THE RACIAL BOUNDARIES OF GENOCIDE

// AS FRONTEIRAS RACIAIS DO GENOCÍDIO

Ana Luiza Pinheiro Flauzina

>> ABSTRACT // RESUMO

This article discusses the Eurocentric features of international criminal justice in the characterization of genocide and consequent denial of the genocidal victimization of black communities in the Diaspora. This dynamic is largely sustained by the symbolic overlap of genocide as a general category and more specifically as it was exacted the Holocaust, which positions the violation of European bodies as a unique expression of terror and dismiss the expressions of black suffering from the protections of international justice. // Este artigo discute as características eurocêntricas da justiça penal internacional na caracterização do genocídio e na consequente negação da vitimização genocida das comunidades negras na Diáspora. Esta dinâmica é amplamente sustentada pela sobreposição simbólica entre o genocídio como uma categoria geral e o Holocausto, sinalizando padrões históricos que situam a violação de corpos europeus como uma expressão única de terror e desconsideram as expressões do sofrimento negro nos preceitos da justiça internacional.

KEYWORDS // PALAVRAS-CHAVE

>> Genocide; Racism; Black Diaspora; International Criminal Justice; Holocaust. // Genocídio; racismo; Diáspora negra; justiça penal internacional; Holocausto.

>> ABOUT THE AUTHOR // SOBRE O AUTOR

Doctor of Juridical Science (SJD), American University Washington College of Law. // Doutora em Direito pela American University Washington College of Law.

1. INTRODUCTION

The United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide on December 9, 1948, as a direct response to the Nazi policies responsible for the extermination of more than six million Jews during World War II[1]. Genocide is defined in article II of the Convention, which reads:

> *In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*
> *Killing members of the group;*
> *Causing serious bodily or mental harm to members of the group;*
> *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
> *Imposing measures intended to prevent births within the group;*
> *Forcibly transferring children of the group to another group*[2].

The formulation of an international instrument that could prevent and punish the practice, which Winston Churchill called a "crime without a name," was guided by the necessity to affirm the right of a human group to exist, thus confronting the social and physical destruction of the Holocaust. This perspective was officially declared in United Nations Resolution 96 (I) that was adopted on December 11, 1946. Resolution 96 (I) asserted that:

> *Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United nations. Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part. The punishment of the crime of genocide is a matter of international concern.*
> *The General Assembly, therefore, Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices — whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds — are punishable*[3].

The criminalization of genocide was inspired by the primordial notion that human groups should be physically and culturally preserved. Despite its humanitarian purpose, the Convention was conceived during a long series of debates expressing the strategic political interests of the nations involved[4]. After its adoption, the importance of this legal instrument to the international human rights field was not sufficient to absolve it from criticism, particularly with regard to its objective capacity to prevent and punish genocide.

After more than sixty years of scrutiny by the international legal and social communities, the definition of genocide remains the same as it was articulated in 1948 Convention and has been incorporated verbatim into the statutes of the *ad hoc* criminal tribunals and the International Criminal Court (ICC).

The current discussions on the limits of the Genocide Convention stem from a history of controversy about the meaning of genocide that has existed since its conceptualization. The implicit dialogue that accompanied the more exposed debates - such as the characterization of *mens rea*, the categories of groups to be protected, the doubts about cultural genocide, and the dilemma of enforcement, among others - is one about the social and political groups that could be potentially affected. In short, the question of the definition of genocide was, and still is, connected to the concern of whether individuals - as a symbolic representation of their nations and social groups - will be held responsible for the crime.

To adequately explore this issue, one must first recognize that genocide is a category that does not belong exclusively to the self-centered circles of law. In reality, the apparent solid ground established by the Genocide Convention is a sensitive terrain of political disputes where the very notion of genocide and the correlated issues raised by the criminalization of the practice are in contention. This history of controversy can be traced back to the very process of conceptualizing genocide and the subsequent drafting of the Genocide Convention.

