The Historical and Legal Interconnections Between the Armenian Genocide and the Jewish Holocaust: From Impunity to Retributive Justice*

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* Editor’s Note: An independent translator hired by the Yale Journal of International Law verified the accuracy of the Turkish sources used in this Article. Due to the nature of the sources and the methods by which the information was obtained, exact dates and page numbers were occasionally unavailable. The Journal and Professor Dadrian have endeavored to provide as much information as possible about each source.

Listed below are the main abbreviations used in this Article:

A.A. Auswärtiges Amt. German Foreign Office Archives, Political Department (1A) (Berlin, presently Bonn).

FO British Foreign Office Archives (Kew, London).


† Director, Genocide Project, H.F. Guggenheim Foundation. This article is the offshoot of a speech I was invited to deliver to the British Parliament in May 1995 on the occasion of the 80th anniversary of the Armenian Genocide. The discussion that ensued with members of the House of Commons and the House of Lords largely focused on my legal-political arguments on impunity as a negative reward associated with the perpetration of the Armenian Genocide and the impact of that impunity on the subsequent Jewish Holocaust. I take this opportunity to express my thanks to the Parliamentarians for the stimulus I received from them to expand my thesis and to produce this Article.
I. INTRODUCTION

A previously published study\(^1\) examined the Armenian genocide in detail as the first instance of a major genocide of this century. The depth of analysis applied to that study was meant to broaden knowledge specific to that case. But case studies essentially are self-contained explorations and, as such, have limited usefulness in the quest for generalizations. By and large, such generalizations are achieved only through comparative studies. This is particularly true when attempting to establish common denominators among crimes as enormous as genocide. Juxtaposing the Armenian and Jewish genocides, the two major genocides of this century, may serve this purpose.

The Armenian genocide’s relevance to the Holocaust derives from the fact that the concept of “crimes against humanity” in international law was first introduced publicly, explicitly, and formally by the World War I Allies—namely, Great Britain, France, and Russia. The occasion for this bold venture was the Ottoman-Turkish authorities’ World War I genocide against Turkey’s Armenian population. Indeed, on May 24, 1915, the Entente Powers solemnly condemned “the connivance and often assistance of Ottoman authorities”: “In view of these new crimes of Turkey against humanity and civilization . . . the Allied governments announce publicly . . . that they will hold personally responsible . . . all members of the Ottoman government and those of their agents who are implicated in such massacres.”\(^2\) Similarly, after the Holocaust, article 6(c) of the Nuremberg Charter and, later, the Preamble of the U.N. Convention on Genocide\(^3\) incorporated the concept of “crimes against humanity” as a new international penal norm.\(^4\)

Closely connected with this issue of punishment is that of prevention; the interconnection between the Armenian genocide and the Jewish Holocaust in this regard is even more acute. The inescapable fact is that both genocides occurred because, for reasons to be explained later, neither of them could be prevented. Punishment is a function of negative prevention: One may infer that the failure to punish the authors of the Armenian genocide contributed to the Jewish Holocaust. The perpetrators of the Holocaust, however, suffered a large dose of retributive justice at the end of World War II. Thus, the two genocides converge in the absence of prevention but diverge as far as punishment is concerned. But in examining the circumstances surrounding this

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2. Id. at 262.
dichotomy, it becomes evident that one element of the dichotomy conditioned
the other. The world’s post-World War I torpor encouraged the Nazis to carry
out their genocidal scheme during World War II; prevention thus failed. By
the same token, however, the aggregate devastation and human loss resulting
from the legacy of this inaction prompted the victors of World War II to
institute criminal proceedings against the Nazis, thereby ending the cycle of
impunity and establishing a precedent for retributive justice in international
relations. Even though the rest of the world could or would not intervene to
spare the Jews of Europe the fate that befell the Armenians, that same world
decided to change course in the wake of a military victory and to substitute
punishment for impunity. In short, Nuremberg’s prosecutorial and punitive
thrust was significantly conditioned by an acute awareness of the cataclysmic
consequences of a past record of impunity.

Indeed, renowned international law scholar M. Cherif Bassiouni
observed that the victorious Allies’ dismal postwar record in punishing the
organized mass murder of the Armenians, which he characterized as the first
“genocide” of this century, had profound consequences for the West: “The
reluctance to recognize ‘crimes against the laws of humanity’ in the post-
World War I era as prosecutable and punishable international crimes came
back to haunt the very same Allies, and particularly the United States, after
World War II.” In a later piece, Bassiouni pointed out the need to
“vindicate the victims of international crimes and remind ourselves and
future generations of the victims’ plight and the perpetrators [sic] misdeeds.”
In keeping with this assessment, this Article confines itself to
the twin issues of prevention and punishment that form the centerpiece of the
U.N. Convention on Genocide mentioned above.

This Article will focus particularly on the concept of an impunity-
punishment axis to examine the historical and legal developments in which
both the Armenians and Jews became prime targets for genocidal
victimization—a type of victimization that helped usher in a new legal ethos
of retributive justice. The core element of that ethos was the common
criminological premise that the main, if not the only, way to prevent a future
crime was to punish the present crime and thereby deter potential
perpetrators. This emerging ethos is cast into particular relief by the
evidence of a direct relationship between the victimization of the Armenians
and that of the Jews in the sense that the former conditioned the latter. The
victorious World War II Allies were cognizant that, even if they wished to
do so, they lacked the legal mechanisms to prosecute effectively the
perpetrators of the previous Armenian genocide. As stated above, they

5. M. Cherif Bassiouni, The Time Has Come for an International Criminal Court, 1 IND.
INT’L & COMP. L. REV. 1, 3-4 (1991). In a recent article, Bassiouni emphasizes the same point. See
M. Cherif Bassiouni, From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a
Permanent International Court, 10 HARV. HUM. RTS. J. 11, 13-17, 58, 60-61 (1997) [hereinafter
Bassiouni, Permanent International Court].
accordingly established a new Charter that, by declaring genocide a crime against humanity, became the foundation of a new international law.

Within this perspective, the Article focuses on three interrelated problems:

1. The similarity of the processes and conditions that made the prevention of the two genocides infeasible.
2. The factors of contagion and emulation through which the unpunished Armenian genocide, directly or indirectly, may have contributed to the unpreventability of the subsequent Jewish genocide.
3. The emergence of a new international legal doctrine, "crimes against humanity," intended as a vaccine against the recurrence of similar genocides by replacing impunity with institutionalized retributive justice.

Part II of the Article provides a brief historical overview of pertinent events occurring prior to, during, and in the wake of World War I. Particularly crucial constitutive elements include: the legacy of unpunished antecedent massacres; the pivotal, genocidal role of the Young Turk Ittihadists; the Kemalist insurgency in the interior of Turkey that challenged both the authority of the reigning Sultan and the victorious Allies; and the brief, dismal career of the Turkish Military Tribunal that sought to prosecute and punish the authors of the Armenian genocide. Part III compares the Armenian and Jewish genocides, considering in particular the historical pattern of persecution that frequently reduced these two peoples to targets of victimization. The exigencies and emergencies of two global wars; the means by which monolithic Turkish and German political parties subverted their respective states; and the overall strategies they employed to exploit wartime opportunities and maximize the vulnerability of the targeted victim populations are part and parcel of this comparative analysis. Part IV examines the portentousness of the Armenian genocide relative to the Holocaust. Was the Armenian genocide a mere precedent for the Jewish genocide or were there intimate links beyond simple precedence? The knowledge of Hitler and some of his cohorts regarding the Armenian genocide, particularly the impunity its perpetrators enjoyed, are especially pertinent. To the extent that the accomplishment of a genocidal undertaking depends on how swiftly the victims are killed, merciless brutality is, as a rule, the main determinant of success. Therefore, Genghis Khan, who organized relentless massacres committed in the course of his military incursions in Asia and the Near East, became a role model not only for the Young Turk Ittihadist perpetrators but for Adolf Hitler himself as well. Accordingly, the Article will explore this aspect of the problem at some length. Part V describes the institution of a major remedial step—formally enunciating a principle of "crimes against humanity"—against the dangers of inaction in the face of organized mass murders. The significance of this step can be traced back to the origins of the Armenian genocide. Equally
significant, however, the Allies' recognition in May 1915 of "crimes against humanity" paradoxically encouraged future genocides because of its very abortiveness. Nevertheless, this fact spurred the same Allies at the end of World War II to fortify that principle instead of relinquishing it altogether. Part V describes and analyzes this process of fortification with reference to the juridical innovations introduced at the International Military Tribunal at Nuremberg.

All genocides presuppose some kind of conflict—often protracted and difficult to resolve peacefully—between the perpetrator and victim groups. This is particularly the case with the Armenian genocide, which may be regarded as the culmination of a series of antecedent massacres that were byproducts of the lingering Turko-Armenian conflict. The following discussion sketches the legacy of these past massacres, their significance, and the conditions in postwar Turkey that helped abort attempts at retributive justice.

II. THE HISTORICAL BACKGROUND AND AFTERMATH OF THE ARMENIAN GENOCIDE

A. Outlines of the Problem

The most striking feature of the continuous victimization of the Armenians in the decades preceding the World War I genocide was the relatively unhampered freedom with which the perpetrators proceeded. Emboldened by the inaction of the Great Powers, who were responsible for averting or punishing these massacres, the Ottoman authorities persisted in their methods of consummating the Turko-Armenian conflict through lethal violence. By the same token, they continued to deny the crimes resulting from such violence. The progressive escalation in the level of genocidal killing of the Armenians in Ottoman Turkey through episodic and recurrent massacres in the eras of Abdul Hamit and the Young Turk Ittihadists is a particularly important fact in this respect. In describing these events, the British historian Arnold Toynbee, who, in 1916, compiled a massive volume documenting and detailing the Armenian genocide, recognized the intimate connections between Turkish official denials and the subsequent mass murders.

When challenging the Turkish wartime protestations of innocence, for example, Toynbee dismissed the Turkish charges of treason and rebellion against the Armenians as fabrications that would not "bear examination," were "easily rebutted," and were "found to rest on the most frivolous

7. See Dadrian, supra note 1, at 230-55.
9. Id.
grounds.” He concluded that “it is evident that the war was merely an opportunity and not a cause.” Restating his firm conviction that the Armenian massacre was a premeditated genocide, he stated half a century later that “the massacre of Armenian Ottoman subjects in the Ottoman Empire in 1896 . . . was amateur and ineffective compared with the largely successful attempt to exterminate [them] that was made during the First World War in 1915.” Moreover, like the later Jewish genocide, this genocide was “carried out . . . under the cloak of legality, by cold-blooded governmental action. These were not mass-murders committed spontaneously by mobs of private people.”

Massacres of Sultan Abdul Hamit’s era (1894–96) lacked thorough planning and the requisite experience for organizing them on a genocidal scale. More importantly, there was some lingering apprehension that unrestricted and indiscriminate mass murder at that time might, after all, provoke the Powers to proceed militarily against Turkey under certain treaty rights, particularly as the Powers already had established a legacy of “humanitarian intervention” in Europe and the Near East. This element of uncertainty forced the perpetrators to view the massacres more or less as experiments. In the end, however, the outcome proved quite reassuring for the Turkish authorities and led them to believe that they could view the victim population as fair game when planning more effective future operations.

The World War I era proved even more conducive to genocide. The Allies’ consuming preoccupation with effective warfare and victory prevented effective humanitarian intervention. Moreover, the Turkish alliance with Imperial Germany served as a powerful protective shield, allowing the Ittihadists optimal scope for unhampered operations against the Armenians, who were defined as “the internal enemy.” In one of his cogent appraisals of the situation, U.S. Ambassador Henry Morgenthau noted in a “private and confidential” letter to Secretary of State Robert Lansing on November 18, 1915: “Unfortunately the previous Armenian massacres were allowed to pass without the great Christian Powers punishing the perpetrators thereof; and these people believe that an offense that has been condoned before, will probably be again forgiven.” Reflecting further on this interrelationship between the past massacres, Morgenthau confirmed

10. Id. at 629.
11. Id. at 631.
13. Id. at 341.
14. See The Treaty of Berlin, July 13, 1878, art. 61, reprinted in J.C. HUREWITZ, DIPLOMACY IN THE NEAR AND MIDDLE EAST: A DOCUMENTARY RECORD: 1535–1914, at 189, 190 (1956) (stating that Turkey was to safeguard security and rights of Armenians and others, subject to supervision by other signatories); Cyprus Convention of Defensive Alliance, June 4, 1878, U.K.-Turk., art. 1, reprinted in HUREWITZ, supra, at 187, 187–88 (stating that Turkey was required to introduce certain reforms in exchange for treaty protection by Great Britain).
15. U.S. National Archives, R.G. 59.867.00/798½.
what other credible sources repeatedly have asserted, namely, that this
time—i.e., World War I—the perpetrators thoroughly planned and organized
a premeditated genocide. After declaring, “I am firmly convinced that this is
the greatest crime of the ages,” Morgenthau went on to state:

[N]ow, while four of the great Powers were fighting [the Turks] and had unsuccessfully
attempted to enter their country [to Constantinople through the Straits], and the two
other great Powers [Germany and Austria] were their Allies, it was a great opportunity
for them to put into effect their long cherished plan of exterminating the Armenian race

For unknown reasons, the State Department chose to excise these comments
from the published volume of official reports.

For several weeks after the Armenian genocide began in April 1915, the Turkish authorities appeared to be testing the waters: They deported at
the outset certain segments of the Armenian population under the pretext of
temporary wartime relocation. The German and Austrian allies’ failure to
intervene and the neutral governments’ failure to protest evidently reinforced
the perpetrators’ expectations, namely, that they would have a free hand in
handling the Armenians. Accordingly, subsequent anti-Armenian measures intensified in tempo and expanded in scale. For months after the first week
of June 1915, the annihilation of the bulk of the Ottoman Empire’s
Armenian population proceeded systematically, relentlessly, and
implacably. At the end of the war, the Armenian presence in Turkey had
been destroyed, for all practical purposes, through the destruction of the
Armenian population itself.

The rapid success of the genocide was not matched, however, by
comparable success in the pursuit of the war. The crushing military defeat
that the Ottoman Turks and their two principal allies, Imperial Germany and
Imperial Austria-Hungary, suffered in October 1918 cast the grim reality of
the wartime extermination of the Armenians in stark relief. The victorious
Allies exerted pressure upon defeated Turkey to prosecute the authors of the
Armenian genocide, threatening that unless the perpetrators were punished,
the terms of the impending peace settlement could be very severe.

16. Id.
17. Id.
18. See, e.g., Letter from American Ambassador Morgenthau to Secretary of State Lansing
(Nov. 4, 1915), in U.S. Dep’t of State, Papers Relating to the Foreign Relations of the
United States, 1 The Lansing Papers 1914–1920, at 762 (1939). This text contains letters and
reports from the various ambassadors, but this portion of the letter is, for some reason, omitted.
20. See A.A. Türkei [Turkey] 183/37, A21257, German Ambassador Wangenheim’s July 7,
1915, No. 433, report to Chancellor Hollweg in Berlin; A.A. Türkei [Turkey] 183/37, A19744,
German Ambassador Wangenheim’s June 17, 1915, report; see also Ulrich Trumpener, Germany
and the Ottoman Empire 1914–1918, at 213 (1968) (stating that German and Austrian ambassadors
were aware of genocide and that they attempted to express some disapproval).
21. See Dadrian, supra note 1, at 292.
Ultimately, however, the resulting courts-martial proved a judicial fiasco, confirming once more that a nation-state rarely can be expected to indict and convict itself.²²

A major contributing factor to the fiasco was the rise of the Kemalist movement in the Turkish interior. Within six months after the Armistice accord, Mustafa Kemal (Atatürk), the legendary Turkish war hero, began to organize an insurrection in Anatolia directed against both the victorious Allies and the Sultan's government, which the Kemalists decried as a submissive puppet of the Allies. In this challenge, which extended to the court-martial proceedings of the Special Turkish Military Tribunal that was investigating war crimes committed against the Armenians, the Kemalists were joined by the remaining leaders of the defunct Young Turk Ittihadist party, which operated through a network of underground cells.²³ Thanks to the ascendancy and ultimate triumph of the Kemalist movement and the attendant resurgence of a defiant Turkish nationalism, a debilitating military defeat was transformed into a spectacular military success. The disagreements, feuds, and rivalries among the Allies, on the one hand, and the general war-weariness among the peoples they represented, on the other, helped undermine the Allies' unity, weakened their resolve to crush the insurrection, and, in the end, facilitated the success of the Kemalist challenge.²⁴ As a result, all occupation forces left Turkey, and the new leadership literally imposed its will upon the victorious Allies when framing the terms of the long delayed peace settlement.

The delayed peace settlement is, of course, the Lausanne Treaty.²⁵ Yielding to the pressures of the implacable Kemalists, the victorious Allies abjectly discarded the two-year-old Sèvres Treaty,²⁶ through which they had attempted to prosecute and punish the authors of the Armenian genocide and, at the same time, redeem their promises for a future Armenia. After expunging all references to Armenian massacres (and, indeed, to Armenia itself) from the draft version,²⁷ they signed the Lausanne Peace Treaty, thus

²². The specifics of that fiasco are reflected in the comments made by British and American authorities observing the court-martial proceedings at the time. See infra note 232 and accompanying text.

