

# The Meaning of Concepts: Some Reflections on the Difficulties in Analysing State Crimes

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## Abstract

The article analyses the different concepts used to conceptualise State Crimes (politicide, massacre, State Terrorism, ethnic cleansing, and crimes against humanity) in order to explore the theoretical advantages and disadvantages in comparison with the concept of genocide. The article highlights the conceptual problems of the different terms and the theoretical strength of the concept of genocide when compared with any of the other possibilities.

## Keywords

human rights, epistemology of social sciences, state crimes, genocide

## The Emergence of the Discussion on State Crimes

The end of World War II constituted a privileged moment for reflection on the characteristics of State violence. The impact of the systematic process of extermination, as developed by Nazism in Europe, generated a strong pressure to try to understand the specificity of the use of the State as apparatus (State violence) that differed qualitatively from classical repression (punishment to persecute those who committed crimes or stood up to power).

At the legal level, two concepts appeared to account for this peculiar use of *State violence*: *crimes against humanity* and *genocide*. However, during the second half of the twentieth century, only the second of these concepts (genocide) generated theoretical development and debate, while the first (crimes against humanity) was used in the Nuremberg trials but was not further theoretically elucidated. To this day, there are still no relevant works that attempt to analyse the theoretical derivations of the concept of crimes against humanity, its peculiar characteristics, its limits, potential, or problems at the conceptual level.

## Theoretical Discussions on the Concept of Genocide

One of the main topics which emerged in the field of genocide studies in the 1970s was the legal and sociological discussion on the definitional shortcomings of the *Convention on the Prevention and Punishment of the Crime of Genocide* (UN Genocide Convention, 1948). Most of the *genocide studies* pioneers began their work by highlighting the conceptual shortcomings of the legal typification — especially regarding the exclusion of certain groups from the legal definition — which leads to an ahistorical depoliticisation of the persecution processes carried out by modern States.

Based on these criticisms, newer and more precise definitions of the concept of genocide were proposed; some of them gained more traction than others, especially those definitions from

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the Canadians Frank Chalk and Kurt Jonassohn, the US-American Helen Fein, the Israeli Israel Charny, or the Armenian Vahakn Dadrian, among many others. Nonetheless, one way or another, the only relevant consensus among the researchers lies in the common criticism of Article 2 of the Genocide Convention, on grounds that it was based on the victims who suffered (the *protected groups*: ethnic, national, racial, or religious) instead of focusing on the type of actions that characterised genocidal practice. The latter would be the basis of any adequate definition of a social practice.

This discussion led the field of genocide studies to develop a peculiar richness — due to the specific contribution of each of the definitions provided by the various authors — while at the same time, creating a complex problem with respect to its internal coherence since there was no consensus that could serve to replace the legal definition of the convention, which was questioned by all.

The disagreements have been reflected in a wide variety of cases in which, for different researchers, each case deserved to be classified as genocide. The classic example of this dispute in genocide studies has been what Henry Huttenbach (2002) called “the Katz-Charny conundrum”, which has, at one end of the pole, the theories of uniqueness (which posit that the only effective case of genocide was the annihilation of the Jewish population at the hands of Nazism, as in the work of Steven Katz), and at the other end, the very broad generic definition from Israel Charny, which includes, in its definition, ecocide (the destruction of the environment), the atomic bombs dropped on Hiroshima and Nagasaki, and any other situation in which a significant number of human casualties can be identified (Huttenbach, 2002; to consult the authors themselves, see Katz, 1994, p. 24, who says “...the Holocaust is an event without real precedent or parallel in modern history” and Charny, 1994, p. 91, who affirms: “The present proposal [of a generic definition of genocide] is strongly inclusive; it seeks to create a wide conceptual base that includes all known types of mass murder and mass deaths that are brought about at the hands of man...”).

Discussions on the advantages, problems, and limits of the different definitions of genocide have been dealt with in numerous works, such as in *Genocide Studies & Prevention* Issues 6.3 (2011) and 7.1 (2012), so the aim of this article is to analyse the potentialities and, above all, the problems of the main alternative concepts that have appeared since then.

