

Dirk Moses, “The Problems of Genocide”

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Genocide scholar Dirk Moses (Frank Porter Graham Distinguished Professor of Global Human Rights at the University of North Carolina), outlined the case for why genocide is a problematic concept in international law. The term began to trouble him as an Australian who pondered whether to define the victimization of its indigenous population as genocide but found the concept too narrow to fit the crimes of its colonial government. Given the Holocaust as the paradigmatic case, very few events actually meet the genocidal standard despite many episodes of civilian destruction on a mass scale. To illustrate the point, Moses highlighted the fate of a Yemeni family killed by a Saudi missile attack. According to legal rationales, the members of this Yemeni family were collateral damage of a military objective and not genocide victims because the intent was to defeat rather than to destroy their community.

In his book, *The Problems of Genocide: Permanent Security and the Language of Transgression*, Moses shifts the analysis of mass violence to favor the perspective of civilian victims. According to security logic, innocent victims killed in a political context, such as a civil war or rebellion, are deemed legitimate according to international law even if their deaths occur on a vast scale. While genocidal logic sees victims persecuted on the basis of their identity, like the Jewish victims of the Holocaust, as exemplary. According to this view, Germany targeted Jews on the basis of Nazi ideology and not because they were involved in a political struggle. By contrast, the Yemeni family is viewed as “vicariously guilty” because they are connected in some way to

an armed insurgency. Global opinion not only tolerates these deadly attacks but normalizes conditions of permanent warfare that are unlike the concentrated timeframe of genocidal events.

While genocide is a relatively new idea within international law, it builds on language that dates back to the period of European conquest in the 1500s. Massacres and the brutal exploitation of indigenous people in the context of colonization were said to “shock the conscience of mankind.” In coining the term genocide, Rafael Lemkin simplified phrasing that developed over centuries to condemn state sponsored slaughter and coercive labor. As a Polish Jew seeking to deploy international law to punish Nazi crimes, Lemkin formulated the term genocide quite specifically as a legal response to ethnic hatred and the plight of internal minorities. The Nuremberg Trials preferred crimes against peace, crimes against humanity, and war crimes to prosecute senior Nazis. Unfortunately, these proved imperfect as legal remedies since they failed to address Nazi crimes that occurred before 1939, which led the UN General Assembly to introduce a resolution calling for a Genocide Convention.

The 1948 Genocide Convention raised the threshold for “what shocks the conscience of mankind” as the Holocaust came to dominate the language of transgression. Adopting a narrow definition of genocide, closely tied to the Holocaust, was in the interest of the allies as they were eager to avoid criminalizing an array of state behaviors that were taking place in the post-war period. These included ethnic cleansing, cultural destruction, putting down colonial rebellions, and suppressing uprisings. The archives demonstrate that American diplomats were also extremely conscious of the danger of bringing attention to Jim Crow laws and lynching.

Moses concluded his talk with an argument for replacing the term genocide with wording that has a more expansive framework. Such a change would better address the “forever wars” that have normalized the constant killing of civilians. In his view, the logic for these endless conflicts is the idea of permanent security that leads states to rationalize actions that imperil innocent populations such as the Rohingya in Burma or the Uighurs in China. Governments that use preemption and state excess to ensure absolute security are guilty of a crime that Moses identifies as “illiberal permanent security.” In his view, international law should also punish “liberal permanent security” that permits actions carried out in the name of humanity and by means of international law, such as blockades, bombings, and sanctions that result in civilian deaths. The terminology Moses proposed provoked a lively discussion from a large zoom audience that included students, scholars, and individuals from around the world.

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