²³. See Dadrian, supra note 1, at 282. The top seven leaders of that party had surreptitiously fled Istanbul, then the Ottoman capital, on the night of November 1-2, 1918.

²⁴. Cf. id. at 286 (discussing "broker[ing]" among Allies).


²⁷. See 3 ŞEVKET SÖREYYA AYDEMİR, TEK ADAM: MUSTAFA KEMAL [A UNIQUE MAN: MUSTAFA KEMAL] 109 n.2 (1969). According to this author, the deletion from the Lausanne Peace Treaty of any and all references to Armenian massacres, and even to Armenia itself, was not a chance occurrence. Rather, it was the result of a secret agreement reached during a luncheon between İsmet İnönü, the head of the Turkish delegation, and Lord Curzon, the head of the British delegation. The next day, when Curzon made a furtive reference to the Armenian question, İsmet was amazed and upset. Trying to mollify him after the end of the session, Curzon reportedly quipped, "Can't you bear
helping to codify impunity by ignoring the Armenian genocide. The international law flowing from this treaty, while a sham in reality, lent an aura of respectability to impunity because the imprimatur of a peace conference was attached to it. A French jurist observed that the treaty was an "assurance" for impunity for the crime of massacre; indeed, it was a "glorification" of the crime in which an entire race, the Armenians, was "systematically exterminated." For his part, David Lloyd George, wartime Prime Minister of Great Britain, found it appropriate to vent his ire when he was out of power: He declared the Western Allies' conduct at the Lausanne Conference to be "abject, cowardly and infamous." A creature of political deal-making, the Lausanne Treaty was a triumph of the principle of impunity over the principle of retributive justice.

B. Conflict in the U.S. Government Regarding the Lausanne Treaty

There was a widespread movement in the United States against the signing of the Lausanne Treaty by the European Allies. The American Committee Opposed to the Lausanne Treaty counted among its principal mentors two former American ambassadors to Turkey: One, Oscar Straus, was a member of the committee, and the other, Henry Morgenthau, was a strong supporter of the cause. Moreover, when then-Secretary of State Hughes negotiated and signed a separate Treaty between the United States and Turkey at Lausanne on August 6, 1923, 110 prominent Americans signed a memorandum against Senate ratification of that Treaty; among the signatories were many former ambassadors, three former Secretaries of War and the Navy, bishops, governors, newspaper editors, university professors, and twenty presidents of American colleges and universities, including those of Yale, Harvard, and Stanford.

Another group, the Armenian America Society, was equally successful in mobilizing American opposition to the Lausanne Treaty. By the spring of 1922, the Society had grown to sixty chapters in the United States. The Society's moving spirit and enduring president, Walter George Smith, was a prominent Catholic lawyer who was elected president of the American Bar

to hear even such a trivial funeral oration?" Id.

28. CHARLES-HIPPOLYTE LEBEAU, ÉSSAI SUR LA JUSTICE EN TURQUIE (À PROPOS DU TRAITÉ DE LAUSANNE) [ESSAY ON JUSTICE IN TURKEY (REGARDING THE TREATY OF LAUSANNE)] 109–10 (1924).
29. 2 DAVID LLOYD GEORGE, MEMOIRS OF THE PEACE CONFERENCE 872 (1939).
30. See THE AMERICAN COMMITTEE OPPOSED TO THE LAUSANNE TREATY: THE LAUSANNE TREATY, TURKEY AND ARMENIA 17 (1926) [hereinafter THE AMERICAN COMMITTEE].
31. See id. at 18.
33. See THE AMERICAN COMMITTEE, supra note 30, at 50–55.
34. See Bryson, supra note 32, at 55.
Association in 1917. He was loyally and effectively assisted by George Montgomery, a Yale Ph.D., lawyer, and versatile diplomat. Other activists in the Society's National Committee included such American luminaries as Jane Addams of Hull House; James Gerard, the wartime American ambassador to Germany; General Leonard Wood; Rabbi Stephen Wise; Oscar Straus, the former American ambassador to Turkey; and Senator John Sharp. Despite numerous pleas, interventions, and admonitions, Smith and his group were unable to block the two Lausanne Treaties—neither the one between the European Allies and Turkey nor the other between the United States and Turkey. Embittered by the methods the victorious Allies used to strike deals with the Kemalists, Smith decried "the cowardly duplicity of the French Government in surrendering Cilicia" in exchange for what he believed to be a Turkish "promise of free commerce." Smith was even more vituperative against Great Britain, which he castigated for the "sordid commercialism" that made it "an object of suspicion and hatred." As he noted, "[o]ut of such a welter of duplicity, cruelty, and horror it is hard to find a way towards peace and justice." The negotiations at Lausanne reached an impasse, the Turkish delegation returned to Ankara for consultations on February 4, 1923, and, before the peace conference resumed on April 23, 1923, Smith urged the Allies not to sign a treaty without some provision for the benefit of Armenia. Anticipating a treaty between the United States and Turkey during the second round of negotiations, Smith reiterated this point, adding, "We owe that much at least to these victims of Eastern cruelty and Western ingratitude."

Even though the Armenian rights advocates failed at Lausanne to secure vindication or redemption for the Armenians' suffering and losses, their efforts proved fruitful in preventing ratification of the Treaty between the United States and Turkey, which Secretary of State Hughes negotiated and signed on August 6, 1923. After four years of agitation, public debate, and Congressional vacillation, the U.S. Senate rejected the Treaty of Lausanne on January 18, 1927, by a vote of fifty to thirty-four—six votes short of the required two-thirds majority. According to William King, the Democratic Senator from Utah and the main proponent in the Senate of the Armenian cause, the problem with the Treaty was that it ignored the Armenians' need for justice. During the Senate's final debate on the Treaty on December 22, 1926, King introduced a resolution referring to the Chester

35. See id. at 53.
36. See id. at 55.
37. See id.
38. Id. at 64.
39. Id.
40. Id.
41. Id. at 69.
42. See ROGER TRASK, THE UNITED STATES RESPONSE TO THE TURKISH NATIONALISM AND REFORM 1914–1939, at 37 (1971).
concession of 1923,\(^{43}\) in which a group of American businessmen promised to undertake certain railroad projects in Turkey in exchange for mineral rights along the railroad’s right-of-way.\(^{44}\) King also charged that Standard Oil Company sought an oil concession in the eastern provinces of Turkey and was therefore pressing the American government to ratify the treaty.\(^{45}\) King maintained that the Turkish government granted this oil concession “with the avowed purpose of securing the moral and diplomatic support of the American delegation [at Lausanne].”\(^{46}\) In fact, the Turks granted the concession in April 1923\(^{47}\) but cancelled it seven months later—four months after the signing of the Lausanne Treaty with the European Allies.\(^{48}\)

The importance of this discussion is accentuated by the conflicting roles Charles Evans Hughes played in the political developments at Lausanne before and after he assumed the post of Secretary of State in 1921.\(^{49}\) Before becoming Secretary of State, Hughes vocally championed the cause of Armenia in 1919 as an active member of the American Committee for the Independence of Armenia, which promoted the interests of a free Armenia. According to his biographer, Hughes was the “principal supporting pillar” of the committee.\(^{50}\) The implications of such a stance for American foreign policy, especially its military policy, ultimately caused Secretary Hughes to reverse himself. As the same biographer put it, “Secretary Hughes thus found it necessary to abandon a cause that Citizen Hughes had earnestly fought for . . . .”\(^{51}\) In his Resolution discussed above, Senator King accused Hughes of subservience to American business.\(^{52}\) King further alleged that Hughes placed “at the disposal of American business interests in the Near East the United States Naval Squadron,” which was dispatched there supposedly to protect American interests but essentially to secure and foster “business” for American firms:

One destroyer is kept continuously at Samsun, Turkey, to look after the American tobacco interests at that port.

. . . .

Destroyers are entering Turkish ports with “drummers” as regular passengers, and their fantails piled high with American samples. An American destroyer has made a special trip at 30 knots to get American oil prospectors into a newly opened field.\(^{53}\)

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43. See id. at 39.
44. See id.
45. See id.
46. Id.
47. See id. at 130.
48. See id. at 37–40.
49. He was governor of New York from 1907 to 1910, became Associate Justice of the U.S. Supreme Court in 1910, was Chief Justice from 1930 to 1941, and was the Republican candidate for the presidency in 1916.
50. See 2 MERLO J. PUSEY, CHARLES EVANS HUGHES 574 (1951).
51. Id.
53. Id. at 89–90 (quoting from 1923 report by Office of Naval Intelligence).
At the heart of this entire conflict is evidence of both political deal-making and what Senator King called "dollar diplomacy," which substituted for formal pledges made by the Harding Administration, especially by President Harding himself. On November 8, 1922, a mere twelve days before the Lausanne Conference met to negotiate the terms of a peace settlement between the European Allies and Turkey, Harding declared, "Everything which may be done will be done to protect the Armenian people and preserve to them the rights which the Sèvres treaty undertook to bestow." The American observers at Lausanne were largely supportive of the stance of the Allies, including the creation of an Armenian National Home, which the Lausanne Conference endeavored to resolve by rewriting the August 10, 1920, Sèvres Treaty. In the aforementioned speech in the Senate, King maintained that this support evaporated abruptly following the agreement reached on the Chester concession by the Turkish delegation and the U.S. observers at Lausanne. As King observed, "[i]t would appear that the Chester concession was the objective of our Government in its participation in the Lausanne conference, and that the price paid for the attainment of that objective was," among others, "the betrayal of Armenia." Finally, King refuted Hughes' argument that the U.S. government was not involved in securing the Chester concession by citing a speech delivered by İsmet Paşa, head of the Turkish delegation at Lausanne, eight months after the signing of the Lausanne Peace Treaty on March 31, 1924, in the National Assembly in Ankara. In the speech, İsmet admitted the active intervention of the American observer on behalf of the Chester Concession.

The U.S. Senate's refusal to ratify the Lausanne Treaty eventually led to a decision by the new U.S. President, Franklin D. Roosevelt, to withdraw the Treaty on January 12, 1934, thus annulling it completely. In the intervening eleven years, neither the Turks nor the U.S. government had seriously entertained the idea of either resubmitting the Treaty to the Senate or of renegotiating it. Instead, the two governments agreed to restore diplomatic relations by a simple exchange of notes rather than by signing a formal treaty.

That agreement was reached in mid-February 1927, creating the legal basis for restoring diplomatic relations that had been broken since 1917, when the U.S. government intervened in the First World War against the

54. Id. at 90.
55. Id. at 78.
56. See id. at 81.
57. Id. at 87.
58. See id. at 87-88.
59. See id.
60. See TRASK, supra note 42, at 48 n.41.
61. See id. at 49-51.
Central Powers and Turkey severed diplomatic relations.\textsuperscript{62} During and after the war, several prominent American statesmen vocally had condemned the wartime atrocities inflicted on the Armenians in Ottoman Turkey and had pledged their strong support for Armenia and surviving Armenians. In a letter dated November 24, 1915, to Samuel Dutton, Chairman of the Committee on Armenian Outrages, Theodore Roosevelt explained why he was not willing to attend a mass meeting to condemn the then-ongoing deportations and massacres of the Armenians:

My Dear Mr. Dutton:

Even to nerves dulled and jaded by the heaped-up horrors of the past year and a half, the news of the terrible fate that has befallen the Armenians must give a fresh shock of sympathy and indignation. Let me emphatically point out that the sympathy is useless unless it is accompanied with indignation, and that the indignation is useless if it exhausts itself in words instead of taking shape in deeds.

If this people through its [sic] government had not . . . shirked its [sic] duty in connection with the world war for the last sixteen months, we would now be able to take effective action on behalf of Armenia. Mass meetings on behalf of the Armenians amount to nothing whatever if they are mere methods of giving a sentimental but ineffective and safe outlet to the emotion of those engaged in them. Indeed they amount to less than nothing. . . . Until we put honor and duty first, and are willing to risk something in order to achieve righteousness both for ourselves and for others, we shall accomplish nothing; and we shall earn and deserve the contempt of the strong nations of mankind. . . .

. . . The American professional pacifists, the American men and women of the peace-at-any-price type, who join in meetings to "denounce war" or with empty words "protest" on behalf of the Armenians or other tortured and ruined peoples carry precisely the weight that an equal number of Chinese pacifists would carry if at a similar meeting they went through similar antics in Peking. . . . They accomplish nothing for peace; and they do accomplish something against justice. They do harm instead of good; and they deeply discredit the nation to which they belong. . . .

All of the terrible iniquities of the past year and a half, including this crowning iniquity of the wholesale slaughter of the Armenians, can be traced directly to the initial wrong committed on Belgium by her invasion and subjugation; and the criminal responsibility of Germany must be shared by the neutral powers, headed by the United States, for their failure to protest when this initial wrong was committed.\textsuperscript{63}

William Jennings Bryan, wartime Secretary of State until June 9, 1915, had declared at a meeting organized by the American Committee for the Independence of Armenia:

If any people have earned the right to be free and independent, masters of their own destiny and sovereigns in control of their own government, it is the Armenians. For more than two thousand years they have maintained their existence amidst difficulties and under hardships that would have crushed a weaker people into the dust. They have not only preserved their race integrity and ideals but they have been "a voice crying in the wilderness"—but their day is here even though the dawn of that day has been reddened by the blood which they have so freely shed. The high character of the Armenians in the United States compels us to respect the country from which they

\textsuperscript{62} See id. at 21.

Charles Evans Hughes, who had opposed Woodrow Wilson as the Republican presidential candidate three years earlier and lost the election in one of the closest presidential contests in American history, made this statement in February 1919:

Why did we enter the War? . . . [T]he immediate purpose was to stop the Hun, to check the wild beast which militarism and the philosophy of might had let loose upon the world. We can never speak of this resolution and of the achievements which followed without paying our tribute to the brave leader of opinion, who never faltered in his demand that America should perform her duty,—the champion of Belgium, of Armenia and of all the oppressed,—Theodore Roosevelt.

. . . . [T]he atrocities in Belgium, terrible as they were, were but slight as compared with the incredible cruelties and massacres that took place in unfortunate Armenia. It was natural that the despicable Hun should join forces with the unspeakable Turk. The ferocity of the Turk, without limit, was given play in Armenia. We had read of the persecutions and massacres of former years, but they were slight indeed as compared with the cruelties and wholesale murders of these last days. The recital has been too shocking to print.

By refusing to ratify the Lausanne Treaty, the Senate, driven in part by American national interests—which included the unsettled issue of capitulations and the right to retain legal jurisdiction over U.S. citizens residing in Turkey—and in part by a desire to mollify the public clamor for justice for Armenia, distanced itself from the executive branch, withstanding the pressures of big business and oil diplomacy. In the long run, however, the end result was the same. Despite the vast body of documentary evidence, supplied by a network of American consuls stationed in wartime Turkey until April 1917, the leaders of the American government joined European statesmen and diplomats in consigning the Armenian genocide to oblivion. They upheld the legacy of impunity accorded to the perpetrators of periodic Armenian massacres throughout modern history.

It is against this background that the interconnections, historical and legal, between the Armenian and Jewish genocides must be examined. Indeed, the unpunished Armenian atrocities foreshadowed, to some extent, not only the genocidal attack on the Jews, but also the very conditions that made that genocide possible. One may conceive of "notorious perpetrators" and may postulate about "notorious victims" as an ancillary category of people who, for a variety of reasons, are frequently targeted for persecution. Such a situation is neither an accident nor the result of haphazard or random

65. The results of this election were 277 to 254 in the Electoral College and 9,129,606 to 8,538,221 in the popular vote. *See The New Columbia Encyclopedia* 1284 (1967).
occurrences. Rather, it is the product of cumulative conditioning involving historical developments that deprived these victim groups of the resources and means to resist effectively. In terms of a legacy of pervasive vulnerability, the Armenians and the Jews converge dramatically in the landscape of murderous persecution. The discussion below is, therefore, intended to place their common genocidal experiences in the context of a historical legacy.

III. COMPARATIVE ASPECTS OF THE TWO CASES

A. The Historical Vulnerability of the Jews and Armenians to Victimization

The significance of the vulnerability factor derives from the fact that genocide, in any form and under any circumstances, is first and foremost an exercise of overwhelming power with massive and lethal consequences. It therefore presupposes a substantial disparity in the power relations between a potential perpetrator and a potential victim. One of the most significant common elements between the Armenians and the Jews has been the inferior status to which they have been relegated for centuries as disdained minorities by nation-states and the dominant groups operating within them. Accordingly, their vulnerable status was a manifestation of these structural realities. The consequences of this oppressed status were considerable. For one thing, designating a group as "inferior" implies a host of prejudices and entails a range of discriminatory practices that frequently debilitate the collective psyche of the targeted population. It is a socio-psychological fact that when a group of people are treated differently over a period of time, many of them will begin to think of themselves as being different and, indeed, even begin to act differently.