### **Alternative Concepts of Genocide**

Barbara Harff and Ted Gurr (1988) developed a concept that took, as its starting point, the characteristic concern of the first generation in the field of genocide studies, i.e., the exclusion of political groups and their legitimacy from convention. Harff and Gurr sought to distinguish two processes that they considered qualitatively different, though legally homologous: genocide and politicide. For these authors, both processes are defined as “the promotion and execution of policies by the state or its agents which result in the death of a substantial portion of a group” (p. 360). The conceptual difference about the definition of genocide and politicide lies in the traits by which the members of the group are identified by the State: In genocide, victims are identified primarily in terms of their communal characteristics (ethnicity, religion, or nationality); in politicide, victims are defined primarily in terms of their hierarchical position or political opposition to the regime or dominant groups.

Almost two decades later, the French historian Jacques Sémelin (2005) argued that there was a fundamental difference at the historical-sociological level between the processes of annihilation of groups; processes where the objective is *to destroy in order to subjugate* and processes where the objective is *to destroy in order to eradicate*, reserving the concept of genocide for the latter practice and subsuming both concepts under the broader term of *massacre* (pp. 386–431). While Harff and Gurr developed the concept of politicide in the North, the Argentine lawyer and activist Eduardo Luis Duhalde (2013), while articulating his analysis on the concept of genocide, coined another concept in order to reflect more adequately the specificity of State crimes suffered by Latin American societies: State Terrorism. At the beginning of the twenty-first century, the North American sociologist Michael Mann (2005) sought — in a work that questions the genocidal character of democracy itself — to restrict the concept of genocide, understanding it as a variant of the broader concept of ethnic cleansing, to which he devotes the core of his work on the subject. It is, therefore, worthwhile to critically review these alternative concepts to genocide that have emerged during the late twentieth and early twenty-first centuries. That would

mean to analyse their contributions, their limits and potentials, as well as their similarities and differences, and compare their analytic value to that of the concept of genocide.

### **Politicide**

A primary concern of the concept of politicide involves the type of relationship between the terms *genocide* and *politicide*; that is, whether it is a relationship between different genres (which therefore requires different concepts), or a relationship from genus to species, in which politicide would be a particular species of the genus genocide, as could be ethnocide, genocide against a national or religious group, or specific genocide against any other group (sexual, economic, labour, gender).

It is evident in the work of Harff and Gurr, which arose as a response to the limitations imposed by the definition in the convention through the exclusion of political groups from said definition, that beyond erroneous and/or politically intentional interpretations (aimed at legitimising impunity), Harff and Gurr propose to analyse different modalities of mass annihilation. The intentionality of Harff and Gurr is evidenced by their attempt to fight to equate *politicide* (at the level of its criminal conviction) with the crime of genocide, which they have tried, unsuccessfully, in international fora.

The underlying discussion is whether politicide is a *variety* of genocide, as are the various delimitations it has in its definition in the convention (national, religious, ethnic groups) or whether they all form a unit that is opposed (at the level of genre) to the category of genocide. If this is a peculiarity, it is hard to see why a genocide, carried out for national or geopolitical purposes, should not also be distinguished from a genocide carried out for religious reasons, which in turn, differs from one carried out for racist ethnic reasons.

What complicates the supposed theoretical necessity of these possible concepts (*politicide, ethnocide, religiocide, nationalicide*) is that these various so-called species or subtypes of the genus genocide are intertwined in the historical facts and are difficult to differentiate. For example, what is called the *Western and Christian* character, wielded by the perpetrators of the destruction of groups in Argentina, simultaneously possesses a political and religious character. In turn, this logic could differ in some points (as an ideological construction that unites politics and religion; two belief systems) from the genocidal processes constructed based on national or ethnic criteria (of which the case of the Kurds in Iraq may be an example; although their struggle for autonomy, once again, interweaves ethnic elements with national or political ones). In Guatemala, unlike what happened in the Southern Cone of Latin America, political persecution was more intertwined with ethnic elements (indigenous identities) than religious ones (Christian Western-ness).

