security," or the idea that at root genocide is a form of states seeking to have permanent security, which leads them to mass civilian destruction. This idea seems to confuse the definition of the concept with that which drives

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the outcome, but nonetheless Moses is a prominent scholar in the field and his book has generated a lot of attention.

In other words, one solution to the problems identified in this chapter is to shunt away the concept of genocide, given its legal foundation and political baggage. That position is logically defensible.

Another possible solution is to seek another concept that would have greater coherence in its application to a set of phenomena in the world. The leading candidate in the policy world is "mass atrocities," which combines genocide, war crimes, and crimes against humanity. Again, from a legal and normative perspective, this capacious understanding of the range of possible criminal acts of heinous violence makes sense, encompassing what some call "atrocity crimes." Yet from the point of view of using concepts to delineate discrete phenomena, mass atrocities is too broad.

To my mind, these kinds of solutions are unsatisfying. Genocide – as the systematic attempt to destroy groups – is an empirical phenomenon. There are times when governments or prevailing authorities seek to eradicate groups from the territory they control. *Mass killing* is not specific enough to describe this attempt to destroy groups. Nor for that matter is *permanent security*. And *mass atrocities* is too broad – there are many different acts of violence under the umbrella of mass atrocity or crimes against humanity. Both mass killing and mass atrocity are part of the semantic field to which genocide belongs, and genocide may be seen as one type of mass killing or mass atrocity. But genocide is distinct from these concepts, and genocide exists in the world. It is a real empirical phenomenon. So we should not, to my mind, give up on the concept.

A SOCIAL SCIENTIFIC CONCEPTUALIZATION OF GENOCIDE

What, then, is a social scientific conceptualization of genocide? To return to the etymology and Lemkin's original formulation, genocide is the systematic attempt to destroy groups, in particular groups affiliated by kinship, whether imagined or not.

I contend (Straus 2015) that the concept of genocide may be decomposed into three key dimensions of violence, namely, that the violence is:

(1) Mass or "large-scale" violence, which can be further decomposed to mean that the violence takes place over time and across space, is systematic and organized, and targets large numbers of victims under a perpetrator's territorial control;
(2) "Group-selective," meaning that noncombatants are selected into violence on the basis of their ostensible group membership, no matter what kind of groups; and
(3) Oriented toward the destruction of groups, meaning that the goal, purpose, and intent of the organized violence – its logic – is to eliminate groups from areas under the perpetrator's control.

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Genocide is thus a type of "mass categorical violence," which itself is an extreme case of violence and an extreme case of group-selective (identity-based or categorical) discrimination. The specificity of genocide lies in an effort at group destruction as one type of mass categorical violence. These distinctions require us to define violence, group-selective discrimination, and group destruction. The first two have more straightforward answers; the last is more complex.

Conventionally in political science, "violence" implies deliberate, direct harm to noncombatants, often measured as homicide or other forms of physical harm and violation, such as rape (Kalyvas 2006; Wood 2009). So large-scale violence is direct physical harm against civilians on a massive scale.

Such violence may take two forms. First, with group-selective violence, the targets of violence are identified on the basis of their purported group membership. Genocide is thus not "indiscriminate" violence, as perpetrators distinguish among populations to identify particular targets. They discriminate. Second, the violence is also not individually selective, meaning that perpetrators do not select particular people (i.e., leaders, politicians, journalists, denouncers, spies, and so forth) to kill. In the political violence literature, stemming from Stathis Kalyvas' foundational work, those are the two main categories of violence. Genocide is a third type of violence, indicating violence directed against groups (see also Steele 2017).

What constitutes group destruction? This remains a key question, and the most difficult. Does a group need to be destroyed physically? How *much* group destruction merits the label, with the recognition that every single person is never destroyed? I think that this dimension of genocide should be inferred from the pattern of action and is conditional on there being large-scale, group-selective violence against civilians. That is, one should seek to determine a logic of violence, according to the perpetrators, as to whether they are seeking to eliminate a specific population from a territory. Are they looking to eradicate present and future populations? Is the violence coercive and communicative, meaning that it sends a message and is meant to change behavior? Coercive or communicative violence is not, to my mind, genocide, as genocide is about group destruction, not changing group behavior. These are not obvious distinctions, but they are a guide for scholars who seek to identify different patterns of violence.

CONCLUSION: A CONCEPTUAL FIELD OF HOMONYMS

Can scholars of a phenomenon call the thing the same name as that which animates the law and policy, even if the legal name has a different meaning from the scholarly one? Absolutely. That is the nature of technical language, which is the foundation for concept formation in the social sciences and beyond.