An offshoot of this process of differentiation was the rise and growth of Jewish and Armenian ethnocentrism which were distinctly adaptive. In order to accommodate and, at times, to placate the abusiveness of the dominant groups, Jews and Armenians learned to appear submissive while they developed an inner toughness which, though subtle, amounted to ethnic assertiveness. As the result, they resisted assimilation and perpetuated an ethnic identity which, depending on changing circumstances such as the onset of acute national
crises, continued to disconcert, irritate, or even provoke potential victimizer groups.

Legal disabilities often compounded these social liabilities. For the Armenians, the legal disabilities included the denial of the right to bear arms in a land where their adversaries were armed to the teeth, especially in the interior and the distant provinces. For extended periods, both the Armenians and the Jews were politically disenfranchised and, barring some incidental exceptions, were excluded from the governmental power structure of their respective societies. This political marginalization often contrasted sharply with the economic ascendancy of certain segments of these two minorities. This limited economic success combined with a lack of political power paradoxically functioned to amplify the vulnerability of these groups, especially as large segments of the respective dominant groups suffered sustained economic hardships.

One must also recognize that both of these cases involved structural causative anti-Semitic and anti-Armenian factors. Specifically, discrimination against the Jews and Armenians effectively barred them from certain occupations, such as the civil service, the military, and the government. This exclusion was restrictive enough to impel the Armenians and the Jews to forego these fields—where income was regulated by fixed salaries—and instead channel their ambitions into trade, commerce, and industry. Nevertheless, most of the Armenian and Jewish populations were neither affluent nor particularly prosperous. For instance, seventy to eighty percent of the Armenians were apolitical peasants engaged in agricultural work in their ancestral territories. In a groundbreaking essay that ushered in the era of pan-Turkish ideology (which displaced the ideal of Ottomanism and eclipsed pan-Islamism), Yusuf Akçura explained the main reason for this exclusionary stance toward the Armenians: “Equality with non-Muslims not only would legally put an end to the 600-year-old domination of Ottoman Turks but would afford the non-Muslims access to jobs in the military and the civil service which were the monopoly of the Turks.”

69. See J. Greenfield, Die wirtschaftliche Bedeutung Armeniens und der Armenier [The Economic Importance of Armenia and of Armenians], in ARMENIEN [ARMENIA] 96–98 (Paul Rohrbach ed., 1919) (maintaining that 70% to 80% of all Armenians were engaged in agriculture and farming (Landbau)); La Barbe, Die Steuern im türkischen Armenien und die Ursachen der armenischen Bewegung [Tax in Turkish Armenia and the Origins of the Armenian Movement], 16 NEUE ZEIT [New Time] 37, 41 (1897) (stating that “without exaggeration one can assert that 85–90% of that [Armenian] population is engaged in agriculture and horticulture”). Sultan Abdul Hamit divided the Armenian population into three categories: independence seekers, annexation seekers, and those who were perfectly loyal. Hamit said that there were very few of the first, more of the second, and that “the large mass” belonged to the third category. See 2 BRITISH DOCUMENTS ON OTTOMAN ARMENIANS 553, 554 (Bilal Simşir ed., 1983).

Exclusion from the military and the government, including civil service, is not merely an economic issue, however. It also implicates access to the resources of power in the state. This distribution of power relations is a critical factor, especially in terms of the origin, direction, escalation, and outcome of the conflict between the two groups. A relatively weak group becomes more easily targeted for destruction than a relatively strong group. Moreover, a substantial disparity in power relations can enable the more powerful group to engineer, create, and exploit suitable opportunities for targeting the victimized group with optimal results. The following Sections of the Article will address these twin issues of power and opportunity.

B. The Factors of Power and Opportunity

Besides the crucial component of overwhelming power, genocide requires another ingredient which, in a sense, controls the exercise of power. It is what sociologists call the “opportunity structure.” As in the case of any premeditated crime, unless there is a suitable opportunity at hand, even a perpetrator possessing substantial power advantages will not act. More or less normal conditions such as peace, stability, and order are unproductive in this respect. The outbreak of a war is, however, by its very nature, pregnant with emergencies that constitute an ideal opportunity structure. It is no accident that the destructions of both the Armenians and the Jews occurred during two global wars, both of which the respective perpetrator group precipitated. Even though Turkey belatedly intervened in World War I, that intervention precipitated the war with Russia, a war that was deliberately provoked. Abandoning its pretended neutrality, Turkey, with German goading and the help of substantial German naval forces, launched a preemptive strike against Russian ports, coastal installations, and ships in the Black Sea, destroying several targets. As expected, Russia

71. The idea here is that an established pattern of crime is, more often than not, “shaped by opportunity.” Especially involved are “predatory crimes” such as murder and deadly assault that require “the convergence in time and space of three minimal elements: motivated offenders, suitable targets, and absence of capable guardians.” Edwin H. Sutherland et al., Principles of Criminology 244-45 (11th ed. 1992); see also Marshall B. Clinard, Criminological Research, in Sociology Today: Problems and Prospects 509, 512 (Robert K. Merton et al. eds., 1959) (arguing that some crimes may be “partially a function of opportunities”).

72. See Joseph Pomiankowski, Der Zusammenbruch des ottomanischen Reiches [The Collapse of the Ottoman Empire] 86-87 (1969). According to a telegram sent to Berlin on November 2, 1914 by Hans Humann, Navy Lieutenant Commander and Marine Attaché at the German Embassy in the Ottoman capital, the Russians sustained the following losses resulting from this incursion into the Black Sea by the combined Turko-German fleet: The German battle cruiser Goeben bombarded the docks at Sevastapol, causing a considerable number of fires. It also sank the mine-layer Pruih with 700 mines and 250 men aboard. The German light cruisers Breslau and Berk bombarded Novorossisk while the Turkish Hamidie bombarded Theodosia, after issuing an unsuccessful ultimatum to the Russians demanding the surrender of all serviceable ships intended for military purposes. The Breslau, Nilufer, and Samsun also laid mines in several places. The Nilufer captured 121 prisoners. A total of 21 ships and 55 oil tanks were destroyed and many grain warehouses shot up in
declared war against Turkey a few days later, with France and England, its allies, following suit.\textsuperscript{73} Moreover, the nature of warfare is such that it allows legislative authority to subside, if not to vanish entirely, with the executive branch of the government benefiting most from the "emergency powers" accruing to it. Emergency powers are expressive of the supreme opportunities a war yields in this regard. In the Nazi and the Young Turk Ittihadist systems, the principal agents of these powers were the so-called "security forces," which were invested with levels of authority that created license for criminal abuse.\textsuperscript{74}

Perhaps the greatest source of power in wartime in an oppressive society is the military establishment identified with the authorities. To the extent that the outcome of the war hinges on its performance, the military will acquire inordinate power and relative predominance. Genocide not only requires opportunistic decisionmaking but also depends on functional efficiency. In addition to planning and administering logistics, there must be a command and control structure to ensure a reasonably smooth operation—the goal is optimal destruction at minimal cost. This is a task that requires the specialized skills of the military. In both genocides, the military did, in fact, play a crucial role. The officers involved were intensely committed to the respective ideologies and goals of the Nazis and Ittihadists. Within this framework of loyalty and dedication, they performed critical staff work, maintained secrecy and discipline, and participated in field operations as commanders of killer bands. Such terms as "Nazi officers" and "Ittihadist officers" are descriptive of the potentially lethal process of indoctrinating military officers with political party credos and teachings and, in general, of politicizing the military or segments of it. War emerges here as an ideal opportunity for harnessing political power into military power as an instrument of genocide.

The dynamics of this process were such that the vulnerabilities of the Jews and Armenians as minorities increased in proportion to this growth of power: The stronger the victimizers became, the weaker their victims did. This mechanism ultimately leads to what might be called "victim trapping." But accumulation of power and a bent for opportunism are necessary, but not sufficient, conditions for a successful genocide. A power- and opportunism-driven tendency should not be confused with a task-oriented proclivity. The latter tendency implies the ability to chart strategies

\textsuperscript{73} See \textit{Encyclopedia of World History} 919 (William L. Langer ed., 1948).
\textsuperscript{74} See \textit{Hilberg, supra} note 67, at 121–37, 181–204, 644. For more on the Armenian case, see Vahagn Dadrian, \textit{The Role of the Special Organisation in the Armenian Genocide During the First World War, in Minorities in Wartime} 50 (Panikos Panayi ed., 1993); and Dadrian, \textit{supra} note 1, at 274–77.
producing optimal results at minimum cost. One must know how to take maximum advantage of opportunities that present themselves or that are purposefully created; one must also be able to use the levers of power. The following Section will explore the strategies utilized to take advantage of the power and opportunity structure.

C. Strategies for Taking Advantage of the Opportunity Structure

1. The Use of Wartime Emergency Powers by the Executive

In the Armenian case, the Turks used four devices to amplify their power and consequently increase the vulnerability of the Armenians. First, the Turkish Government suspended Parliament just before the initiation of the genocide, reconvening the body only when the genocide had all but run its course.75 Second, the Ittihadist party, acting through the executive and relying on martial law, initiated a series of arrests throughout the Ottoman Empire, and, following the enactment of a system of Temporary Laws, the party embarked on a program of large-scale deportations.76 Third, armed with these powers, the Ittihadists launched a program of massive arrests in all parts of the Ottoman Empire. Nearly all Armenian community leaders, intellectuals, educators, ranking clergymen, and political activists were rounded up in nightly surprise raids; they were subsequently deported and, in most cases, executed.77 Fourth, to weaken the Armenian population further and facilitate its subsequent annihilation, the Government conscripted all able-bodied Armenian males as part of a general mobilization; very few survived the ensuing summary executions by fellow Turkish soldiers and officers or extirpation by other lethal means.78 A continuation of the state of siege and martial law considerably facilitated these measures.79

The Nazis adopted similar procedures during the Holocaust. The dismantling of the Jewish community in Germany was more gradual. The Jewish persecution began prior to the onset of World War II, originating in Hitler's presidential decree suspending the guarantees of individual liberty enshrined in the Constitution of the Weimar Republic.80 Neither this action

75. See Dadrian, supra note 1, at 274.
76. See id. at 266–67, 273–74.
77. See id. at 266–67.
78. See id. at 265 & n.136.
79. See id. at 305 & n.331.
80. See ROBERT H. JACKSON, THE NURNBERG CASE: AS PRESENTED BY ROBERT H. JACKSON, CHIEF OF COUNSEL FOR THE UNITED STATES 44 (1971). The Weimar Constitution contained a special clause, article 48(2), under which the President of the German Reich—at that time, Marshal Hindenburg—was authorized to suspend basic civil rights "if the public safety and order in the German Reich are considerably disturbed or endangered." WHITNEY R. HARRIS, TYRANNY ON TRIAL: THE EVIDENCE AT NUREMBERG 45 (1954). It appears that the purpose of the clause was to enable the state to protect itself against imminent danger of governmental overthrow by infringing on constitutional liberties. See id.
nor the March 23, 1933 Enabling Act was specifically directed against the Jews, however. As in the case of the Ittihadist initiative described above, the Enabling Act empowered the Nazis to make laws without the approval of the German parliament, the Reichstag. The five articles of the Act all but destroyed the German constitution. Like the Young Turk Ittihadists who had succeeded in transferring all legislative power to the executive branch of a party-dominated government, the Nazis subsequently embarked upon their deadly scheme of Gleichschaltung, whereby they substituted Nazi power for parliamentary power. With the initiation of German aggression, however, the Enabling Act acquired special significance for the Jews, as article 1 of the Act transferred legislation from the Reichstag to the government—i.e., the executive—and was renewed in 1937, 1939, and 1942 in conformity with article 5 of the Act, which required renewal every four years.

The Nuremberg Laws, which took effect on September 15, 1935, and which were a byproduct of the Enabling Act, specifically targeted the Jews. These laws divested the Jews of their normal citizenship rights and declared them second-class subjects. Between 1935 and 1943, some 250 decrees were promulgated, prohibiting the Jews from assuming official positions and professions, progressively excluding them from economic activities, and forcing them to wear the Star of David: "The final decree anticipating the Final Solution, made Jews outlaws in Germany."

In assessing the significance of emergency powers in the programs of persecution and victimization that led to these two genocides, it is necessary to consider the emphasis their perpetrators placed on maintaining the appearance of legality. The destruction of the Jews was, above all, associated with a doctrine of racism, the lethal pursuit of which was predicated upon an aberrant form of legalism. The Nuremberg Laws were essentially laws of racism, primarily directed against the Jews; the source of these laws, however, was the Enabling Act, which empowered the Nazis to enact such laws by executive fiat. The progressive escalation of the

81. See HARRIS, supra note 80, at 47–48. Despite the atmosphere of terror and intimidation in the wake of the torching of the Reichstag, 94 deputies had the courage to vote against the proposed Enabling Act, while 441 deputies voted in favor of it; only a two-thirds majority was required for passage of the Act. See id. at 48.
83. This term referred to the creation of a highly centralized, one-party Reich through a series of laws enacted by the Nazi government after 1933. The thrust of these legislative acts was the creation of a Nazi state. By the end of March 1933, the first Unification Law placed the legislatures of the 15 German states and the three Hansa towns under Nazi control. These initiatives involved a "legislative explosion which had come to be known as Gleichschaltung." This program "provided every weapon necessary for the final takeover of the state." Id. at 131–33.
84. See id. at 111.
86. TAYLOR & SHAW, supra note 82, at 242.
87. See HARRIS, supra note 80, at 290–92.
victimization of the Jews was made possible, from the legalistic standpoint of the Nazis, by the Nuremberg Decrees, which ensured the Jews’ exclusion from the professions and cultural life, their segregation, and the confiscation of their property.\textsuperscript{88}

A similar penchant for legalism prompted the Young Turk Ittihadists to cloak their anti-Armenian measures with a legislative mantle. As will be discussed in detail in the next Section, they also temporarily suspended Parliament and ruled the country by executive fiat. The destruction of the Armenians was carried out under the code word “deportation,”\textsuperscript{89} which was ostensibly conducted for the purposes of wartime “relocation.”\textsuperscript{90} The law legitimizing the ensuing deportations was called the Temporary Law of Deportation \textit{(Tehcir Kanuni)}.\textsuperscript{91} One of the architects of the Armenian genocide, however, physician-politician Dr. Behaeddin Şakir, reportedly conceded that these measures may well have been “a violation of the laws of the nations and of humanity.”\textsuperscript{92} In commenting on this pattern of “legalism,” A. Zimmermann, German Undersecretary of State in Berlin, underscored the propensity of the Young Turk Ittihadists to proceed against their Armenian victims “with an appearance of legality.”\textsuperscript{93}

Regarding the Jewish genocide, a related aspect of the problem is the relationship between the German state apparatus and the Nazi party. The promulgation of the Nuremberg laws clearly illustrates the nature of this relationship, in which the party desiderata were significant primarily in the administration of state affairs. The laws were drafted in Nuremberg, revised repeatedly by the intervention of Hitler and his party ideologues, and then announced by Hitler to the Reichstag in Berlin.\textsuperscript{94} After seizing power, the Nazis restructured the German state so that a hierarchy of party functionaries gained ultimate control of the main operations of the nation. The key to this restructuring was the division of the Reich into Nazi Party administrative regions, called \textit{Gaus}, each headed by a \textit{Gauleiter}. In 1938, there were thirty-two Nazi party districts. With the acquisition of new territories through \textit{Anschluß}—the annexation of Austria—and the forced incorporation of parts of Poland and Czechoslovakia and the attendant creation of a “Greater Germany,” the number rose to forty by 1942.\textsuperscript{95} With these changes and additions, the German state acquired a new character not only in terms of territory and population, but also in terms of government,

\begin{itemize}
\item \textsuperscript{88} See Ann Tusa & John Tusa, \textit{The Nuremberg Trial} 151, 276 (1990).
\item \textsuperscript{89} See Dadrian, \textit{supra} note 70, at 221-22.
\item \textsuperscript{90} See id. at 240.
\item \textsuperscript{91} See id. at 221.
\item \textsuperscript{92} Id. at 234 n.43.
\item \textsuperscript{93} Id. at 226 (quoting Botschaft Konstantinopel [Embassy at Constantinople] 174/27); A.A. Türkei [Turkey] 183/44, A26071 (referring to October 2, 1916 communication to Imperial Ambassador Wolff-Metternich).
\item \textsuperscript{94} See Nazism, \textit{supra} note 85, at 534-35.
\item \textsuperscript{95} See Taylor & Shaw, \textit{supra} note 82, at 127-28.
\end{itemize}
the instrument by which the state is guided and directed in its internal and external affairs.96

In sum, the Nazi and Ittihadist takeovers of the machinery of the respective governments almost automatically conferred upon the leaders of the two parties supreme authority over the emerging states, particularly the executive branches. In due course, the executive branches of the two governments dissolved the legislative and judicial branches as well as the adjunct administrative agencies. The two parties became veritable powerhouses, but the source of that power, unlike that of standard state power, was informal rather than formal authority. It is therefore worth examining how the two monolithic political parties managed to harness this informal authority in pursuit of overt and covert party agendas, especially genocidal schemes.