2. CONCEPTUALIZING GENOCIDE: BETWEEN POLITICAL WILLS AND LEGAL LIMITATIONS

Raphael Lemkin, a lawyer of Jewish descent, born in Imperial Russia known today as Belarus, was the first author to develop a concept of genocide. In his 1944 publication, *Axis Rule in Occupied Europe*, Lemkin analyzed the legal framework of the Nazi occupation in Europe and coined the term genocide to represent that scenario of violence[5]. From an intellectual standpoint, Lemkin was part of the long philosophical tradition that held the question of the morality of European colonization as one of its main concerns since the invasion and domination of the Americas in the sixteenth century[6]. Developing his research within this framework, Lemkin devised a concept of genocide that was intrinsically associated with colonialism[7]. As he states in *Axis Rule in Occupied Europe*:

> *Genocide has two phases: one, destruction of the national pattern of the oppressed group: the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain, or upon the territory alone, after removal of the population and the colonization of the area by the oppressor's own nationals.*[8]

Following this line of reasoning, Lemkin's notion of genocide is the result of a reflection on German colonialist and imperialist impulses that

were historically experienced in several different contexts. As Andrew Fitzmaurce explains, Lemkin "was trying to read the colonial past from the perspective of European present"[9]. For him, the method applied by the conquerors to subjugate the locals and transplant populations during the colonization process in the Americas was guided by the same principles that oriented the execution of modern forms of genocide like the Holocaust[10].

Lemkin's central concern regarding the violent actions he described as genocidal was "their threat to existence of a collectivity and thus to 'the social order' itself"[11]. This original idea of genocide was associated with the perception of broad social destruction, which had as important elements direct killings and cultural, economic, and political assaults on the target groups[12]. As Lemkin points out:

> *Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all the members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of cultural, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is direct against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.*[13]

Considering the multiple dimensions of assaults that together constitute genocide in Lemkin's original formulation, it appears that this definition conceals an essence that is not fully captured by the Genocide Convention's traditional analysis[14]. For him, the content to be protected by this new international legal instrument was the social, economic, cultural, and political destruction of the collectivity[15].

Instead, the broad idea of genocide developed by Lemkin had to be adjusted to penetrate the legal domain. The first draft of the Genocide Convention, initially authored by Lemkin, was rejected by the General Assembly in 1947[16]. The draft's language expressed genocide as connected to the direct killing of and the systematic assault on the general structures of the target group's social life[17]. The definition of genocide in the terms proposed by Lemkin was considered too wide and a potential source of harm to sovereignty[18].

In the following year, the General Assembly designated an *ad hoc* committee to prepare a new draft of the Genocide Convention[19]. The delegates struggled to develop a document that could incorporate the fundamental principles of the alleged "right of a human group to exist as a group", considering the political tension among the countries. The United States and the Soviet Union were especially diligent in ensuring that their practices would not be identified as genocide[20].

Among the most debated issues were the inclusion of political groups in the list of groups protected by the Convention and the matter of cultural genocide[21]. With respect to the inclusion of political groups, the Sixth Committee decided that political and social groups should not be included as subject to protection because belonging to such a group, in opposition to a race, religion, ethnicity, or nationality, was a matter of individual choice[22].

In contemporary debates, while some authors consider the formal inclusion of these groups in the Genocide Convention unnecessary because they are protected by other human rights and humanitarian laws, many consider that "the failure to protect political and social groups constitutes the 'Genocide Convention's blind spot"[23].

Regarding the issue of cultural genocide, the initial understanding of the Sixth Committee was that the Convention should protect physical and cultural genocide because both represent a threat to the existence of a group[24]. However, some countries, such as the United States, were uncomfortable with the proposed language that included cultural genocide[25]. Lemkin, who was present during the debates, insisted on the necessity of this important feature of the crime in the document[26].

After defending the idea in two drafts, Lemkin finally gave up on its explicit insertion in the Convention due to the apparent lack of support[27]. In the final draft, the argument that cultural genocide should be considered in a supplemental convention prevailed under the proposition that the 1948 Genocide Convention addressed only the most "serious" forms of genocide[28].

For some, the exclusion of cultural genocide from the legal definition has compromised the very understanding of what genocide is and has allowed the perpetration of uncensored genocidal practices[29]. Analyzing the specific role of the United States, Ward Churchill affirmed that:

> *For starters, the American initiative in excluding the entire criteria of cultural genocide from the 1948 legal definition has so confused the matter that both academic and popular understandings of the crime itself- never especially well developed or well rooted – have degenerated to the point of synonymy with mass murder. This has facilitated the continuation – indeed, intensification – of discriminatory policies against America's "domestic minorities" throughout the 1970s and `80s, and on into the `90s. It has also masked the fact that much of what the United States has passed off as "developmental" policy in the Third World, entailing as it does the deliberated underdevelopment of the entire region and emulsification of its "backward social sectors", is not only neocolonial in its effects but patently genocidal (in Raphael Lemkin's sense of the term).*[30]

In reality, the decision to exclude these important aspects of genocide from the final document was primarily based on the political concerns of states over the possibility that the Genocide Convention could target their actions[31].