Is it naïve to think that scholars will abandon the public, political conceptual field in order to insist on a concept that is analytically coherent? Yes. And yet such a move is needed when the law so crowds – and confuses – a social

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scientific conceptual space. For genocide, such a move might seem difficult because the gravity of the violence is so enormous. Scholars cannot turn their back on the normative demands of the concept, and yet if one is to treat genocide as a social science concept, scholars must at least suspend the legal and political aspects in order to insist on a specific type of violence to study.

In short, I am not advocating for a change to the legal concept of genocide but rather for the need for an adjacent social science space that departs from the legal concept. Maybe the legal and social science concepts of genocide are not quite full homonyms – they have the same origin – but they can and should have different definitions and meanings.

POSTSCRIPT: WAR IN THE MIDDLE EAST – AN INTERIM ASSESSMENT

This chapter was drafted before the violent attack by the Palestinian movement Hamas of October 7, 2023, on Israel and before Israel's brutal war waged in Gaza thereafter. Hamas fighters massacred some 1,200 Israelis, mostly civilians, and kidnapped another 250. Israel's bombing campaign and land incursions have resulted in at least 35,000 Gazan deaths, the majority civilians. As of this writing (May 2024), famine looms in Gaza, and the end game is unclear. The war persists, hence this postscript may be considered an "interim report" on the ongoing situation. The purpose is not to offer a final judgment about whether genocide is or is not being committed. At this time, it is too early to know, in my view. Rather, the chapter offers a historical slice on how, as of May 2024, the concept of genocide has shaped the discussion of the war and how such usage relates to the arguments in this chapter.

The concept of genocide has been widely employed in public and private conversations about the ongoing violence. The most common application is to accuse Israel of committing genocide in Gaza, though some label Hamas' goals as being inherently genocidal – in part because the organization calls for the destruction of Israel. Further, the October 7 attacks singled out Jews and massacred them, hence the attack had genocidal elements – of group-selective, systematic killing of civilians. Whether each actor is committing genocide is complex, and a full analysis is beyond the scope of this Postscript. Nonetheless, I seek to draw out a few points in light of the chapter's analysis.

Overall, the conflict has demonstrated, once again, how powerful and problematic the concept remains. For many, who used the term in relation to Gaza, "genocide" conveyed the horrors of violence. The concept also became a litmus test to signal where one stands on the conflict. At the same time, the term became central to international legal measures to try to restrain Israel from committing further extensive violence against civilians; these legal measures in turn provoked furious responses from Israel and some of its supporters. In short, as in other ongoing violent conflicts, "genocide" has been a central site of and for contestation, which among other things demonstrates how hard

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a life this concept has as a social science term to designate a specific type of violence.

During the first eight months of this conflict, one can observe these competing objectives in the use of the concept. To many people, "genocide" has clearly meant something akin to "a massive, horrible atrocity" that should be condemned in the strongest possible manner. This meaning reflects the concept's central normative dimension: genocide stands in for rendering judgment on large-scale, unacceptable violence that inflicts massive pain and destruction on human beings. A good example is a piece by a Gaza-based doctor in *The Lancet*, a British medical journal, which catalogs the violence and civilian suffering in Gaza – but with no effort to sustain an argument about intentional group destruction. The essay is called "Stop the Gaza Genocide Immediately" (Abu Salmiya 2024).

Many activists, protestors, and some politicians have adopted this framework. On college campuses across the US, and internationally, many protestors brandished signs that read "Stop the Genocide" in Gaza; for his support of Israel, US President Joseph Biden has been frequently and publicly accused of aiding and abetting genocide. Many activists have called him "Genocide Joe." Sometimes the use – or not – of the term has served to divide critics from one another. Those who insisted on the term refused to relinquish or temper it; those who were critical of the civilian casualties but nonetheless thought genocide was inappropriate to describe the violence were dismissed as being too soft on Israel. The term itself was the pivot for disagreement. The term was also found in the language of diplomacy. In breaking ties with Israel, for example, Colombia denounced the "genocide" in Gaza, and Colombia was not alone in such language (Suárez 2024). In these examples, "genocide" has served as a label by which to denounce atrocity and a signal of where one stood politically on the conflict.

On the legal side, in December 2023, South Africa filed a case against Israel at the ICJ, claiming that Israel was committing genocide and hence violating the Genocide Convention. South Africa asked the ICJ to intervene to order a ceasefire, among other requested provisional measures. Many states around the world voiced support for the case, and several have intervened directly at the court on behalf of South Africa. Acting with unusual alacrity, the court issued Provisional Measures in January 2024, indicating that Israel had a duty not to commit genocide, but refused to require a ceasefire. A later ICJ decision in May 2024 ordered Israel to halt its offensive in Rafah, where more than a million Palestinians had congregated. At this stage, these rulings appear not to have constrained Israel, and the ICJ has not ruled whether genocide is occurring; rather, it has ruled that Israel has an obligation under the convention to prevent genocide, and the court's provisional measures have been taken with that purpose in mind.