2. The Role of Political Parties

With regard to genocide victims, differences among members of a single victim group or among several victim groups are of little significance. The differences simply collapse into irrelevance as they are leveled by the mammoth machinery of destruction. The most salient common feature of the two genocides contributing to the circumstances under which neither could be prevented is the identity of the agents who designed, installed, and effectively ran that machine. Contrary to generally accepted assertions, these agents were not primarily identified with the respective state structures but with two monolithic political parties, the Nazis and the Ittihadists.

The conventional assertion that the agents of destruction were closely associated with official state structures is flawed insofar as it is informed by an incorrect assessment of the relationship between formal and informal authority. By definition, the state is simultaneously the locus and the expression of formal authority. Under relatively normal circumstances, that authority is predicated upon the principle of legitimacy, which not only sanctions the authority of the state but also circumscribes the parameters of that authority while conditioning the terms of its application. Even in times of war, there are normally limits on the extent to which these parameters may be enlarged and the conditions under which use of force is permissible. In other words, in origin, structure, and function, the state is not geared to conceiving, organizing, and implementing a monstrous crime such as genocide. As a rule, formal authority precludes such a recourse to criminality. In order for a state to become involved in the business of

96. For a listing of the four components of the state, see Montevideo Convention on Rights and Duties of States, 1933, art. 1, 49 Stat. 3097, T.S. No. 881, reprinted in William Bishop, Jr., International Law: Cases and Materials 301 (3d ed. 1971).
genocide, it must undergo structural change and transform itself into an engine of destruction. In short, it has to be criminalized.

The only instrument capable of generating such a transformation is a type of ascendant informal authority that rivals the authority of the state. Driven by an inveterate urge for power, the agents of such authority compete for the state’s resources. In the two genocides under review here, these agents were none other than the combative and daring leaders of two monolithic political parties animated by revolutionary and radical designs. I refer, of course, to the Nazis (the National Socialist Party) and the Young Turk Ittihadists (the Committee of Union and Progress).

As they entrenched themselves in their respective positions as monolithic parties, they drifted into progressively more radical ideologies and postures. Their drive for supreme domination culminated in the seizure of the reins of power of their respective states. In the modern history of sovereign states, this is perhaps the most dramatic and portentous moment, when the bearers of informal authority overwhelm the formal authority of the state apparatus. What is even more critical, however, is the fact that with seizure of power, the informal authority of the party does not evaporate or subside. Merging with the formal authority of the state organization that the party now controls, it emerges in a reinforced mold of informal authority, holding sway over the key agencies of the government identified with that state. This is a process of intrusion in and domination of the state apparatus. As a result, the party subverts the functions of the state for its own benefit and superimposes party programs and ideologies on governmental agencies. In brief, for all practical purposes, the state is reduced to a tool of the party and its ideological interests.

These considerations suggest, therefore, that genocide scholars should focus not on states but on political parties capable of displacing, and continually replacing, state power. Thus profoundly limited in its means of authority, a state can hardly be considered in and of itself a determinant in the conception and enactment of genocide. It is a crucial fact that the architects of the Jewish and Armenian genocides were also leaders of the Nazi and Ittihadist parties respectively. This means that, in order to examine and comprehend the overt and covert aspects of both genocides, it is necessary to examine the leadership, ideology, structure, and inner workings of the two political parties that became de facto substitutes for the governments they supplanted and usurped. As Ambassador Morgenthau observed, “The Young Turks were not a government; they were really an irresponsible party, a kind of secret society, which, by intrigue, intimidation, assassination, had obtained most of the offices of state.”97 Commenting on the Nazis, a German author recently noted that the German

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97. HENRY MORGENTHAU, AMBASSADOR MORGENTHAU’S STORY 11 (1918).
state apparatus was controlled by the staff of Hess and the party-chancellery of Martin Bormann. 98

Nowhere is the convergence of the Jewish and Armenian genocides so dramatically revealed as in the exposure of the crucial initiatory roles the two parties played. The act of initiation was intimately connected with two analogous top-secret conferences during which the attendees decided to liquidate the two victim populations. The January 20, 1942, Wannsee Conference, the embodiment of the “Final Solution,” 99 is a well-known occurrence. What is infrequently emphasized, however, is that even though there were some professional civil servants and bureaucrats in attendance, it was the purest form of party decision reached by potentiates of the party whose prime and exclusive loyalty was sworn not to the German state but to the Führer, Adolf Hitler. 100 The deliberations took place in the central office of National Security, run by the SS (Schutzstaffel). 101 The idea was to render Germany “free of Jews” (“Judenfrei”).

An almost identical conference took place in Istanbul, then the Ottoman capital, shortly after Turkey unilaterally intervened in the war. It was a major link in the chain of secret party enclaves meant to resolve the Armenian question by radical means. As at Wannsee, the five participants included the highest ranking party leaders: party boss Mehmed Talât; Drs. Mehmed Nazım and Behaeddin Şakir, the most powerful members of the party’s Supreme Directorate; Seyfi Düzgören, the head of counterintelligence and guerrilla war at the Ottoman General Headquarters; and Ismail Canbolat, head of the National Security office (Emniyeti Umumıyde). The conference attendees outlined the measures to be taken and the methods to be used for the liquidation of Ottoman Armenians. 103 What is so remarkable about this blueprint is the fact that the actual process of destruction and its outcome confirm the document’s authenticity and operativeness.

The distinct and primarily genocidal roles of the two political parties are underscored by the fact that the party executioners had sworn their oath of allegiance not to the state, but to Adolf Hitler and National Socialism, and

99. See Taylor & Shaw, supra note 82, at 344–45.
100. See Nazism, supra note 85, at 185 (referring to “oath of loyalty of public officials,” introduced on August 20, 1934).
101. See the participants in the Wannsee Conference were Reinhardt Heydrich, Alfred Meyer, Georg Leibbrandt, Wilhelm Stuckart, Roland Freisler, Josef Bühler, Martin Luther, Karl Schöngarth, Otto Lange, Erich Neumann, Gerhard Klopfner, Wilhelm Kritzinger, Otto Hofmann, and Heinrich Müller. See Hilberg, supra note 67, at 264; Nazism, supra note 85, at 1127.
102. See Taylor & Shaw, supra note 82, at 179 (defining term).
to Ittihad and its mission respectively. Robert Jackson, chief counsel for the United States at Nuremberg, interprets this ritual as follows:

The membership took the Party oath which in effect, amounted to an abdication of personal intelligence and moral responsibility. This was the oath: "I vow inviolable fidelity to Adolf Hitler; I vow absolute obedience to him and to the leaders he designates for me." The membership in daily practice followed its leaders with an idolatry and self-surrender more Oriental than Western.104

The Ittihadist operatives, agents, and killer-band leaders were likewise sworn party loyalists who hardly felt any obligation to the state. Their oath included the acknowledgment that, should they ever reveal a party secret or disobey a command of the party's central authorities, they would be targeted for destruction. Special Organization Chieftain Major Yakub Cemil, who played a major role in the Armenian genocide, openly declared: "If my fatherland's interests required that I kill my father, I would not hesitate for a moment."105 Informal authority has optimal scope for exercise because, unlike state organization, it does not have to observe fixed or preordained rules and regulations. Precisely for this reason, it can afford to be irresponsible and unaccountable. These are conditions that not only allow but stimulate deviant or criminal behavior. The genocidal enterprises reviewed here were essentially byproducts and consequences of the exercise of informal authority by political parties that both held the levers of state power and nurtured covert genocidal agendas.

The organizational makeup of the two parties allowed the leadership to rely on a level of discipline from the committed party faithful that exceeded that of their most dutiful bureaucrats. As stated above, the Third Reich was administered and controlled by a network of Gauleiters, all of whom were devoted—if not fanatical—party luminaries. The entire network, including internal security, police, and intelligence, was run by select and trusted party zealots. These Gauleiters, with the help of a network of co-opted and submissive functionaries of the formal state authority, were the essential components of the genocidal machinery.106

104. JACKSON, supra note 80, at 40.
106. See, e.g., HILBERG, supra note 67, at 650–52 (describing infrequency of criticism within Nazi bureaucracy). Turkey's wartime Third Army Commander-in-Chief General Vehib prepared written testimony at the request of the Turkish Military Tribunal investigating the Armenian deportations and massacres. In that affidavit, the Turkish general discloses that the functionaries of the provincial administration's state and civil service appointees willingly "submitted" ("inkiyad") to the instructions and orders of Dr. Behaeddin Şakir, a potentate of the Supreme Directorate, or the Central Committee of the Ittihad party, who directed and supervised the killing operations in the interior of Turkey. See Vahakn N. Dadrian, The Complicity of the Party, the Government, and the Military: Select Parliamentary and Judicial Documents, 22 J. Pol. & Mit. Soc. 29, 63–64 (1994); Vahakn N. Dadrian, The Naim-Andonian Documents on the World War I Destruction of Ottoman Armenians: The Anatomy of a Genocide, 18 Int’l J. Middle E. Stud. 311, 330 (1986).
Similar patterns appeared in the Armenian case. Ittihad engineered and supervised the destruction process through three types of representatives sent to the provinces to serve as party provincial commissars overseeing the details of the massacres: the so-called Responsible Secretaries (Katibi Mesul); the delegates (Murahhas); and the Inspectors (Miifettiş). Many of these party commissars were former army officers who had resigned from the military to dedicate themselves to the goal of serving the party. During the implementation of the genocide, they proved themselves to be efficient executors of the party's covert anti-Armenian agenda because they were all invested with a veto power over the provincial governors-general.

Because informal authority is not circumscribed by the constraints of accountability and responsibility present, those exercising such authority can afford to be conspiratorial in planning and organization. Strict secrecy is obviously the core element of all conspiracies. The architects of both genocides fostered such secrecy with great care primarily through the special channels of a disciplined party organization. As will be explained in some detail below, Hitler was extremely secretive when conspiring. So was Talât, "the soul of the Armenian persecutions" ("die Seele der Armenienverfolgungen"), who, in a top-secret party conclave, outlined the future plans of the Ittihad party. After denouncing the non-Muslim elements of the empire as "infidels" ("gâvur"), and repudiating the idea that there could be equality among Muslims and non-Muslims, party boss Talât informed the party chieftains that the Ittihadists planned to expand into the provinces and establish a wide network of branches; but, he added, the government's "permanent officials ought to remain in ignorance" of certain secret agendas that the party held. It is significant that when deploring Ittihad's principal role in the demise of the Ottoman Empire, the Turkish author Akhmed Izzet Paşa depicts this conspiratorial trait of the Ittihad party as the main source of the disaster befalling Turkey. Akhmed Izzet, who was Minister of Defense in the pre-World War I years, served as Army

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108. See Vahakn N. Dadrian, The Documentation of the World War I Armenian Massacres in the Proceedings of the Turkish Military Tribunal, 22 J. Pol. & Mil. Soc. 97, 124 n.58 (recounting chronicler of Ittihad party's description of these provincial party commissars as potenates whose innocuous-sounding office titles, such as "responsible secretary" of party, were "created to avoid the appearance of overshadowing the state authority while investing the holder with such powers as may be required for the direction of the course of events. In fact, in all matters of consequence, the last decision belonged to them. These men . . . made [the] final decisions.").

109. See infra Section IV.B.


Commander during that war and was the first Grand Vizier in the Armistice period. According to him,

the principal reason of the Ittihadist government’s failure was its insistence on the implementation of decisions which Ittihad had reached as a secret [conspiratorial] party but which it tried to implement even after gaining control of the government . . . . It ran that government through the secret levers of power with which its party centers were invested.112

Secrecy, although critical for success, is not in itself sufficient to ensure the unhampered execution of a genocidal scheme. There are uncertainties and contingencies to be considered. One way to make appropriate adjustments in planning, organization, and concrete action is to start with rudimentary and tentative initiatives. That is the subject of the next segment of this Article.

3. *Trial Balloons*

The vulnerability of the Jews and Armenians was not determined solely by the internal conditions of the German and Turkish nation-states and the attendant coerciveness of the Nazis and the Ittihadists. For similar reasons but under dissimilar circumstances, both minorities had developed and fostered support groups abroad, including political groups, diasporas, and occasionally even governments, acting on their behalf for reasons of expediency or on grounds of purported humanitarianism. The perpetrators had to reckon with these support groups. Because of the minorities’ foreign support, both genocides began gradually rather than precipitately, cautiously rather than carelessly.

The Nazis started with a scheme of expulsion113 and expropriation;114 they then planned and negotiated with Western countries for a massive relocation of the Jews (the Madagascar Plan).115 As the noted author Raul Hilberg observed, “Hitler did not order the annihilation of the Jews immediately upon the outbreak of the war. Even Hitler shrank from such a drastic step. Even Hitler hesitated before the ‘final solution.’”116 The lack of cooperation by the West and the onset of new war-related exigencies combined to encourage the Nazis to consider more radical options. As a new phase of deportation was evolving, one of the foremost Nazi leaders, Joseph Goebbels, noted in his diary on December 13, 1942, that the European media apparently were concerned by the “persecution” of the Jews, but “[a]t bottom, however, I believe both the English and the Americans are happy

113. See HILBERG, supra note 67, at 98, 257–58.
114. See id. at 54–105.
116. Id. at 127, 257–58.
that we are exterminating the Jewish riff-raff." 117 As American sociologist W.I. Thomas postulated, if men define situations as real, they are real in their consequences. 118 One can hardly underestimate the effect perceptions such as Goebbels's had upon the subsequent crystallization of the Nazi resolve to proceed more drastically against the Jews. The "Final Solution" was undertaken with near-complete abandon, without much concern for consequences and accountability. The dimensions of the war against the Soviet Union and the confrontation with a new demographic problem, namely the millions of Soviet Jews, were certainly considerations in this matter. To some extent, a change in the size of the victim population produced a change in the type of policy aimed at that population. 119 War, the obviously intense hostilities associated with warfare, and the near-total Jewish helplessness contributed to this drastic change of policy. Coincidental with the Nazi invasion of the Soviet Union in the summer of 1941, Reinhard Heydrich, the Chief of Nazi Germany's General Security Office, told Foreign Minister Joachim Ribbentrop that emigration was no longer a viable option for the approximately three and a half million new Jews falling under German control. Rather, "a territorial final solution would be necessary." 120 In other words, the victims had to be eliminated in loco. The external world's failure to even attempt to deter them considerably emboldened the Nazis. The Nazis had been testing the waters for a long time, monitoring any potential counteraction or credible threat from the outside world.

The initiation of the Armenian genocide also involved developmental stages during which the Young Turk Ittihadists likewise released trial balloons. On April 24, 1915, for example, the Turks arrested and jailed a number of the Armenian notables in the Ottoman capital. 121 Given Ottoman Turkey's history of handling such matters, the mass arrest was a harbinger of worse things to come. This ominous measure did not move Turkey's allies and the neutral states in Europe and in the Americas, however. The promulgation on May 26, 1915, of the Temporary Law of Deportation was the next stage, 122 the portentousness of which likewise drew little attention from the rest of the world. The Turks then began a cycle of sporadic massacres, destroying a number of Armenian convoys whose general deportation the Turkish authorities had ordered as part of their scheme of

120. HILBERG, supra note 67, at 262.
121. See Dadrian, supra note 1, at 266.
122. See DADRIAN, supra note 70, at 221.
genocide. For nearly six weeks, the Ittihadists continued to probe the conscience, solidarity, and resolve of the rest of the world. To sum it all up, the Central Powers, Turkey's allies, pretended, but actually did not want, to intervene and help the Armenians; the Entente Powers, Turkey's wartime adversaries, were handicapped by their preoccupation with winning the war; and the neutrals by definition preferred to remain aloof and uninvolved. It is, therefore, no coincidence that the Armenian genocide moved into full gear only after the perpetrators persuaded themselves that they could afford to proceed radically.

In both cases, external deterrence failed to materialize, not only because other powers were disinclined to intervene, but because neither the Armenians nor the Jews had a parent state to identify with them and effectively counteract the measures taken against them. As members of minorities, identified as two orphan nations, they were most vulnerable at a time of great peril.

The discussion thus far has attempted to examine the common denominators of both genocides. It now becomes possible to assess the factors by virtue of which neither of the two genocides could have been prevented. There may also be another, more direct, connection between the two massacres. Is it conceivable that the sterile reaction to the Armenian genocide—i.e., the impunity enjoyed by the perpetrators of that crime—facilitated the Jewish genocide? In other words, did the Final Solution applied to the Armenians somehow presage the Final Solution applied to the Jews? Is there any significant link between the two genocides? Part IV of this Article will address these questions.