The Soviet Union considered the issues of political groups and socio-economic exploitation to be sensitive matters[32]. The United States viewed

the issue of cultural genocide as associated with the continuous assaults on Native Americans with great suspicion[33].

What is clear in view of the controversy is that the delegates were framing genocide to limit the original fundaments of the protection to the structural lives of the target groups proposed by Lemkin[34]. There was a noticeable effort to restrict the definition of genocide to the most explicit element of the crime — mass murder with an express intent[35].

If the rhetoric to justify the restraint of the capitulation of the crime was based on claims of legal appropriation, then the narrowing genocide definition in the Convention reflected multiple concerns over the extension of its applicability.

Yet not defined in its original version, the final document approved by the General Assembly in 1948 maintained the essential meaning of the protection of the right of a group to exist as such as proposed by Lemkin[36]. Interestingly, although reducing the scope of recognition for genocide and allegedly reformulating what was considered broad to a more precise definition, the Convention is often characterized as an instrument with "ambiguous and frequently misunderstood provisions"[37] and receives considerable criticism in the legal sphere. Moreover, the challenges posed by the concrete prevention and punishment of genocide under the terms established by the Convention have also been a recurrent source of debate.

Even after the establishment of key international tribunals, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which are generally considered to be important advances in the confrontation of the crime, criticism is still constantly adressed at the Convention itself and the overall response to genocide.

Considering this panorama, it is apparent that the absence of legal consensus over the scope of genocide and the situations that should be evaluated within its framework along with the lack of political volition by states to comply with their legal and moral obligations to prevent and punish the crime have become central issues.

This delicate balance between strict legal demands and political concerns has set the tone for discussions over the features of the crime from the broad intellectual approaches of genocide field studies to the "technical rulings" in international tribunals. If the controversies over the plain text of the law receive a considerable amount of intellectual and juridical analysis, proving the complexity of the theme, the claims of social groups throughout the world wanting access to the Genocide Convention as an effective legal instrument to address their specific issues adds yet another piece to this already challenging puzzle.

3. THE DISPUTES ABOUT GENOCIDE

The delicate equations in international criminal law gain complexity in the worldwide phenomenon of the use of genocide as a slogan to

denounce violence. Some argue that activists' claims that consider issues like drug distribution, manufacturing nuclear weapons, birth control and abortion policies to be forms of genocide are often more debated than the "real" genocidal atrocities[38]. Helen Fein calls attention to the fact that in the 1960's and 1970's several genocide cases did not have an impact on the international community:

> *Between 1960 and 1979 there were probably at least a dozen genocides and genocidal massacres- cases include the Kurds in Iraq, southerners in the Sudan, Tutsi in Rwanda, Hutus in Burundi, Chinese and "communists" (...) in Indonesia, Hindus and other Bengalis in East Pakistan, the Aché in Paraguay, many peoples in Uganda, the people of East Timor after the Indonesian invasion in 1975, many peoples in Kampuchea. In a few cases, these events stirred public opinion and led to great campaigns in the West (as did allegations of genocide during the Nigerian civil war) but in most cases, these acts were virtually unnoted in the Western press and not remarked upon in world forums.*[39]

There are important questions that must be posed to understand this, at the very least, contradictory scenario. First, what is the reason of emphasis on genocide? Why is this specific crime used by activists worldwide to describe violent social contexts and practices? Second, if one takes into consideration the episodes seriously considered as genocide by experts, why are so few accepted as such from the legal perspective? And third, on what basis does international criminal law deal with the recognition of genocide?

3.1. GENOCIDE CLAIMS AND THE HOLOCAUST STANDARD

The fact that social activists and scholars use genocide to define violent and discriminatory practices, from sterilization to imprisonment, from torture to a lack of health care, is often subject to criticisms that consider this a political misuse of the term[40]. These claims tend to be interpreted as passionate and irrational attempts to call the attention of the international community to relevant human rights violations that are far from rising to the level of genocide.