To make matters more complex, many of these cases coincide in terms of their *structural elements* — modality of operation, concentration camp system, effects on the destruction of social relations, instigation of denunciation, degradation and dehumanisation of others, and binary construction of reality. Although the use of the concept of politicide seems useful as a species of the genus genocide to account for historical particularities of some processes that do not exist in others, it could obscure the political elements that have always existed behind ethnic, national, or religious persecutions, as well as simultaneously belie the use of religion or racism in cases which are *eminently political*.

Accepting the concept of politicide legally would legitimise the annulment of the universalist principle of equality before the law without bringing any relevant advantage at the legal level. Accepting it sociologically could account for some historical specificities, but with the risk of conceptually separating, what is empirically, often intertwined or producing a *depoliticisation* of those cases where racism, nationalism, or religious fanaticism are significant — facts that do not deny the existence of political patterns of victim selection, which are almost always predominant.

### **Massacre**

As Sémelin points out, processes of destruction aimed at *subjugating* a society could be conceptually differentiated — at least at the logical level — from those implemented with the objective of *eradicating* certain groups. However, by refining the historical analysis, we can find that concrete situations (including those analysed by Sémelin himself, in his work, Nazism, the former Yugoslavia and Rwanda) generate a problem similar to that indicated with respect to the concept of politicide.

Subjugations usually require the eradication of certain specific population groups, a pattern that builds terror on the population, as a whole, to which these groups belong. In a complementary manner, eradications tend to be produced as a tool to subjugate the population, as a whole, by proposing a potential for expanding the logic of annihilation, which would be applied to larger groups than those originally victimised.

The Argentine case is an excellent example of this — given that the subjugation of the Argentine national group was implemented together with the simultaneous eradication of a certain diversity within Argentine society. Among the eradicated groups were dozens of political and educational organisations, trade unions, and neighbourhood associations that were systematically persecuted suggesting that their eradication was being sought, as stated in numerous military documents that guided the persecution.<sup>1</sup>

The problem with the distinction established by Sémelin is that, by legitimising the application of the concept of genocide only to eradication practices and excluding its use in cases of subjugation, he ends up creating a fragmented view of the historical facts, which permeates practices that would fit his concept of genocide and others that would not, both occurring in the same historical endeavour and at the same time. Sémelin, himself, recognises this issue in his analysis, arguing that there was genocide in Srebrenica, while *only* massacres had occurred in other parts of the former Yugoslavia (Tuzla, Mostar); as if the events in Srebrenica, Tuzla, or Mostar were not part of the same political project and, therefore, expressions of a larger unified historical endeavour and not partial events that can be analysed independently and in a dissociated manner.

This analytical confusion tends to obscure or distort the understanding of the meaning found in historical facts. The eradication of some groups is often carried out with the aim of subjugating a larger group. Both practices (eradication and subjugation) constitute the two facets of any genocidal process, and not the possibility of distinguishing two distinct concepts such as genocide and massacre.

Finally, the creator of the neologism genocide, Raphaël Lemkin, understood genocide as Sémelin defines massacre; a practice aimed at the subjugation of the oppressed through the destruction of their identity. Thus, Sémelin's work introduces a second confusion to the field of genocide studies — by unilaterally deciding to change the meaning of the concepts under analysis without providing any elucidation, but rather, introducing conceptual breaks that prevent an overall view of the use of violence and its social and political consequences on the peoples in which it is applied.

### **State Terrorism**

Eduardo Luis Duhalde defines the terrorist State as a peculiar type of state of exception. In relation to the definition of the Terrorist State, Duhalde (2013) says that:

[t]errorism is no longer a contingent instrument used to reinforce the coercion exercised publicly through the set of repressive state organs. In the terrorist State a new philosophy is expressly assumed: (...) a permanent and parallel activity of the State must be incorporated through a double face of action of its coercive apparatuses: one public and subject to the laws and the other clandestine, outside any formal legality (p. 249).