IV. THE ARMENIAN GENOCIDE AS A PRECEDENT AND A PRECURSOR OF THE HOLOCAUST

This is an issue with manifold significance and with an acuteness that is unfortunately matched by the difficulty of providing a clear and definitive answer. As noted previously, Hitler was usually extremely secretive about the details of his conspiratorial plans. As will be seen below, this obsession with secrecy came into play after he alluded to the success of the World War

123. See Morgenthau, supra note 97, at 374–75 (referring to "hypocrisy" of German "pro-forma" protest in light of their lack of intention to help Armenians); see also Vahakn N. Dadrian, German Responsibility in the Armenian Genocide: A Review of the Historical Evidence of German Complicity 82–83 (2d prtg. 1997) (1996) (providing further evidence of Germany's lack of intention to help Armenians).

124. See Richard Lichtheim, Rückkehr: Lebenserinnerungen aus der Frühzeit des Deutschen Zionismus [Return: Life Memories from the Early Period of German Zionism] (1970). Lichtheim was one of the German Jews who, as a young leader of the Zionist movement, feverishly negotiated with Ittihadist leaders in wartime Turkey, and later described the cold-bloodedly planned (kaltblütig durchdacht) extermination of over one million Armenians as an act of perpetration akin to Hitler's crusade of destruction against the Jews in the 1940–42 period. See id. at 287, 341.
I genocide against the Armenians. The inadvertent witness to his statement subsequently ended up dying in dubious circumstances.

A. Nazi Germany’s Knowledge of the Fate of the Armenians

The relative ease with which the Armenian genocide was effectuated and with which the perpetrators escaped retributive justice impressed the Nazi leadership as they contemplated a similar initiative with respect to the Jews. The episode was instructive primarily because, as noted above, it was rewarded with impunity. As David Matas, a Canadian expert on international law, observed: “Nothing emboldens a criminal so much as the knowledge he can get away with a crime. That was the message the failure to prosecute for the Armenian massacre gave to the Nazis. We ignore the lesson of the Holocaust at our peril.”

Even though the story of the Armenian genocide was suppressed in wartime Germany during World War I, the German missionary and historian Johannes Lepsius had already spread the word in limited circles in 1916. German authorities were particularly sensitized to the situation as a plethora of German missionaries, especially Protestants, besieged them with accounts of the “infamous” persecution of the Armenians. Furthermore, the 1921 Berlin trial of the assassin of Talât, the architect of the Armenian Genocide, and his subsequent acquittal by a German jury galvanized the public and familiarized them with the details of that genocide.

126. See DADRIAN, supra note 123, at 157-58.
127. See TRUMPENER, supra note 20, at 211-13, 217.
128. Id. at 227, 245, 247, 249.
129. See Robert M.W. Kempner, Vor Sechzig Jahren vor einem deutschen Schwurgericht. Der Völkermond an den Armeniern [Before a German Jury Court Sixty Years Ago: The Armenian Genocide], in 3 RECHT UND POLITIK 167-69 (1980). Robert Kempner had attended that trial as a young law student in Berlin. See Tessa Hofmann, New Aspects of the Talât Pasha Court Case. Unknown Archival Documents on the Background and Procedure of an Unintended Political Trial, 42 ARM. REV. 41, 51 (1989). Given the influence Kempner exerted as a prosecutor at Nuremberg, a brief note on his background and role is in order. He was a lawyer in the Interior Ministry of Germany that bore the imprint of the Weimar Republic; he served from 1928 to 1933 in the Prussian police force. After fleeing Nazi Germany in 1935, he emigrated to the United States and became a professor at the University of Pennsylvania. See DAVID IRVING, NUREMBERG: THE LAST BATTLE 90-91 (1996). Joining the American prosecution team at Nuremberg after World War II, he became one of the chief assistants of Justice Robert Jackson, the head of that team, and was responsible for preparing the cases against the defendants. See TUSA & TUSA, supra note 88, at 226. It was Kempner who uncovered the original of Copy No. 16 of the infamous Wannsee Protocol in the archives of the German Foreign Ministry, bestowing upon it the reputation of being a key document prescribing the Nazi Final Solution. See IRVING, supra, at 91 (1996). In his above-cited article, Kempner declared with respect to the mass murder of the Armenians, which was a central theme in the Berlin trial of 1921, “for the first time in legal history, it was recognized that other countries could legally challenge gross human rights violations committed by a government, especially genocide, without being liable to the charge of unauthorized intervention in the internal affairs of another country . . . .” (“grobe Menschenrechtsverletzungen, insbesondere Völkermond, begangen durch eine Regierung . . . .”).
expert on the Holocaust, noted during the 1920s various authors had popularized the history of the genocide; Franz Werfel, the German-Jewish novelist, did the same in the 1930s through his *Forty Days of Musa Dagh*. Werfel wrote in his novel that “[t]o be an Armenian is an impossibility!” and signaled to the world that “the Armenian nation has survived by that power which is obtained by minority and disenfranchised races throughout the world,” adding that the Young Turk regime “cast an ominous shadow across the map of Europe.”

Higher-echelon Nazi leaders, including Hitler, had even more opportunities that did the German public to come into possession of intimate details of the Armenian genocide. Some of these German officials functioned as agents of transition from World War I to Armistice. For example, Wilhelm Solf, Real Privy Councilor and Minister of Colonial Affairs (*Reichskolonialamt*) during the World War I, became Foreign Minister during the Armistice. Others acquired a double identity, serving Emperor William II and Adolf Hitler consecutively. Franz von Papen was Chief of Staff of the Fourth Turkish Army during the War and later served as Hitler’s Vice Chancellor and President of Prussia from January 30, 1933, to June, 1934. In 1934, he became Special Ambassador to Austria, where he paved the way for the annexation of Austria to the Third Reich. During World War II, he was Germany’s ambassador to Turkey.

Most of these officials were stationed in World War I Turkey for varying periods and thus knew a great deal about the liquidation of the Armenians. For example, Lieutenant General Hans von Seeckt, Chief of the Ottoman General Staff (1917-18), laid, in the 1920s, the groundwork for the later emergence of the Third Reich’s Wehrmacht. He eventually embraced Hitler and his ideology, declaring that the aim of German policy should be “to prepare for the next war.” When he died in 1936, Hitler honored him with a state funeral that the Führer himself attended. General von Seeckt assisted the seven top Ittihadist leaders who were the principal authors of the Armenian genocide in their escape from Istanbul at the end of the war.

While it is unknown how these Germans communicated their knowledge of the Armenian genocide to Nazi decisionmakers, they were closely identified with the Nazi regime and ideology and had ready access to top decisionmakers. A prime example of an individual with such connections

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131. WERFEL, *supra* note 130, at 814.


133. DADRIAN, *supra* note 123, at 201.

134. *See id.* at 64, 201.
is Grand Admiral Karl Dönitz, who, during World War II, was the Supreme
Commander of the German Navy. In his last will and testament of 1945,
Hitler elevated Dönitz to the rank of President of the Reich and Supreme
Commander of the German Armed Forces. During World War I, moreover,
Dönitz was an ensign on the light cruiser Breslau (later renamed Midilli to
indicate its Turkish affiliation), which played a major role in precipitating
Turkey’s war with Tsarist Russia by launching a massive preemptive Turko-
German attack against Russian ships and coastal installations in the Black
Sea. Another example is Rudolf Hess, the Commandant of the Auschwitz
extermination camp in 1940–43 and Deputy Inspector of Concentration
Camps at SS Headquarters 1944–45. As a runaway teenager, he had joined
the German military forces serving in Turkey. In short, the potential for
communication was present for all of the individuals described; the
likelihood of such communications applies to many of them, and the
probability of such communications to some of them.  

However, of all the German World War I veterans who served in allied
Turkey in a military or diplomatic capacity and who also were in a position
to influence Hitler’s frame of mind as he began to consider the Final
Solution, Scheubner Richter stands out as potentially the most effective
mentor. As Vice Consul in Erzurum, a major city in eastern Turkey and the
headquarters of the Ottoman Third Army facing the Russian Caucasus army
in World War I, and later as Co-Commander of a joint Turko-German
Expeditionary guerilla force, he had exceptional opportunities to gain insight
into both the overt and covert aspects of the Ittihadist genocidal scheme.
During the fall 1915 march of the Expeditionary Units to the zone of
operations, he even witnessed massacres in the Bitlis province in eastern
Turkey, which he described in his last report to Chancellor Hollweg in
Berlin. Between April 30 and November 5, 1915, he sent to his superiors
fifteen major reports detailing the ongoing deportations and massacres, and,
in his last lengthy report, noted above, he declared that except for a few
hundred thousand survivors, the Armenians of Turkey for all practical
purposes had been exterminated ("ausgerottet"). In the same report,
Scheubner describes the Ittihadist plan to homogenize Turkey violently; the
web of contrived excuses, pretexts, deflections, and concealments with
respect to that design; the techniques used to lull and trap the victim
population; the use of criminal gangs; and the active involvement of the
Ittihadist party machinery in all stages of execution. In brief, Scheubner

135. For details about all these men and others, see id. at 199–203.
136. A.A. Türkei [Turkey] 183/45, A33457; see also Botschaft Konstantinopel [Embassy at
report.
138. See id.
learned all that needs to be learned about the motivation, organization, mechanics, and concealment of a genocide.

Whether he transmitted all that knowledge to Hitler, thereby contributing to Hitler's repeated assertion that, based on the Armenian example, one may commit mass murder with impunity, is a constantly debated question. Focusing on the August 22, 1939, declaration made in Obersalzberg, a German publication stated that “Hitler must have known exactly” ("Hitler muß genau Bescheid gewußt haben") about the Armenian case of genocide because one of his closest collaborators in the early stages of the National Socialist movement was Germany’s former consul at Erzurum, Dr. Max Erwin von Scheubner Richter, whose awful reports on the massacre of the Armenians are preserved. The periodical went even further, asserting that Hitler modeled his attack on the Jews on lethal devices used against the Armenians, such as wartime deportations; extirpation through exhaustive labor; death marches; incitement of other peoples for the purpose of enlisting their help in the destruction of the victim population; 'natural decimation' through attrition by way of artificially induced hardships involving exposure to harsh climactic conditions, starvation and epidemics; shameless acts of enrichment through the appropriation of the possessions of the deportees; and the creation of concentration camps.4

The issue of Scheubner’s direct and effective influence upon Hitler requires a brief review of the origin, nature, and outcome of their relationship. In Munich in 1920, Alfred Rosenberg, a fellow Baltic German and a leading exponent of Nazi ideology, introduced Scheubner to Hitler. On November 22 of the same year, Scheubner and his wife joined the Nazi party after attending a Nazi gathering where Hitler spoke. The initial impetus for both Hitler and Scheubner to involve themselves in launching a nationalist movement in Bavaria was the revolutionary agitation throughout Germany of the German socialists and communists. In one of his editorials in his paper Aufbau-Korrespondenz, which he had established in Munich in 1920, Scheubner warned that behind communism lurked the international Jewish plot of world domination. Both Germany and Russia, he continued, should therefore beware of the threat of “a Jewish-Bolshevik dictatorship.” In yet another editorial published in early 1923, Scheubner adopted a more militant posture. Blaming alien elements for what he called the gradual corrosion of Germany, he urged the resort to “a ruthless and relentless” campaign against these elements so that “Germany is inexorably

140. Id.
142. See id.
143. See id. at 186.
144. Id.
cleansed” ("rück­sichts­lose Reinigung Deutsch­lands"). He wrote that it would be necessary to wage a merciless fight against all that was alien to the German people’s corporate entity for the sake of the German nation and the Great German Reich. It is noteworthy that in one of his World War I reports to his ambassador, Scheubner characterized the city-dwelling Armenians as "these ‘Jews of the Orient’ who are wily businessmen” ("gerissene Handelsleute”). It is equally noteworthy that this remark, along with some others, is deleted in the printed version of this report in the German Foreign Office compilation of documents on the Armenian genocide that Lepsius edited. The purpose of this and other deletions from the same volume was to exonerate Germany from any blame for the fate of the Armenians. Whenever possible, most references in official German diplomatic correspondence that damaged the image of Germany as a non-complicitous wartime ally of Turkey were excised from printed publications.

When, in February 1920, the Nazis in Bavaria allied themselves with a string of militantly nationalistic societies and other fascist outfits and the S.A. (Sturmabteilung) became the military arm of this new Fighting League (Kampfbund), Hitler appointed Scheubner as its general manager. From then on, their relationship intensified, with Scheubner securing for the League “enormous sums of money” through his network of extensive contacts with German industrialists. At the abortive putsch in München of November 8 and 9, 1923, at which such foremost Nazis as Alfred Rosenberg, Julius Streicher, Hermann Göring, and General Erich Ludendorff tried to overthrow the Bavarian government, Scheubner was marching with his arm linked with Hitler's. He was one of the first to be shot by the local police, struck in the heart by a bullet that killed him instantly. "As he fell, he pulled Hitler down with him, so hard that the Führer dislocated his shoulder and screamed out with pain." As Joachim Fest observes, “His influence on Hitler was considerable; he was the only one of those killed at the Feldherrnhalle on November 9, 1923, whom Hitler held to be irreplaceable.” Similarly, Ulrich Trumpener noted that “Scheubner-Richter, like so many other German officials in wartime Turkey, later

145. Id. at 190.
146. See id. at 190–91.
149. See V.N. Dadrian, Documentation of the Armenian Genocide in German and Austrian Sources, in 3 THE WIDENING CIRCLE OF GENOCIDE 78, 94 n.2 (Israel Charny ed., 1994).
152. FEST, supra note 150, at 137.
became a prominent figure in German politics. In the early years of the Nazi movement he was one of Hitler’s closest advisers . . . .”

B. **Hitler’s Appreciation of the Armenian Genocide**

The major components of Hitler’s ideology, including his stated plan to destroy the Jews, were no secret, as they were routinely broadcast in general terms. When it came to specific blueprints, mechanics, instructions, and orders, however, there was either silence or abiding stealth. One is confronted here with a personality-characteristic duality, “an inimitable mixture of brutal honesty and the art of concealment.” Joachim Fest, who called attention to Hitler’s “characteristic mania for secrecy,” maintains that Hitler knew of the record of the past involving “acts of physical annihilation,” meaning, “‘elimination’ or ‘extermination,’” and he was thus cognizant “much earlier than his closest followers . . . . Even at the beginnings of the thirties Hitler had, among his intimates, called for the development of a ‘technique of depopulation’ and explicitly added that by that he meant the elimination of entire races.”

Hitler made a number of statements in the twenties and thirties indicating that he was knowledgeable about Armenians and Turks in general, about the historical record of the persecution of the Armenians, and about their “annihilation” in Turkey. In one of the earliest surviving written documents containing statements or speeches by Hitler in the period up to 1924, the future Nazi leader alluded to the Armenians as victims of cowardice. The solution to the Jewish question, he added, therefore required a bloody clash. Otherwise, Hitler noted, “the German people would end up just like the Armenians.” Hitler made an analogous remark some two decades later. At the Klessheim Conference of April 17, 1943, he plunged into a speech describing the Jews as depraved parasites, as “tubercular bacilli that threatened a healthy body.” He argued that nations that could not defend themselves against what he viewed as the pernicious influence of

153. Trumpener, supra note 20, at 207 n.19.
155. Fest, supra note 150, at 681.
156. Id. at 679.
157. Hitler: Sämtliche Aufzeichnungen 1905-1924 [Hitler: Comprehensive Notes 1905-1924], at 775 (Eberhard Jäckel & Axel Kuhn eds., 1980) ("Das deutsche Volk wird ein Volk wie die Armenier . . . ."). The respective document is identified as one issuing from the German Federal Archives. See Daddario, supra note 70, at 417 n.10 (citing German Federal Archives (Bundesarchiv) R48 I, Reichs Chancellor’s Office (Reichskanzlei), dossier No. 2681, at 85). By comparing the Germans with the Armenians, rather than the Jews, the object of his disdain, Hitler was trying to convey the idea that unless the Germans confronted the Jews, they might end up becoming just like the Armenians, a people devoid of courage and doomed to dissolution.
158. Hilberg, supra note 67, at 524 (quoting Hitler).
the Jews would suffer the fate of "once so proud a people as the Persians, who now had to continue their miserable existence as Armenians." 159

In an interview in July 1933, Hitler told the editor of a Turkish newspaper that he admired the modern Turkish movement that fostered the virtues of primitivity among native peasants in Anatolia. For Hitler, that movement was "a shining star." 160 This admiration seemingly stemmed from the Nazi ideology of Blood and Soil (Blut und Boden). The phrase expressed the idea of a primitive relationship of earth and peasants, 161 countered against an urban, industrial, and capitalist civilization. The Nazis, inspired above all by Hitler, glorified the peasantry. 162 The situation for the Jews of Germany in 1935 was ominous enough to prompt two British officials, negotiating at the time with German officials in the Economics Ministry about the financial aspects of emigration of German Jews to Palestine, to express their despair about the future of the Jews in Nazi Germany. One of them, Eric Mills, the Commissioner for Migration and Statistics in Palestine, sensed a parallel between the acute vulnerability of the Jews in Germany and the condition of the Armenians when they were targeted for destruction. In a private letter after the negotiation, he wrote: "[T]he fate of German Jews is a tragedy, for which cold, intelligent planning by those in authority takes rank . . . with the elimination of Armenians from the Turkish Empire." 163

"Who after all is today speaking of the destruction of the Armenians?" is another statement attributed to Hitler. 164 The statement is highlighted in block letters on a granite wall of the Exhibition Hall of the U.S. Holocaust Museum in Washington, D.C. to establish a link between the Armenian genocide and Hitler's subsequent genocidal initiatives. Hitler was presumably influenced by the Armenian genocide, and, more particularly, by the impunity granted to the authors of the Armenian genocide. Whether such a statement was made is disputed, however. The debate is prompted by the uncertainties surrounding the provenance and venue of the document containing that statement, and, more particularly, the identity of the source recording that statement and embedding it in that document. These issues arose in connection with the Nuremberg prosecutors' efforts to ascertain the criminal intent and conduct of the Nazis prior to and during the course of the

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159. Id. The data are culled from a summary prepared by Dr. Paul Otto Schmidt, German Foreign Office interpreter, on the meeting at Klessheim. Hitler and Foreign Minister Ribbentrop were trying to induce Admiral Horthy, the Hungarian Regent, to proceed against the Jews of Hungary mercilessly, namely, to have them killed off. See id. at 524 & n.867.