Rather than supporting the commonplace use of genocide as a political term to denounce social violations as a negative process, it may be important to perceive this phenomenon as an informative one. After all, what does it say about genocide? What are these claims telling us about this crime, both materially and symbolically? What are people aiming to conquer when they establish the comparison of a social context of violence with genocide?

To answer these questions, one must understand what the recognition of genocide afforded social groups that had their tragedies acknowledged as such. With respect to the political disparities in the international context regarding the degree of censorship yielded to the different scenarios of genocide, the Holocaust remains the most paradigmatic case to be analyzed.

In fact, the Holocaust has become the standard as it is the most well known and politically recognized instance of genocide, and the one with which others are compared to discern the minimum political requirements for a genocide claim. Yet it is the occurrence with which no other human tragedy can compare given its alleged unique status.

The question of why genocide is such a recurrent term employed to describe human rights violations is connected to the political response to the Holocaust in terms of punishment and reparation policies. What intellectuals and activists aim to achieve with the characterization of certain forms of social and institutional violence as genocide is the moral and legal degree of censorship that was accorded to the Holocaust.

Here, it is important to consider that, in terms of the more immediate consequences, the legal recognition of the Holocaust was able to stop violations against the targeted minorities and punish the perpetrators of the crime, albeit in a distorted and symbolic way.

In a broader sense, the international moral acknowledgement of the Nazi extermination practices guaranteed the implementation of reparation policies, such as the preservation of the memory of the tragedy and pecuniary restitution to the victims. From this perspective, genocide as a political category is disputed as a symbolic instrument able to produce material responses in a world order where the indifference to human tragedies is the great obstacle to be overcome.

Even though the Nuremberg Charter did not have the United Nations (UN) Genocide Convention as a formal resource to charge the individuals responsible for the Jewish extermination policies, it was in the indictment of October 8, 1945, against prominent Nazi criminals that the term genocide debuted in an international document[41].

If the approval of such paradigmatic Convention was the first of several international political responses to the Holocaust, no one can deny the irony that the charges of genocide are not legally attached to the Nazi extermination activities.

Yet, even though other cases of genocide were recognized, the Holocaust remains the universal paradigm, from the ostensible media productions on the topic to the current discussions on intent in the *ad hoc* tribunals and the International Criminal Court.

The fact that genocide and the Holocaust have no legal boundaries in terms of the formal application of penalties does not interfere with the symbolic capital that enabled the effective political response to the crime, creating space for reparation policies that go far beyond the limited sphere of international criminal law.

After all, the Holocaust is the event that made the U.N. Convention politically viable and has since become the one that most effectively extracted practical consequences from the international legal instrument.

The punishment of the perpetrators of the Holocaust and the subsequent reparation policies are considered remarkable accomplishments with respect to both moral and legal human rights consciousness after World War II. Among the most well known reparations is the economic restitution to the victims derived from class action suits in the U.S.

In the mid-1990's, several private civil law suits were filed in U.S. courts on behalf of Nazi victims against businesses and the Swiss, German, French, and Austrian governments[42]. Thus far, the suits have resulted in more than $8 billion to be shared by the Holocaust victims. The case involving the Swiss banks in 1998 was settled for $1.25 billion[43]. The procedures for the trial and the effective payment of the victims were indisputably challenging, resulting in an important corpus of jurisprudence that Morris Ratner and Caryn Becker best describe:

> *The Swiss bank case is the only major Holocaust case that was fully resolved through a private class action and not through an international agreement. Chief Judge Edward R. Korman of the Eastern District of New York, the presiding federal judge, extended the American court's jurisdiction over a worldwide class of victims and targets of Nazi persecution for the purpose of resolving all claims against Swiss banks and other Swiss entities in one proceeding. Judge Kroman oversaw an incredibly detailed and extensive worldwide notice plan (including a multi-million-dollar publication program, direct mail to survivor lists and support groups, and grass-roots community outreach) and appointed a Special Master to develop a plan for allocating the settlement funds among the many different types of class members. After holding hearings in both New York and Israel, he issued an order approving, first, the settlement and then, later, the Plan of Allocation. The Second Circuit upheld both orders. The lesson from these cases in the U.S. courts can effectively provide forum for resolving these kinds of extraordinary historical wrongs.*[44]