And then, he adds:

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<sup>1</sup> See, for example, secret directive 334 of September 1975 called "continuation of operations in Tucumán", secret directive 335 of April 5, 1976 on the same subject or Regulation RC-9-1, approved on December 17, 1976 under the title "Operations against subversive elements", or secret directive 504 of April 1977, among many others, all of which define the population as a whole as a *target*, within which they identify student, union, neighbourhood, religious, human rights organisations, in many cases making explicit, one by one, the organisations, in others treating them as a group of groups within the general population, being that the *target* is always the whole of the Argentine national group and the persecution of specific organisations constitutes the effective way of transforming the "target" group. But years before the drafting of all of them, the issue was already precisely formulated in the Reserved Regulations RC-5-1 and R-C-5-2 of "Psychological Operations", approved in November 1968 by the Argentine Army. As can be seen, several years even before the genocidal operations began.

The Terrorist State appears as a consequence of the impossibility of the Military State to carry out its purposes through the sole discretionary control of coercion and the subordination of civil society. Public repression, however important it may be, is not enough to achieve the proposed objectives. Two essential components are missing, which are those that the Terrorist State will contribute: the global clandestine action of the State and crime and terror as a fundamental method (Duhalde, 2013, p. 250).

Duhalde notes the peculiarity of the dual role the State plays (the occurrence of covert operations which are not publicly recognised/acknowledged by the State itself) in the acts of modern genocides. The conceptual question, then, is whether this peculiarity is sufficient to replace the concept of genocide with that of *State Terrorism* (this type of use, or approach, can be found, for example, in Vezzetti, 2002; or, even more clearly, in Novaro & Palermo, 2004; or, also by Novaro & Palermo, 2003). Can the analysis of the double role of the State structure successfully replace the historical-sociological analysis of the dynamics of genocidal social practice; or does State terrorism account for a different type of social practice other than genocide, which would require precise discerning of its distinctive characters?

While Duhalde has made clear that his understanding of State Terrorism was not against the qualification of the facts as genocide, but the opposite (State Terrorism as a specificity of Argentine genocide) — throughout his work, he always considers the terrorist State as a peculiar modality of some genocides — he specifically analyses the Argentine case using the concept of genocide. Up to this point, Duhalde's work is indeed a contribution, since the dual structure of the State apparatus that he labels as *Terrorist State* can be observed not only in the Argentine case but in almost all genocides of the twentieth century, such as Turkish Ittihadism, Nazism, or the repressions developed under the National Security Doctrine, both in Latin America and in Indonesia, or even in the French counterinsurgency wars.

The problem arises when trying to isolate the term "State Terrorism" into a different category that would divide *genocide* as comprising two different genres, since it would account for a practice that would occur instead of genocide, in those historical cases in which the use of this concept is not considered viable. In such cases, the concept of State Terrorism fails to provide explicative power; in particular, in establishing what would be the structural characteristics of such practices and why the term would be more accurate, or appropriate, than that of the term *genocide*, which is more established and conceptually developed.

### ***Ethnic Cleansing***

Unlike the concepts analysed so far, the term *ethnic cleansing* was created by the perpetrators themselves with its emblematic case (and its conceptual origin) being the historical experience of annihilation of the Bosnian-Muslim populations by the Bosnian Serbs in the central region of the former Yugoslavia (today, the state of Bosnia-Herzegovina); although usage of the term has since been expanded to encompass the whole of the Balkan conflict, beyond its previous use in cases involving racial practices. The concept seems to have been borrowed from the Slavic expression *etnicheskoye chishcheniye*, first used by Soviet authorities in the 1980s to describe Azeri attempts to expel Armenians from the Nagorno-Karabakh area, and then immediately reappropriated by Serb nationalists to describe their policies in the central region of Yugoslavia. Nevertheless, the United Nations began to use the term after the Balkan case, legitimising the concept, mainly as a way of denying the occurrence of genocide in the former Yugoslavia, stating that the aim was not to eliminate the Bosnian population but only to *expel* them with the objective of carrying out an *ethnic cleansing* of the region.