161. See TAYLOR & SHAW, supra note 82, at 61.

162. See NAZISM, supra note 85, at 378.


war. As explained below, however, documentary evidence emerging since the Nuremberg trials has firmly established the authenticity of the statement.

The document was transmitted for the first time to British diplomats in Berlin in August 1939 by Louis Lochner.\textsuperscript{165} For more than two decades, Lochner was chief of the Berlin Bureau of the Associated Press and, for many years, he served as president of the Foreign Press Association in Berlin. Sir Neville Henderson, British Ambassador at Berlin, transmitted the document, in turn, to London on August 25, 1939.\textsuperscript{166} The document purports to summarize one or two speeches Hitler delivered to the Chief Commanders and Commanding Generals at Obersalzberg on August 22, 1939, in preparation for the impending invasion of Poland. In essence, in that speech (or those speeches) Hitler admonished the high-ranking military officers to be brutal and merciless in order to achieve a quick victory.\textsuperscript{167} Hitler portrayed the imminent invasion as the first step of a wide-ranging scheme to “secure the living space we need.”\textsuperscript{168} The overall purpose was to “redistribute the world.”\textsuperscript{169}

As noted above, Hitler’s statement on August 22, 1939—upon which this entire discussion is predicated—has been the subject of dispute. The debate arose in connection with the Nuremberg prosecution’s attempt to introduce as an exhibit the document from which the statement was excerpted. For the reasons described—provenance, venue, and identity of source—the document was not accepted as authentic by the Tribunal. This rejection led to questions regarding the veracity of Hitler’s statement.

Two detailed studies thereafter, however, have tackled this problem of veracity. One of them, that of the German author Winfried Baumgart,\textsuperscript{170} concluded that there were actually five versions of the document in question. The first was the one that Lochner procured; the second consisted of two versions originating from the German High Command’s repositories; the third from Admiral Böhm; the fourth from General Halder, Chief of the German Army General Staff; and the fifth from the German Army’s War Diary, compiled by Helmuth Greiner.\textsuperscript{171} After a meticulously detailed examination, Baumgart concluded that Lochner’s document was essentially identical with the two versions from the German High Command as well as with Greiner’s fifth version and that, in all likelihood, all these versions were commonly based on the handwritten notes secretly taken by Admiral

\textsuperscript{165} See id. at 257.
\textsuperscript{166} See id.
\textsuperscript{167} See id. at 259.
\textsuperscript{168} Id. at 258.
\textsuperscript{169} Id.
\textsuperscript{171} See id. at 121.
Canaris, the Chief of German Counterintelligence, during the conference on August 22.

Baumgart proved less accurate, however, when he suggested that the reference to the Armenians in Hitler's speech was probably an act of editorial "coloring up" ("Ausmalen") by those who reported the speech. Indeed, at the time Baumgart's article appeared in 1968, another German author, Edouard Calic, published his book Ohne Maske, containing the texts of two newly uncovered confidential interviews with Hitler in 1931. Calic reveals that fully eight years prior to the 1939 speech at Obersalzberg, Hitler had made exactly the same statement when describing "the extermination of the Armenians." During the second interview, in June 1931, Hitler allowed Richard Breiting, the powerful editor of the great German daily Leipziger Neueste Nachrichten, the organ of the conservative-nationalist Germans, to take shorthand notes, although swearing him to secrecy. According to Breiting, Hitler remarked: "Everywhere people are awaiting a new world order. We intend to introduce a great resettlement policy... Think of the biblical deportations and the massacres of the Middle Ages... and remember the extermination of the Armenians." 

Breiting's report bears reliable indicia of authenticity. After a lapse of several years, the Nazi leadership mobilized the Leipzig Gestapo to retrieve Breiting's notes, which they felt in hindsight to reveal too much about Hitler's plans and, therefore, likely to provoke hostile reactions from the West. Like the Young Turks, Hitler and his Nazi followers were not concerned as much with the world's response to their crimes as with its foreknowledge of their plans. Hence, they tried their best to conceal rather than to reveal details. Breiting died in 1937 under suspicious circumstances only days after meeting two Gestapo agents to whom he unsuccessfully pretended that he had destroyed the notes. These were hidden until after the war, however, by his sister.

Calic names seventeen people who, through sworn statements and affidavits, certify the authenticity of the notes; the memorandum of Ludwig Krieger, the former chief of the Reichstag stenographic bureau, is especially detailed. Similarly, a second study, by Kevork Bardakjian examines the

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172. See id. at 139.
174. CALIC, supra note 154, at 81.
175. Id.
176. See id. at 15.
177. See id. at 16 (giving details of notes' history). Krieger's memorandum says in part: The transcript checks with the original... Having been a shorthand writer at Hitler's briefing conferences in his headquarters during the Second World War, I recognize Hitler's style and reactions throughout the record. Breiting's papers as a whole confirm the sequence of events. Both from the factual and political points of view the checking of these papers has been of extreme interest to me. Breiting's shorthand record is
entire debate in terms of the origin, conditions, and authenticity of the document containing Hitler's speech, ultimately concluding that it is authentic.178 (The confirmation of the accuracy of the portion on the Armenians in Hitler's speech extends to that on Genghis Khan as well. The context is the same, the words are uttered in the same vein, and Hitler on other occasions acknowledged the legacy of the latter as a source of inspiration for him.179)

Even though Hitler's motives for persecuting the Jews were not identical to those of the Ittihadists with respect to the Armenians, the two victim nations shared one common element in Hitler's view of the world: their extreme undesirability. Hitler emphasized the urgency of "the task of protecting the German blood from contamination, not only of the Jewish but also of the Armenian blood."180 Consistent with this portrayal of the Armenians, Hitler's subordinates are on record deprecating the Armenians as a race. For example, Alfred Rosenberg, the top Nazi ideologue, described both Jews and Armenians as "the people of the wastes."181 Similarly, the German Army High Command declared that the "Armenians were even worse than Jews."182

There is evidence that these anti-Armenian attitudes reflected pre-Nazi prejudices. Since the Armenian presence in Europe and particularly in Germany was negligible—in fact, practically non-existent—these beliefs did not assume the intensity and lethal dimensions that developed in the case of the Jews. Nevertheless, it is important to emphasize the fact that a very prominent World War I German officer serving in wartime Turkey, General Major Fritz Bronsart von Schellendorf, not only vilified Armenians in general terms but also likened them to the Jews, whom he called a despicable people. Von Schellendorf occupied a powerful position in Turkey during the Armenian genocide: Between 1914 and 1917, he was Chief of the Ottoman General Staff, the second most powerful man after General Enver, War Minister and de facto Commander-in-Chief of the Turkish armed

assuredly of great historical value since, as far as I know, no shorthand notes of private discussions with Hitler in the pre-1933 period exist.

Id. (quoting Memorandum of Ludwig Krieger (Sept. 8, 1968)) (omission in original).

178. See Kevork B. Bardakjian, Hitler and the Armenian Genocide (1985). For another source that asserts the authenticity of Hitler's statement on the Armenians in August 1939, a conclusion it reaches after examining in some detail the conditions of the surfacing of the statement and its treatment at Nuremberg, see Edward V. Gulbekian, The Poles and Armenians in Hitler's Political Thinking, 41 ARM. REV. 1, 1-9 (1988).


forces. Von Schellendorf kept regular diaries during his service in the Turkish High Command, and for May 13, 1916, when the Armenian genocide had all but run its course, he made a particularly revealing entry. After denouncing the Armenians as "parasites" and "agitators," he wrote "[the Armenians were] hated even more in all of Turkey, and rightly so, than the worst Jews." In line with this attitude, he—along with General von Seeckt, his successor in the post of Chief of General Staff in the Ottoman General Headquarters—surreptitiously organized the seven arch-Itithadist leaders' escape from the Ottoman capital at the end of the war.

In his extensive study of the parallels between the Armenian and Jewish genocides, Robert Melson points out that the German generals, like the Turkish military, supported their leaders' genocidal policies and, indeed, issued correlative orders. In both cases, a number of high-ranking military officers were politically radicalized to the point of seeing attacks on a civilian population as merely an extension of targeting military objects.

The vilification of a potential victim group, on the one hand, and the vulnerabilities of that group, on the other hand, are only part of the calculus of genocide. Hitler's appreciation of the Armenian genocide as a contributing factor to his own plan was tied to some degree to these twin poles of degradation and vulnerability—conditions the Jews and the Armenians shared as suitable candidates for wholesale extermination. This is the victim-oriented component in the equation of genocide. That component needs, however, to be supplemented and reinforced by perpetrator attitudes animated by destructive impulses. Here, the propelling force is not a particular victim-group but the penchant for victimization with a particular goal. The intoxicating example of successes achieved by past organizers of mass murder is an important factor in this respect. The next segment will examine this problem relative to Hitler.

C. The Legacy of Genghis Khan as a Functional Nexus Between the Two Genocides

As with most crimes that require a certain state of mind, so too the perpetration of genocide requires the presence of a genocidal intent. The preceding discussion indicates, if not demonstrates, a certain interconnection at such a mental level between the incidence of the Armenian genocide and of the Jewish Holocaust. An additional detail, to be discussed now, is the

183. For details on von Schellendorf's role in the decision to deport the Armenian population of Turkey and the genocidal outcome of these deportations, see DADRIAN, supra note 123, at 17, 19, 20, 23–24, 90, 116–18, 122–23, 185.


185. See DADRIAN, supra note 123, at 123–24.

extent to which the murderous legacy of the Mongol warlord Genghis Khan emerges as a nexus, as a functional link between the Ittihadists and the Nazis. There are, of course, many other factors that allowed the genocides to evolve and materialize, including the ideologically conditioned belief that the creation of a radically new order may necessitate destruction and cataclysm on a grand scale. But there can be no doubt that the example of Genghis Khan impacted the organization and implementation of both the Armenian and Jewish genocides. In his overall assessment of the Jewish Holocaust, Lord Wright, the Chairman of the United Nations War Crimes Commission, acknowledged this fact. He attributed the horrors of World War II to a lapse into barbarism, reminiscent “of the days of Attila, Ghengis Khan or Tamarlane.”

Hitler’s affinity for Genghis was basically anchored in a type of merciless murderousness that Hitler reportedly admired in the Mongolian conqueror. In order to cement solidarity among his warriors, the latter had introduced the practice called Blutkritt that involved bloodthirsty behavior vis-à-vis the conquered people. According to the findings of a German psychologist, Wanda von Baeyer, Hitler adopted this principle for his SS troops after reading about it in a book while serving his sentence in Landsberg prison (February 2–December 20, 1924).

That affinity was manifestly shared by some of the most prominent organizers of the World War I Armenian genocide who relished their admiration for Genghis Khan’s legacy of death and destruction. One of them was General Halil Kut, War Minister Enver’s uncle, who not only ordered the extermination of most of the Armenian population in his military command zone in eastern and southeastern Turkey, but also openly bragged about that exterminatory role. While awaiting court martial, and before he managed to escape from prison, he defiantly told a British army captain that the number of his victims of mass murder may have reached “300,000 Armenians. . . . It may be more or less, I didn’t count.” Moreover, in a speech in Yerevan, Armenia, in the summer of 1918, he boastfully declared to a large crowd gathered at the square of the city that “I have tried to wipe out the Armenian nation to the last individual.” In trying to explain this stance which led to “the solution of the Armenian Question through annihilation” with “inexorable ruthlessness,” German Colonel Ernst Paraquin, General Halil’s Chief of Staff in the Sixth Army, revealed Halil’s

188. See Leo Alexander, War Crimes and Their Motivation: The Socio-Psychological Structure of the SS and the Criminalization of a Society, 39 J. CRIM. L. CRIMINOLOGY & POL. SCI. 298, 300 (1948); see also Hilberg, supra note 67, at 650 (containing a reference to “blood kit”).
190. Id. at 241.
conjurations of Genghis made in the course of a candid exchange initiated by the General in Mosul. According to Paraquin, Halil’s veneration for Genghis bordered on idolatry, a veneration that found its symbolic expression when Halil named his youngest son after the war lord Genghis. Halil is quoted saying, “Let us push to Turkestan; there I will found the new empire for my little Genghis.” That empire was to stretch as far as the Siberian Jakuts, “the extreme outposts of Turkdom in the East.”

This pathos for Genghis Khan and his legacy was not confined to the frame of mind of Turkish military men. For instance, among the Ittihadist party chieftains there was the provincial commissar Yenibahgeli Nail whose role was to oversee and control the anti-Armenian lethal operations in the province of Trabzon on the Black Sea. Nail had been touring the various districts of the province to deliver inflammatory anti-Armenian speeches in order to pave the ground for the impending genocide. He reportedly finished one of this speeches with the intonation,

Oh people (“ev ahali”), we are the progeny of the likes of Genghis Khan, Tamerlane and Osman; we are their worthy scions. In our vein flows their blood. We shall demonstrate to the world the might of our arms; the palpitations of our horses’ hoofs will echo in the lands of our foes. The hour has come to show to the Europeans of Christian faith, to the infidel Russians, and to their friends [amongst us] the power of our sword.

The allusion to the Armenians as the internal enemy in the last sentence was as ominous as it was transparent. That ominousness materialized and came into full play when Nail ruthlessly implemented Ittihad’s plan of genocide in Trabzon province. To mention but one example of this role performance, reference may be made to a report by Oscar S. Heizer, American Consul at Trabzon. He informed the State Department that Nail ordered the drowning of multitudes of Armenian children who “were loaded into boats and taken out to sea and thrown overboard. I myself saw where 16 bodies were washed ashore and buried by a Greek woman near the Italian Monastery.” Nail, according to the testimony of a Greek merchant in Trabzon, was so driven by bloodthirstiness that he told the merchant the following: “Were it within my powers (“elimden gelirse”), I would recreate the Armenians we killed so that I may exterminate them anew.”