To achieve this outcome, the political articulation of social organizations and institutional forces was crucial. The media, the executive and legislative branches, and several grassroots organizations provided the indispensable environment, based on the moral legacy of the Holocaust, to pressure the Swiss banks to settle after a great deal of resistance.[45]

A good example of this dynamic was the so-called "rolling sanctions" that were specifically designed to pressure the Swiss banks into agreeing to the terms proposed by the Holocaust victims' lawyers. The sanctions stated that:

> *(1) if a settlement was not reached by September 1998 the New York State and city comptrollers would stop depositing their short-term investments with the Swiss banks and would bar Swiss banks and investment firms from selling state and city debt;*
> *(2) if a settlement still was not reached by November 1,1998, private investment managers investing for the state and city would be instructed to cease trading through Swiss firms; and*
> *(3) finally, other unspecified sanctions would follow if the matter was still pending.*[46]

In August 1998, a month after the sanctions were publicized, the Swiss banks capitulated[47]. In 2001, several cases against German corporations, insurance companies, and banks were dismissed as the result of the

establishment of the German foundation "Remembrance, Responsibility and the Future" that holds $5 billion for the compensation of Holocaust victims[48]. Also in 2001, a billion dollar Austrian foundation responsible for providing restitution to Holocaust victims was established in response to the pressure generated by the litigation in the U.S against Austrian banks that resulted in a $40 million settlement in 1999[49].

All these cases demonstrate the incredible mobilization power of the Holocaust as a genocide incident with great international recognition. The status of Holocaust victims allowed the unprecedented success of restitution litigation targeting the profits of banks, corporations, and insurance companies that were generated by slavery and forced labor, among other wrongs, such as the retention of Holocaust victims' money by the banks after the end of the war.

Aside from the condemnation of the extermination practices executed by the Nazis in the criminal sphere, there is also the perception that the exploitation of human beings as slaves is immoral, illegal, and should be compensated. This is an impressive exception in modern history that has otherwise used extermination and labor exploitation as essential tools to enrich and impoverish countries and peoples without moral or legal censorship[50].

It is also worth noting that in the interface of symbolic and material grounds, the criminalization of the denial of the Holocaust in some countries is a very important feature of the response to the Holocaust. The criminalization of Holocaust denial is one important aspect of the political responses to the Jewish genocide. It is important to remember that in the years following the end of World War II, a process of disqualification of the Holocaust was promoted by important public figures[51].

The assault on the memory of the Holocaust would begin on European soil with publications such as *Le Passage de la Ligne* by Paul Rassinier and *Nuremberg ou la terre promise* by Maurice Bardeche in 1948 and would be rapidly replicated by preeminent anti-Semitist intellectuals, especially in the United States[52].

Beginning in the 1950's, scholars such as Austin J. App, David Leslie Hoggan, Arthur Butz, Richard Verrall, David Irving and many others disseminated works that questioned the existence of the Nazi policies and, most importantly, the massive extermination of Jews during World War II[53].

Among the most aggressive attempts to discredit the Holocaust is *Did Six Million Really Die?*, written by Richard Verrall. In his book, Verrall claims that the predominant narratives of the Holocaust are "atrocity propaganda"[54] and add to "a growing mythology of the concentration camps and especially to the story that no less than Six Million Jews were exterminated in them"[55].

Moreover, Verrall argues that the exaggerated portrayal of the tragedies of the Holocaust serve as blackmail in favor of the Jewish community which "emerged from the Second World War as nothing less than a triumphant minority."[56]

This perspective, disseminated by key anti-Semite individuals and right-wing organizations primarily in the 1970's, would become the

theoretical foundation for the establishment of one of the most important organizations focused on the denial of the Holocaust in the United States—the Institute for Historical Review (IHR), founded by Willis Carto and William McCalden in 1978[57]. The IHR became an international reference for Holocaust deniers and created a platform through the *Journal of Historical Review* that aimed to build academic credibility for denial literature.[58]. Furthermore, it sponsored international conferences and used the media to foment distorted perceptions of the Holocaust to the general public.

Naturally, the systematic discrediting of and assault on the memory of this tragedy caused outrage within the Jewish community and the general public. From an intellectual standpoint, several authors, including Deborah Lipstadt, Gill Seidel, and Kenneth Sterns, are recognized in the genocide field for their groundbreaking contributions challenging the Holocaust denial framework[59]. From a legal perspective, Holocaust denial has promoted direct responses vis-à-vis the recognition of the suffering of the victims and the violation of the tragedy's memory.