Indeed, it is this legitimization of the concept by the United Nations that led the US-American researcher Michael Mann (2005), to seek, ten years after the events in the former Yugoslavia, to establish the term as a theoretical concept that would provide explanation for a form of social practice, out of which genocide would merely be only one of its species. Mann views ethnic cleansing procedures as constituents of democracy itself, since they attempt to transform the people (*demos*) into a unified and identity-homogeneous people (*ethnos*). From there, he distinguishes a series of social practices of ethnic cleansing at different levels, which are grouped according to whether their objective is total or partial

cleansing, and to six forms of escalating violence in the pursuit of this objective (non-violent cleansing, institutional coercion, repressive policies, violent repression, unintentional mass killings in the style of pogroms, and premeditated mass killings). Thus, genocide would only be the last stage of this process of ethnic cleansing (when the intent of ethnic cleansing is total and carried out through premeditated mass killings).

Nevertheless, Mann has been the subject of numerous criticisms. On the one hand, he reduces his analysis only to cases in which the persecutions have an ethnic content, making invisible the political, religious, or national motivations in many of the analysed historical cases. On the other hand, his analysis has led to the generation of an extremely reduced concept of genocide, which resembles the works of the *uniqueness school*, which posited the annihilation of the European Jews by Nazism, alone, as the only historically valid case of the genocidal process.

One of the strongest criticisms of Michael Mann's concept has come from British sociologist Martin Shaw, who calls the concept of ethnic cleansing a "legitimizing euphemism for genocidal ideology." (Shaw, 2007, p. 49) Tracing its uses even by Croatian fascists (*Ustashes*) during the persecutions of Serb populations in World War II, Shaw (2007) argues that the use of a concept such as ethnic cleansing ends up —

reproducing rather than criticizing its particular meaning of 'cleansing' or 'purification,' while failing to indicate the destructive character of the eradication of groups from the territories in which they lived. Although journalists, politicians, lawyers and international officials did not defend ethnic purity, their use of the term legitimizes this idea rather than indicating the consequences of 'cleansing' for the victims. The question that arose was why enshrine a perpetrator concept in official, legal, journalistic and social scientific language, when there were terms such as expulsion and forced migration that indicated the precise harm caused and when genocide described the general social destruction involved (p. 49).

Used, de facto, as a euphemism by the United Nations, the concept of ethnic cleansing would seem to have nothing to add to the much more precise ones like genocide, deportation, or forced migration, all of which have each their own distinct conceptual development.

### ***The Non-Existence of a Field of Study on the Concept of Crimes Against Humanity***

Despite the widespread legal use of the expression "crimes against humanity" in the last two decades (as a favoured term in the judgments of international tribunals and as a permanent substitute for the possibility that an incident qualifies as genocide), there is no work that analyses, criminologically or sociologically, the peculiarities of crimes against humanity in theoretical terms.

Nothing prevents such a work from appearing in the future, but its obstacles are clear. Since we are dealing with a catalogue of entirely different practices (which do not have, by contrast, the consistency of the five actions described in Article 2 of the Genocide Convention), a conceptual analysis of the term would require an account of common elements in practices such as murder, extermination, enslavement, deportation, forcible transfer, imprisonment, torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation, persecution for any reason, enforced disappearance, apartheid, and "other inhumane acts".

Since each of these practices, in some cases, has its own areas of conceptual reflection (for example, genocide, homicide, deportation, migration, the prison system, sexual crimes, eugenics, slavery, apartheid), it is difficult to imagine how a sociological or criminological field of study could be created, beyond their legal commonality as practices that make crimes unlawful or grant them universal jurisdiction — a field of sociological or criminological studies that would allow for standardised analysis without weakening or obscuring the meaning, and thus, understanding of these practices, since they have no shared elements beyond consequences in relation to the breach of safeguards such as statutes of limitation or territorial jurisdiction.