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193. Paraquin, supra note 191. A Turkish historian stated in this connection, “Halil was dead serious when he vowed to have [his] son Genghis sit on the throne of Turkistan. He was deceiving neither himself nor anyone else. . . . He was speaking his own true language.” 3 ŞEVKEt SÜREyyA AYDEMIR, MAKEDONYA'DAN ORTAASYA'YA ENVER PaŞA [ENVER PaŞA FROM MACEDONIA TO CENTRAL ASIA] 541 (1972).
196. BADMOUJTUN HAIGAGAN BONDOSSEE [HISTORY OF THE ARMENIAN PONTUS] 240 (H.
In turn, Hitler's explicit reference to the Armenians occurs in a passage that also furnishes the context for his notion that the creation of a new world order requires mass murder. For support of this idea, Hitler invoked the example of Genghis Khan, who "sent millions of women and children into death knowingly and with a light heart. [Yet, history] sees in him only the great founder of States." 197 Hitler introduced this line of thought to imply that the extermination of the Armenians served a similar purpose. The Turks destroyed them mercilessly, thereby allowing Mustafa Kemal to establish a new Turkish state system, and the world not only permitted the annihilation of the Armenians but accepted the new order. 198

As I have argued, Genghis Khan's conquests impressed the Turks as well as Hitler. 199 Hitler's affinity for Genghis Khan also extended to Mustafa Kemal Atatürk, whom he extolled in the same passage as a true statesman, while dismissing as "half idiots and 'cretins'" those who succeeded him as stewards of modern Turkey. 200 It was in this context that Hitler proclaimed his motto: "The world believes only in success." 201

It is most significant that the architect of the Armenian genocide, Interior Minister, Young Turk Ittihadist party boss, and subsequently Grand Vizier Talat is likewise on record exalting the glory of success as a justification for mass murder in the name of supreme national interests. When summarizing his sentiments about the issue of "the extermination" of the Armenians, Talat made a statement almost identical in essence and form to Hitler's. He reportedly was discussing the mass murder of the Armenians with Turkish feminist writer Halide Edib when he declared, "I have the conviction that as long as a nation does the best for its own interests, and succeeds, the world admires it and thinks it moral." 202 Moreover, Fest cites

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197. 7 Documents on British Foreign Policy, supra note 164, at 258.
198. See id. ("Who after all is today speaking about the destruction of the Armenians?").
199. See Dadrian, supra note 70, at 405.
200. 7 Documents on British Foreign Policy, supra note 164, at 259.
201. Id.
202. Halide Edib, Memoirs 387 (1926) (emphasis added) (quoting Talat). This view of the extermination of the Armenians as a factor permitting the establishment of the new Turkish Republic, a view implied by Hitler, is shared by a number of prominent Turkish authors. One author (a former Ittihadist and subsequently an ardent Kemalist and a confidant of Mustafa Kemal Atatürk) using the Greco-Latin term "genocide," noted that "there was no doubt" ("şüphe yoktu") that the presence, en masse, of the Armenians in the East was seen as a threat to the establishment of the new Kemalist Turkey. See Falih Rifki Atay, Pazar Konuşması [Sunday Talk], DÜNYA, Dec. 17, 1967. A contemporary Turkish author went even so far as to suggest that "the foundations of the edifice of the Turkish Republic are built on the blood of Anatolian minorities . . . ." Taner Akçam, Türk Ulusal Kimliği ve Ermeni Sorunu [Turkish National Identity and the Armenian Question] 161 (1992) (author's translation). In the same vein he maintained that the Turkish War of Independence, which led to the establishment of that Republic, "was largely organized by the Ittihadists . . . who played an extremely important role ("son derece önemi bir rolü") . . . [and] the group providing the most crucial support was the Special Organization which previously had enacted the Armenian genocide." Id. at 156. Even Atay, mentioned above, admitted that without the success of the plan of the Ittihadists to eliminate the Armenians, Atatürk's movement to create a new nation-state could not have succeeded, and observed that although the Armenians brought upon themselves "this tragedy by
Hitler's treatment of Kemal as a model for him at the time of the Münich Putsch: Hitler reportedly drew inspiration from the Turkish leader to overcome his hesitations and to act boldly and forcefully. This anticipatory exaltation of success by the two principal architects of two of the foremost genocides of this century not only indicates common motivation but also the workings of identification through the mechanism of contagion. Impressed by the success of the Ittihadists, Hitler, one way or another, emulated their genocidal performance when the opportunity was at hand. The Armenian genocide stimulated the Holocaust not only because the victim groups were suitable targets but also because the perpetrator groups had grandiose, inherently risky designs. When the anxieties associated with one such risk evaporate after success, precedent and organic links are established for subsequent actions.

Despite important differences between Genghis Khan and Atatürk, there are certain similarities in the circumstances of the two which call for some comments. For one thing, Atatürk himself exalted the historical figure of Genghis Khan in a speech to the Grand National Assembly on November 1, 1922, describing him as a source of pride for the Turkish nation. Moreover, the three foremost pioneers of modern Turkish nationalism—Yusuf Akçura, Ali Hüseyinzadeh, and Ziya Gökalp—glorified Genghis Khan in prose and verse as the primary symbol of the capacity of “Turko-Turanian” warriors to proceed with boundless ferocity during sweeping martial operations. In a poem titled Turan, Ziya Gökalp described him as a genius who “crowned my race with conquests.” In another poem, likewise titled Turan, Ali Hüseyinzadeh, using the pen name A. Turani, marveled at how Genghis “shook the horizons end to end.” Akçura, similarly, “exalted” (“yüceltmis”) the figure of Genghis, calling him “a Turk.” Another nationalist poet and cohort of Atatürk, Mehmed Emin, in

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203. See Fest, supra note 150, at 156-57. A French author states that Atatürk's bullying tactics against the French in 1936 and 1937 in connection with his design to annex Alexandrette, which was part of French-mandated Syria (which annexation he achieved by simply sending in Turkish troops of occupation), influenced Hitler's own handling of the annexation (Anschluß) of Austria. See Paul du Véou, Le désastre d'Alemdrette 1934-1938 [The Disaster of Alexandrette 1934-1938], at 2, 136-39 (1938).


206. Id. at 25 (translating and quoting Hüseyinzadeh's poem Turan).

his ringing call, "O Turk, Awaken" ("Ey Türk Uyan"), which found an echo in the Nazi emblem, "Germany, Awake" ("Deutschland, Erwache"), appealed to "all the Turks" to be inspired by the heroic feats of the Mongolian conqueror and emulate him by ascending "the heights of the Altais," (that conqueror's homeland), "and raise your voice ferociously . . . . No flower grows ever without blood . . . . Let all the Turks of this planet / Come and unite 'round your banner." The thread of devastation running through all these episodes is exemplified in the attitudes of some of the foremost organizers of the Armenian genocide.

The Armenian genocide and its aftermath demonstrated, however, that when not harnessed to effective penal arrangements, the outraged conscience of mankind is only likely to result in derision by the perpetrators. The affinity Hitler and his clique felt for Genghis Khan, for example, reflects this cavalier, if not disdainful, stance towards the world's reaction to mass murder. The inaction of the victorious Allies in the aftermath of the Armenian genocide rewarded its perpetrators, thereby indirectly vindicating the legacy of Genghis Khan and emboldening the Nazis to embark upon the Holocaust, as formulated by Hitler himself. The importance of this point cannot be overemphasized. Yehuda Bauer, one of the premier scholars of the Holocaust, has noted that in the minds of Hitler and Himmler, "the annihilation policy was identified with Genghiz Khan, but the Mongol ruler enjoyed a good reputation with the top Nazis. They saw in him . . . a model to be followed." The glorification of Genghis Khan by political and intellectual leaders of the Young Turks and the Nazis is an important connection between these two genocides. When one probes into the rationale for this glorification, a major motivational element emerges—namely, the outcome of the belligerent activities of the Mongol ruler. In the minds of the Nazi and Young Turk leaders, the massive crimes of Genghis Khan were secondary to his military success. Consequently, his crimes, involving serial mass murders, remained unchallenged and unpunished.

V. THE NUREMBERG CRUCIBLE

Because of the retributive justice imposed by the victors, the Holocaust had an outcome quite different from that of the Armenian genocide, and it is worth examining how this difference materialized. To what extent was the Allies' resolve to administer such justice conditioned by a concomitant desire to end the legacy of impunity? This question has foremost relevance

208. ZAREVAND, supra note 205, at 133 (translating and quoting Mehmed's poem Ey Türk Uyan).

209. For a detailed discussion, see DADRIAN, supra note 70, at 405-07, which provides examples of Turkish generals who ruthlessly annihilated Armenians in an attempt to establish "Genghis-style dominion."

210. Bauer, supra note 179, at 308-09.
because the theme of this Article is that the two genocides occurred in the shadow of this legacy: Unpunished past Armenian massacres encouraged the Young Turks to resort to the World War I genocide as a Final Solution, and the impunity accorded them emboldened Hitler to devise and enact his own Final Solution vis-à-vis the Jews. This part of the Article will explore this problem.

If the Jews and Armenians shared a common fate because their victimizations were not prevented, that commonality vanished with the Nuremberg trials’ imposition of retributive justice on the Nazi perpetrators. The scale of that justice was considerable because of its byproducts and aftereffects; a host of other ancillary trials subsequently were launched in Germany and elsewhere in Europe.

A. The Judicial Innovation at Nuremberg

The mistakes and failures by the European victors in World War I rendered the Armenian genocide impervious to both prevention and punishment. The failure of the justice process in this case—compounded by the dismal results of the German Leipzig trials investigating the war crimes of the German military211—prompted the Allies to employ different methods at Nuremberg. This change was facilitated by maintaining a modicum of consensus and unison among the victors. The German state and its subsidiary organizations were challenged on the main issue of the criminal abuse of sovereignty, whereby its own citizens had become victims of “murder, extermination, enslavement, [and] deportation.”212 United States Supreme Court Justice Robert Jackson played a key role in the trial. Questioning the relevance of the World War I arguments of the American members of the Commission on Responsibilities who adhered to the doctrine of the inviolability and immunity of the sovereign state, he declared, “sentiment in the United States and the better World opinion have greatly changed since Mr. James Brown Scott and Secretary Lansing announced their views . . . .”213 As his opening statement indicates, the gist of Jackson’s arguments mirrored an observation made by the eminent French writer Victor Hugo a century before: “If a man is killed in Paris, it is a murder; the throats of fifty thousand people are cut in the East, and it is a

211. See Dadrian, supra note 1, at 315–17.
212. M. Cherif Bassiouuni, Crimes Against Humanity in International Criminal Law 290–317 (1992). In 1950, the International Law Commission (ILC) adopted and submitted to the General Assembly the Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, of which Principle 6(c) was the “crimes against humanity” provision. That provision discerned the major offenses at the core of these crimes, which included murder, extermination, enslavement, and deportation. See id. at 480.
question." Since crimes are committed by specific individuals rather than that elusive and abstract entity known as the “state,” individuals rather than states are responsible for criminal violations of international law. Holding individuals responsible is necessary because it is difficult to enforce international law against uncooperative states suspected of complicity: Enforcement often is possible only by way of warfare yet the alternative to enforcement is impotence, frustration, and inaction. The Nuremberg Charter maintains that offenders cannot be allowed to escape punishment by taking refuge in “superior orders” or a plea of immunity of heads of state. Legitimate warfare should not be confounded with illegitimate, criminal acts committed in the course of such warfare. Moreover, there is such a thing as vicarious liability. When a number of people conspire to execute a particular criminal scheme or plan, all of them are responsible for the crimes resulting from the conspiracy—even when some or all of them did not personally participate in the physical act of crime.

Clearly, Jackson was underscoring the futility of the extensive reliance on the doctrine of “act of state” and the associated maxim of “superior orders” to preempt liability in violations of international law. But even more significantly, he was bringing into particular relief the liabilities of monolithic political parties that embark on such capital crimes as genocidal undertakings. Within Jackson’s paradigm, not only are the actual murderers subject to prosecution and punishment, so are the decisionmakers and organizers behind the mass murder.

The Nuremberg Tribunal was not only a military court of occupation, but an international court as well. As such, it pioneered crucial ways to overcome tension between national and international law so as to impose penal sanctions for crimes against humanity committed by a state through its agents. The procedural adaptations embedded in the Nuremberg Charter illustrate the point.

The Agreement, an outgrowth of the work of the London Conference, was concluded in London, on August 8, 1945. The Charter, under which the 1945–46 Nuremberg trials were held, was annexed to the Agreement. The Nuremberg principles, which emerged from a series of decisions associated with these trials, are significant in terms of both precedence and codification. They furnish not only a conceptual but an authoritative set of principles for adjudging future cases of organized mass

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214. Dadrian, supra note 1, at 223 (quoting Hugo’s comment on Armenian massacres in Sultan Abdul Hamit era).
215. For a detailed discussion of individual criminal responsibility, see Bassiouni, supra note 212, at 192–234.
216. See id. at 400, 466.
217. See Jackson, supra note 80, at 88–89.
murder. The legal principles established at Nuremberg thus serve as a juridical basis to decide other cases involving similar questions of international law dealing with infractions against humanity subsumed under the general category of “crimes against humanity.” These principles deserve special attention.

Perhaps the most significant principle enunciated and applied at Nuremberg defined the jurisdiction of the Tribunal. The Tribunal rejected the argument that the Nuremberg Charter was an arbitrary exercise of power on the part of the victors. It asserted instead that that Charter expressed international law already existing at the time the Charter was framed. The Tribunal especially emphasized the power to punish crimes against humanity committed prior to World War II as warranted by international law as it existed on August 8, 1945, the date of the Charter. Consequentiy, the Tribunal maintained, the law of the Charter is both decisive and binding. In explaining the source of the authority of that law, the Tribunal declared that the preparation of the Charter was an exercise of the sovereign legislative power accruing to the countries to which the German Reich had unconditionally surrendered and that the civilized world had already recognized the legislative right of these countries over the vanquished territories.

The procedural adaptations spelled out in the Charter were even more significant. The Tribunal denied both the prosecutors and the defense counsels the right to challenge the Tribunal and its members, insisted on the expeditious handling of the trial proceedings, set out to prevent undue delays and the raising of irrelevant issues, forbade any resort to “contumacy” under threat of temporary or permanent exclusion from the proceedings (although “without prejudice to the determination of the

221. See M. Cherif Bassiouni, International Law and the Holocaust, 9 CAL. W. INT'L L.J. 202, 283 (1979). The views of Lord Wright, the Chairman of the United Nations War Crimes Commission, are of equal relevance here. As he put it:

A criminal cannot exculpate himself on the grounds that . . . the law . . . is being enforced by the victorious belligerents against the vanquished. Someone must act as policeman if law is violated. The policeman must belong to the stronger side . . . . That the stronger may sometimes in fact be substituting power for justice is no doubt a calamity when it happens, but this possibility is not relevant to the argument when what is being sought is justice, not revenge.

Nor can a criminal complain that he is entitled to be tried by an impartial and neutral Court and not by a Court constituted by the enemy. All he is entitled to is a trial on fact and law conducted on the principles of elementary justice . . . . Trials of international criminals are watched by the world and the Court knows that it is also itself on trial.

222. See Charter, supra note 219, art. 3.
223. See id. art. 18(a).
224. See id. art. 18(b).
charges"), and vowed not to be bound by the constraints imposed by rules of evidence.

These innovations are better understood when placed in a comparative context—that is, when examined in relation to the jurisdictional and procedural problems confronting the postwar Turkish Military Tribunal investigating the crimes committed against the Armenians. First, the Turkish Tribunal, unlike the Nuremberg Tribunal, was a national rather than an international court. Unlike Germany, where the Nuremberg trials took place, Turkey did not surrender unconditionally and was not entirely occupied. In Turkey, the Allies left a de facto and de jure sovereign state system in place when the postwar Ottoman-Turkish regime instituted the courts martial. Accordingly, the administration of justice was predicated upon national and municipal laws, rather than international law. Significantly, however, the Turkish authorities did invoke norms concerning the laws of humanity and crimes against humanity to justify the prosecution and punishment of the Turkish war criminals. When a deputy of the Ottoman Parliament submitted a motion on November 2, 1918, to institute hearings in the Ottoman Chamber of Deputies to establish the responsibility of the members of the two wartime Cabinets, for example, he used the term "the rules of law and humanity" ("kavâdi hukukiye ve insaniye") to describe the offenses. On March 3, 1919, when the Sultan responded to the request of the Cabinet to authorize a new law for court-martialing the perpetrators, he also denounced the offenses in question as "crimes against humanity" ("kanuni insaniyete . . . karşı ıkä edilen cerâm"). Furthermore, in its verdict at the end of the Yozgat trial series, the Tribunal asserted that the perpetrators had violated the principle of "human sentiments" ("hissiyat-ı insâniye"). These invocations, which go beyond Turkish municipal law and possess attributes of international law, may best be explained as attempts to apply a general principle of law that recognizes certain crimes against humanity that need not be criminalized by statute in order to be punishable. Involved here are such principles as "rules recognized by civilized nations" and "the demands of public conscience."

225. Id. art. 18(c).
226. See id. art. 19.
227. For an analysis of the work of this Tribunal, see Dadrian, supra note 1, at 291–315.
228. HARP KABINELERIN ISTICVABI [HEARINGS OF THE WARTIME CABINETS] 5–6 (1933); see also id. at 293–94.
230. TAKVİM-1 VEKAYI, No. 3617, at 1 (Aug. 7, 1919). This publication of the Ottoman Parliament, which roughly corresponds to the American Congressional Record, served as a judicial journal during the courts-martial. In special supplements (ilâve), it published most of the proceedings of the Tribunal, especially the Key Indictment against the Cabinet Ministers and Ittihadist leaders, and the series of Verdicts. For a discussion of the Yozgat trials, see TANER AKÇAM, ARMENIEN UND DER VÖLKERMORD: DIE ISTANBULER PROZESSE UND DIE TÜRKISCHE NATIONALBEWEGUNG [ARMENIANS AND THE GENOCIDE: THE ISTANBUL TRIALS AND THE TURKISH NATIONALIST MOVEMENT] 172 (1996).
231. BISHOP, supra note 96, at 41 (citing League of Nations, Permanent Court of
Even acknowledging these precursors, however, as a whole the innovations introduced at Nuremberg contrast sharply with the laxity that afflicted the post-World War I Turkish Military Tribunal, serving as a national court representing a defeated nation-state and awkwardly trying to prosecute its own nationals for war crimes against its own citizens. The litany of British and American disparagements, labeling this tribunal incompetent, indirect, ineffective, and even a "farce and injurious," exemplify the impediments intrinsic to national courts charged with the task of conducting domestic war crimes and mass murder trials.

In avoiding all these problems, the legal precedents established at Nuremberg circumscribed the primacy and exclusivity of domestic laws concerning personal responsibility, international accountability, and criminal liability for wartime conduct. The Nuremberg principles extended criminal liability to the highest officials of a state, including the sovereign, imposing severe restrictions on such defenses as superior orders and immunity of heads of state. The legal nuances of these restrictions, treated as a matter of customary international law, were extensively debated in the wake of World War I by British, French, and German jurists grappling with the proposed terms of the Versailles Treaty.