The crux of the South Africa petition to the court was that senior Israeli leaders had shown an "intent to destroy" Palestinians when blaming them

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collectively for the Hamas attack, referring to them as animals and promising to withhold food, water, and electricity – which were crucial as means of survival. This *mens rea*, or mental state indicating the intent to destroy, was matched by a number of acts specified in the convention, including killing and committing serious physical harm against Palestinians, as well as mass expulsion and denial of food, shelter, water, and medical care.[4]

Israel furiously rejected the claim. Its leaders argued that their military objective is to destroy Hamas, not the Palestinian population; that Israel follows international law; that Israel has a right to defend itself; and that civilian casualties are, in part, because Hamas combatants hide where civilians are present. The genocide accusation seems to have particularly rankled. Israel's President Izaac Herzog, for example, called South Africa's case a "blood libel" against Israel (*Times of Israel* 2024). Speaking before the court some months later, Israel's Deputy Attorney General called South Africa's case "scandalous."[5]

These examples demonstrate again that the genocide debate is intensely charged, in normative, political, and legal ways. The discussion is not a value-neutral one about the merits of whether the pattern of violence amounts to genocide.[6] Nor should it be. But that context makes the research assessment challenging – in two ways. First, what is the register for applying the concept? Is the concept used to signal the occurrence of a horrible, massive, unacceptable atrocity? Is the concept used to satisfy the specificity of the definition in the United Nations Convention? Or is the operative question: Does the pattern of violence amount to a systematic effort to destroy a population? The answers to these questions should establish whether or not the concept of genocide should be used.

One important suggestion for navigating these issues, then, is that for a particular speaker who seeks to make a claim about whether genocide is used, the rhetorical purpose should be clear. Second, the stakes are so high that a reasoned discussion is particularly difficult. The Israel–Gaza war lays bare these challenges, yet the problem is one that consistently recurs.

Again, one solution is to say that this concept is not appropriate for use in the social sciences. The term is too normatively charged, too legally codified, too *political*. That conclusion would be unfortunate, in my view, because there is a distinctive form of violence out there in which states or other authorities seek to destroy groups.

In terms of judging, from a social science perspective, whether Israel's actions amount to genocide, we do not yet have enough information to reach

[4] South Africa's application to the court, in which the arguments are spelled out, can be found here: www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf.

[5] www.gov.il/en/pages/israeli-delegation-to-the-icj-concludes-its-arguments-17-may-2024.

[6] Even Aryeh Neier (2024), the former head of Amnesty International, presents less a factual rendering of actions that could be construed as genocide and more presents a legal and normative history when asking "Is Israel Committing Genocide?"

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a firm conclusion, in my view, as of this date. The pattern of action could amount to genocide, but it also could amount to an effort to destroy Hamas, accompanied by excessive civilian casualties, including war crimes and crimes against humanity. There are likely different currents in the Israeli state, and which view will prevail – rid Gaza of Palestinians and destroy the population so they never return, or defang Hamas and control the population so another October 7 does not happen – is not yet clear. Much will depend on how the war plays out and what happens after the war. In other words, genocide is a possible outcome, but not an inevitable one. For South Africa and others who invoke the term, that may be the point: make the claim in order to ensure it does not happen – accuse Israel as a way to "prevent" genocide, which is one of the goals of the Convention. But that political and normative objective, in this case via a judicial intervention, is distinct from how a scholar might approach the subject when using the term to classify political violence.

There are no easy answers to these problems. The complications in applying the term resurface in case after case – for recent examples, in Sudan, Ethiopia, Myanmar, China, and Russia – and the same is likely to be true in the future. Some will invoke genocide to denounce atrocity; some will invoke genocide to get a court to intervene, either in an interstate context such as the ICJ or a criminal context such as the ICC; some will invoke genocide to lambast political enemies or refrain from invoking it to protect political allies; and some will invoke it to distinguish the pattern of action from indiscriminate or small-scale political violence. These tensions will not disappear.

Given how ethically charged the concept is, and given these divergent usages, reasonable people find the term unhelpful. After a recent panel where we both spoke about the conflict in the Middle East, a well-known legal scholar remarked to me that he wished the term could just be dropped, as it confuses and inflames more than it clarifies. As I have argued, I think that is an unfortunate recommendation because the term is meaningful and specific and designates a particular type of violence. Yet those who insist on using the term should be prepared, time and again, for the kinds of disagreements that, as the Gaza war demonstrates, seem to be the rule rather than the exception.

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