### ***Brief Summary of Alternative Concepts to Genocide***

In short, the concepts of politicide and massacre serve to illustrate, in two opposite instances, how the attempt to restrict the most precise and legitimate concept for understanding the reality of the

systematic annihilation of population groups (genocide) can lead to logical, legal, criminological, historical and political imbalances — regardless of whether the understanding is framed and segmented in terms of the identity of the groups or in relation to the social practices situated within the same historical process.

The concept of *politicide* tends to confuse the structurally analogous, establishing two different genres to account for a single practice. The problem arises for the creators of the term when they seek to catalogue the mass annihilations between 1955 and 2001 and are forced to qualify most of the cases as *geno-politicide* (i.e., situations that would be both genocides and politicides). If it is accepted that all genocides are ultimately political, the distinction vanishes and the need for differentiation becomes absurd.

In contrast, the concept of massacre homologises the structurally diverse, since it includes both the systematic and planned annihilation of population groups and sporadic and indiscriminate repression, more properly included in concepts such as the *Pogrom*. Restricting the concept of genocide to that of the quest for eradication (and defining it in exactly the opposite way to that of its creator, Raphaël Lemkin), Sémelin ends up analysing most cases as massacres, a lax and confused concept that distinguishes ineffectively distinct practices while separating practices that historically operate in an interconnected way. Sémelin's grouping of cases, under the concept of massacre, would be the equivalent of confusing homicide with suicide or accident since all cases end with a lifeless body.

The concept of State terrorism transforms one of the possible specificities of genocides (the use of the State as *terrorist*, through the development of the double-role in its operations: public and clandestine) into a type of practice of its own, which fails to elucidate in any of its three possibilities (as indiscriminate killing, as political killing, or as a tactic of civil war) what would be its contributions, advantages, similarities, and differences with the concepts of genocide, *politicide*, or massacre.

The concept of ethnic cleansing has become a euphemism with which to deny the consequences of ethnic persecutions on the identities of the peoples in which they occur; thus, essentialising ethnic difference, obscuring the political strategy in which it is embedded in and legitimising the conceptions of identity formulated by the perpetrators of said violence. In this way, the four forms of genocide described in the UN Genocide Convention, that are not based on immediate extermination (serious injury to the integrity of the members of the group, intentional subjection of the group to conditions leading to its destruction, measures aimed at preventing births or transfers of children from one group to another), are downplayed as cases of *ethnic cleansing* and their profound destructive effects on group identity are not observed.

Finally, the hegemony of the concept of crimes against humanity in legal sentences is clear (from the former Yugoslavia to Cambodia, from Argentina to Chile). Despite this, no criminological, historical, or sociological work has been found that sets out to elucidate theoretically from the social sciences the content of the concept of crimes against humanity, beyond the inclusion therein of a long list of fundamentally different social practices.

It is not the aim of this paper to explore in detail and elucidate the different meanings of State crimes that are not homologous to genocidal practices (the specific massacres in sporadic repression of the population, the so-called drip massacres produced by police or prison institutions, environmental crimes, or those economic crimes produced by the State and often linked to corruption or criminal organisations), as this would require its own work.

But, it can be concluded that the gradual abandonment of theoretical reflection on the concept of genocide in recent decades has not allowed the emergence of more powerful or effective theoretical frameworks to account for State crimes aimed at the annihilation of specific population groups and that, although the concept of crimes against humanity has allowed the prosecution of some of those responsible, it has not allowed for the theoretical advancement of the concept of crimes against humanity. This gradual abandonment of theoretical reflection has also failed to allow for the theoretical and conceptual advancement of the ways in which these practices have established, their deployment over time, their similarities, and differences. This has led to comparative work on the various concepts, or to reflections on the consequences of the use of terror on identity processes and the construction of social memories. Thus, in a general review of the theoretical discourse, it appears that it is the concept of genocide that has been the most powerful to analyse the nuances, complexities, and specificity of this particular use of violence by modern States.

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