B. Nuremberg and the Legacy of Humanitarian Intervention Applied to Armenia

The most salient aspect in the comparison of the two genocides is outcome. The outcome of the Nuremberg Trials is perhaps the most consequential innovation resulting from these trials. It stands in stark

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International Justice, Advisory Committee of Jurists, Procès Verbaux of the Proceedings of the Committee, June 16–July 24, 1920 (remarks of Baron Descamps, Chairman of the Committee of Jurists of the League of Nations, in discussion of generally accepted principles of international law)).

232. See Dadrian, supra note 1, at 313 n.368 (citing several British Foreign Office documents as well as document from U.S. National Archives); see also FO 371/4173/80105, folio 419 (containing handwritten note in margin stating that "common to all Turk-judiciary" proceedings is habit of "beating about the bush").

233. See JAMES WILFORD GARNER, INTERNATIONAL LAW AND THE WORLD WAR §§ 588–593, at 483–501 (1920). British scholar Hall, for example, disagreed with the British Manual of Military Law stipulation that members of the armed forces who commit war crimes as are ordered by their government or commander cannot be punished by the enemy. Hall, however, argued that a belligerent "possesses the right to punish persons who have violated the laws of war, if they afterwards fall into his hands." Id. § 588, at 485–86. Relying on a similar clause of the French criminal code, article 64, French legal scholar Nast rejected the liability of German soldiers who participated in the spoliation of French industrial installations, even though the acts were contrary to the Hague Convention; he maintained that they could not be arrested and tried by the French courts. Another French professor, Merighac, adopted a contrary view, however, arguing that article 64 of the French penal code was never intended to shield soldiers who seek refuge under the plea of superior orders after committing atrocities. See id. § 585, at 486–87. On the issue of the immunity of the ex-Kaiser of Germany as head of the state, the Commission on Responsibilities rejected the idea of such immunity and irresponsibility on the ground that the trial of lesser offenders might be seriously prejudiced if they tried to plead superior orders of a sovereign. See id. § 590, at 491.
contrast to the rather uninspiring outcome of the Turkish Courts Martial, at whose abrupt end only three minor officials were executed.\textsuperscript{234} This fact encapsulates the shift in international justice from impunity to retributive justice,\textsuperscript{235} a shift that is the central theme of this Article.

As described in the introduction to this study, the public declaration of the Allies on May 24, 1915, was the effective forerunner of the modern principle of “crimes against humanity.”\textsuperscript{236} This concept was first formulated in 1919 by the Commission of Responsibilities of the Paris Peace Conference,\textsuperscript{237} then adopted by the Nuremberg Charter,\textsuperscript{238} it was subsequently incorporated into the Preamble of the U.N. Convention on Genocide.\textsuperscript{239}

The Nuremberg Charter stipulation that crimes against humanity, in order to be prosecuted, have to be war-related (that is, “in execution of or in connection with any crime within the Jurisdiction of the Tribunal”\textsuperscript{240}) was previously discussed in general terms by the 1919 Turkish Military Tribunal. In its Key Indictment, the Tribunal scorned the covert goals of the conspirators in trying to take advantage of the European war.\textsuperscript{241} It reiterated this point by recounting the evidence of an unauthorized strike against Russia committed by one of the members of the Ittihad party’s Central Committee.\textsuperscript{242} The final report of the Commission on Responsibilities likewise underscored the fact that the war was “premeditated by the central powers together with their allies, Turkey and Bulgaria, and was the result of acts deliberately committed in order to make it unavoidable.”\textsuperscript{243} The Commission then linked these premeditated designs with the wartime perpetration of “barbarous methods in violation of the established laws and


\textsuperscript{235} For evidence that the organizers of the Turkish Military Tribunal were likewise intent on exacting punishment for the crimes committed against the Armenians before the trials were jettisoned by the ascendant Kemalists, see Dadrian, \textit{The Documentation}, \textit{supra} note 234, at 551-52; and Dadrian, \textit{The Naim-Andonian Documents}, \textit{supra} note 106, at 342, 358 n.111.

\textsuperscript{236} See \textit{supra} text accompanying notes 2-4.

\textsuperscript{237} See \textit{supra} note 233, § 590, at 490–91 (discussing Commission report noting actions by Central Powers that violated “elementary laws of humanity”); Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities, Conference of Paris, Violation of the Laws and Customs of War 25 (Carnegie Endowment for International Peace, Division of International Law, Pamphlet No. 32, 1919) [hereinafter Reports] (recommending trial of persons alleged to be guilty of “offences against the laws and customs of war and the laws of humanity”).

\textsuperscript{238} Nuremberg Charter, art. 6(c), reprinted in Bassiouni, \textit{supra} note 212, at 18–33.

\textsuperscript{239} See Bassiouni, \textit{supra} note 212, at 710.

\textsuperscript{240} See Nuremberg Charter, art. 6(o), reprinted in Bassiouni, \textit{supra} note 212, at 24–28.

\textsuperscript{241} See Takvim-i Vecayi, No. 3540, at 4 (May 5, 1919) (date of sentence rendition).

\textsuperscript{242} See Takvim-i Vecayi, No. 3604, at 218 (July 22, 1919) (date of sentence rendition).

\textsuperscript{243} Reports, \textit{supra} note 237, at 11.
customs of war and the elementary laws of humanity."²⁴⁴ The Nuremberg Tribunal went beyond these affirmations, however, and paved the way for the description of crimes against humanity as a supreme offense under international law, treating it as subsidiary to common and uncommon types of war crimes and part of the law binding nations.

The historical roots of this development, with particular reference to the nineteenth-century Armenian Question, deserve to be emphasized once more. When British Foreign Secretary Grey decided, after some hesitation, to join his French and Russian colleagues in endorsing the May 24, 1915, public warning against Turkey regarding a new wave of Armenian massacres, he "saw the threat of punishments as a continuation of nineteenth-century policies against Turkish atrocities."²⁴⁵ Even more significant, Sir Hartley Shawcross, the British Chief Prosecutor at Nuremberg, singled out the Armenian case as the basis of the Nuremberg law on crimes against humanity. Quoting Grotius for the view that intervention is justified when atrocities are perpetrated by dictators against their own subjects, he declared: "The same view was acted upon by the European Powers which in time past intervened in order to protect the Christian subjects of Turkey against cruel persecution. The fact is that the right of humanitarian intervention by war is not a novelty in International Law . . . ."²⁴⁶ This argument was preceded by his analysis of the limits of state sovereignty in relation to international law:

Normally International Law concedes that it is for the State to decide how it shall treat its own nationals; it is a matter of domestic jurisdiction . . . . Yet International Law has in the past made some claim that there is a limit to the omnipotence of the State and that the individual human being, the ultimate unit of all law, is not disentitled to the protection of mankind when the State tramples upon his rights in a manner which outrages the conscience of mankind.²⁴⁷

VI. CONCLUSION

This Article has attempted to trace the conditions—historical and legal—under which the genocides of the Armenians and the Jews have convergent and divergent features. The convergence attaches to the commonality of their genocidal fate, the divergence to the outcomes of the two genocides for the perpetrators: impunity in the case of the Armenians and punishment in the case of the Jews. In examining the convergence feature, it was established that the sustained vulnerability of the two victim

²⁴⁴. Id. at 19; see also 2 Garner, supra note 233, § 590, at 490.
²⁴⁶. Schwelb, supra note 4, at 198-99 (quoting H.M. Stationery Office, Speeches of the Chief Prosecutors at the Close of the Case Against the Individual Defendants, Cmd. 6964, at 63-64 (H.M. Attorney-General, 1946)).
²⁴⁷. Id.
groups (throughout their long histories, but especially in modern times) played a major role in their genocidal fate. That vulnerability was essentially a function of the minority status of both peoples. Devoid of access to the resources of power in their respective socio-political settings, they remained hostage to the inequities and associated legal disabilities imposed upon them by dominant groups with full access to the resources of political and military power—a power that was endemic in the state organizations with which they were identified and in which they held sway as members of the dominant group. Thus, statutory powerlessness was a major factor in the escalation of victimization. Closely associated with this factor was the latitude given by world inaction, which enabled the perpetrators to activate and develop their embryonic schemes involving Final Solutions to the lingering Turkish-Armenian conflicts, on the one hand, and German-Jewish conflicts, on the other. These opportunities, in both cases, issued from arrays of emergencies and exigencies generated by two global wars. In both instances two monolithic political parties precipitated the two wars in pursuit of agendas reflective of party ideologies and desiderata, and for which purpose they ultimately subverted the functions of the governments of which they had gained total control. The wartime opportunities accruing to the executive branches of the two governments thus became opportunities for the leaders of the two parties, who had suspended the respective parliaments and ruled the two countries by executive decrees and fiats as substitutions for constitutional law. In both cases, the victim populations were declared internal foes in a blanket, indiscriminate effort at vilification and disenfranchisement. The fact that neither the Jews nor the Armenians had parent states to counteract or deter these attacks critically amplified their vulnerability as targets for Final Solutions.

When one probes another aspect of the similarities between the two cases—namely, the fact that, like the genocide of the Armenians, the genocide of the Jews was not prevented—political and legal determinants come to the fore. Foremost among these is the specter of impunity looming large in the landscape of the Armenian genocide. Although the enormous significance of this impunity (and its insidious impact upon subsequent genocides, especially the Jewish Holocaust) largely has been ignored by most legal scholars, Canadian international law expert David Matas has concluded that:

Because the perpetrators of the Armenian genocide were not prosecuted, the Nazi-organized Holocaust against the Jews became possible. There is a direct linkage between the failure to prosecute the crimes against humanity before World War II and their commission during World War II.

This failure did not occur because there was no offense or because there was no jurisdiction. Both existed, and still the prosecutions did not occur. This reluctance to act, in spite of the offense and in spite of the jurisdiction, made the Nazis more brazen
and the Holocaust more likely.\textsuperscript{248}

This diagnosis is confirmed by none other than Albert Speer, one of Hitler’s most trusted ministers, who was in charge of the German armament industry and was a dedicated Nazi. After his conviction in Nuremberg on charges of “war crimes” and “crimes against humanity”\textsuperscript{249} and some pondering in Spandau prison (he received a sentence of twenty years), he expressed chagrin that the victorious Allies failed to exact punishment after World War I and war criminals were thereby rewarded. Such punishment “would have encouraged a sense of responsibility on the part of leading political figures if after the First World War the Allies had actually held the trials they had threatened.”\textsuperscript{250} It is equally noteworthy that the unpunished Armenian genocide was itself the consequence of impunity attending several massacres in the decades preceding World War I. As legal scholar Philip Marshall Brown observed at the time, “the terrible massacres . . . in 1895 and 1896 . . . were the precursors of the general policy of extermination adopted later by the Young Turks.”\textsuperscript{251}

In addition to the general knowledge of the impunity following the Armenian genocide, ancillary factors reinforced Hitler’s propensity to emulate that genocide. A number of his associates, especially his trusted confidant in the early days of the Nazi movement, von Scheubner, had ample knowledge of the conditions surrounding the Armenian genocide, including familiarity with the thinking of the Young Turk decisionmakers, the organization of the mass murder, and the mechanics of implementation. Moreover, the legacy of Genghis Khan not only stimulated Hitler but reinforced the historical legacy that emerges as a connecting link between the two genocides: some of the Young Turk perpetrators themselves felt a strong affinity for Genghis Khan, and he was held in high esteem by many nationalist Turkish elites at the time.

Many factors combined to perpetuate the established patterns of inaction and impunity regarding the incidence of episodic massacres in modern history, in particular the cycle of the notorious “Armenian massacres.” Foremost among these were the rival covetousness of the Great Powers in terms of economic rapaciousness, colonialism, and imperialism that paralyzed or seriously impeded joint initiatives. Such initiatives might well have served as antidotes to impending or ongoing instances of mass

\textsuperscript{248} Matas, \textit{supra} note 125, at 104. A similar view is expressed by the historian Howard M. Sachar: “[T]he genocide was cited approvingly twenty-five years later by the Führer . . . who found the Armenian ‘solution’ an instructive precedent . . . .” \textit{Howard M. Sachar, The Emergence of the Middle East: 1914-1924}, at 115 (1969).

\textsuperscript{249} See Bishop, \textit{supra} note 96, at 1017.


murder, or as punitive strikes against the perpetrators in the aftermath of the crimes. Another consideration relates to the absence of the proper machinery by which to administer retributive justice internationally rather than nationally.

In Nuremberg, all these impediments were effectively obviated on the basis of a rule of international law enunciated by the Allies in connection with the World War I mass murder of the Armenians but which, for all practical purpose, had been ignored at the end of World War I. That rule concerned the legal norm of "crimes against humanity." The application of this rule countered arguments that the prosecution and punishment of the Nazis was an exercise of power over a defeated enemy and hence was merely a form of victor's justice. Moreover, the creation of the Charter and the vigorous defense of its terms and stipulations by the prosecutors and many international law experts effectively refuted the assertions of victor's justice. The Charter served as a matrix for the development of a machinery of retributive justice that set new standards of international jurisprudence and international justice. This is reflected by the international community's adoption of the subsequently promulgated U.N. Convention on the Prevention and Punishment of Genocide. None of these innovations could have been achieved without a condition that was patently wanting in the aftermath of the Armenian genocide: a modicum of unison among the victors, despite serious political and ideological disparities between the three Western allies (the United States, Great Britain, and France), on the one hand, and the Soviet Union, on the other. That unity was present to some extent when the Allies signed the Sèvres Treaty on August 10, 1920, several articles of which provided for retributive justice to be administered against the Turkish perpetrators. As a principal legal authority on this issue declared,

[The provisions of Article 230 of the Peace Treaty of Sèvres were obviously intended to cover, in conformity with the Allied note of 1915 [the May 24, 1915 declaration] referred to in the preceding part, offences which had been committed on Turkish territory against persons of Turkish citizenship, though of Armenian . . . race. This article constitutes, therefore, a precedent for Articles 6(c) and 5(c) of the Nuremberg and Tokyo Charters, and offers an example of one of the categories of "crimes against humanity" as understood by these enactments.252]

The success of Nuremberg, however, should not obscure the ever-present dangers that led to the failure of international law during the Armenian genocide. Given the nature of genocide, the practical problems attending the enforcement of legal sanctions are issues that continue to render questionable the viability of efforts at deterrence. Nor is there any great likelihood that future initiatives at retribution will benefit from the degree of consensus among the participating states at Nuremberg. The Nazi

252. WAR CRIMES COMM’N, supra note 3, at 45.
crimes were too extensive, the victim categories too numerous, and the resulting devastation too cataclysmic to permit the intrusion at Nuremberg of even consequential disagreements among the Allies. Most important, many of the nations participating in the judicial prosecution of Nazi crimes were, next to the Jews, the principal victims of Nazi atrocities. It is appropriate to wonder whether the victorious Allies would have contemplated, let alone instituted, war crimes trials at all if the Jews and the Gypsies had been the sole victims of the Nazis. As Holmes commented, there is no substitute for lived experience as an impetus for lawmaking.\(^\text{253}\)

In assessing the future tasks of national and international law as they relate to genocide as a crime, the fundamental and universal mission of law must be underlined. That mission is to restrain human behavior through a system of legal sanctions. The negative assumption about the human potential for criminal acts implied by this view was cogently articulated by Aristotle some twenty-three centuries ago: “When separated from law and justice man is the worst of all animals.”\(^\text{254}\) In the absence of such legal sanctions, however, the concept of criminal behavior is bound to be diluted in the minds of offenders.\(^\text{255}\) As Bassiouni continues to insist, “the time has come for an international criminal court.”\(^\text{256}\) Such a Court would be the logical extension of the legacy of the Nuremberg Tribunal, enshrining the legal norm of crimes against humanity by not only codifying it as an international penal law but also effectively administering it. Time and unfolding events will show whether the civilized world will have the requisite forethought to preserve the legacy of Nuremberg by establishing a permanent International Criminal Court.

Meanwhile, humanity can ill afford to lose faith in the civilizing mission of the law that, according to Lord Bryce, who (together with Toynbee) compiled the most massive documentary volume on the Armenian genocide, is “the only thing which stands between us and primitive savagery.”\(^\text{257}\) The two major genocides of the twentieth century attest to the dismal failure of the rule of law and to a reversion to barbarism. It is a lapse that, theoretically, bodes ill for the future of humanity. Notwithstanding, there is reason to maintain faith in the enduring value of the rule of law. Commenting on the atrocities committed during World War I, the contemporary British expert on international law, Sir Frederick Pollock,

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254. Aristotle, Politics, bk. 1., ch. 2, at 6 (Benjamin Jowett & Thomas Twining trans., 1859).

255. For further analysis of this problem, see Dadrian, supra note 70, at 386-87 (analyzing problem in context of discussion on the dynamics of impunity).

256. Bassiouni, supra note 5, at 1.

257. Garner, supra note 233, § 595, at 504.
stated: "Law does not cease to exist because it is broken or even because for a time it may be broken on a large scale."\textsuperscript{258}