The decades of 1970, 1980, and 1990 were marked by trials in several countries, including Canada, the U.S, Germany and France against individuals who were considered Holocaust's deniers. In his book *Holocaust Denial and the Law*[60], Robert Kahn explores the legal and political aspects of the prosecutions, considering the differences between the civil and common law jurisdictions.

Regardless of the differences in legal systems, what is important to retain from the debate on the criminalization of Holocaust denial is the degree of protection that this historic event has achieved. Denying or trivializing the Holocaust is not just an immoral practice, it is illegal in many countries.

The law is there to support historic versions of the past and ensure that the collective memory of a social group is not violated[61]. It is the ultimate recognition that the right of a group to exist is comprised of the right of a group to have a past—a historic narrative that supports collective identity based on cultural patterns, epic episodes, and myths and also by the tragedies shared by the members of a community.

The degree of censorship associated with the denial of the Holocaust indicates an understanding that if the response to genocide in the short term is connected to the criminalization of the perpetrators and the most immediate reparations for the victims, then the long term dispute is about the integrity of the episode, the necessity to remember lives that were lost, and the responsibility that should arise from the extermination practices. History, though, is the great piece in dispute and the Holocaust has been the modern episode able to set the tone of the narratives allowed to circulate in the public sphere.

Considering the symbolic dimensions inscribed in the criminalization of Holocaust denial, one can understand some of the elementary roots of the dispute about genocide as a category claimed by activists and scholars worldwide. In a world where violent episodes motivated by racism constantly take place, the great challenge is to become visible

and to make the local suffering matter. This is exactly what was achieved with the great political recognition of the Holocaust.

Fundamentally, the Holocaust is not just a Jewish problem contextualized in the limits of a European conflict—it is perceived as a human tragedy. It is an episode built on the notion that the violation of social groups cannot be dismissed in the justifications of historic contexts, but must be recognized as harm to humans in general. In a period defined by the extermination of so many people, the extermination of Jews is a harm shared by all.

This is the essential and most important meaning the Holocaust gave to genocide: proving the power of the tragedy in social imagination.

The fact that this historic episode was able to generate so many tangible political responses is the subject of different analyses by scholars of genocide. At the heart of the matter is the debate about the singularity of the Holocaust.

3.2 THE UNIQUENESS DEBATE IN PERSPECTIVE

The controversy over the oneness of the Holocaust began simultaneously with sociological and anthropological interests in genocide. The scientific investigations of genocide, which still are largely produced by scholars with an educational background in the United States, Canada, and Israel, began in the 1970's and grew considerably in the 1980's when inquiries about the Holocaust's uniqueness heated up[62]. The uniqueness debate has since become a central topic in the academic agenda of the genocide studies field.

In the social science fields—philosophy, sociology, anthropology, theology, among others—authors[63] that believe in the uniqueness perspective defend the general idea that the Holocaust has a singular nature that distinguishes it from other cases of genocide[64]. Some common arguments point to the number of victims, the methods and efficiency of execution, and the intent element of the Holocaust as evidence of its unmatched status in the violent context of modernity[65].

Gavriel Rosenfeld, a defender of the Holocaust's uniqueness, explains that this paradigm began as an intellectual tendency that took place during the 1970's and 1980's to confront a scholarly inclination to historicize and politicize the Holocaust. From his perspective, this was a "defensive response to the perceived attempts by others to diminish the event for apologetic or revisionist purposes."[66]

Among the most popular pro-uniqueness arguments are those formulated by Yehuda Bauer and Steven Katz in the 1980's and 1990's, respectively. For Bauer, the Holocaust was an event that deserves a separate designation from genocide given its extreme nature and is therefore "qualitatively different from other cases of genocide."[67]

Katz's harshly criticized approach to the uniqueness argument considers the Holocaust as the only true case of genocide. In his extensive work, *The Holocaust in Historical Context*, first published in 1994, the author aimed to demonstrate how the "holocaust is phenomenologically

unique"[68]. To prove the singularity of the Holocaust, Katz narrows the concept of genocide:

> *For myself, I shall use the following rigorous definition: the concept of genocide applies only when there is an actualized intent, however successfully carried out, to physically destroy an entire group (as such a group is defined by perpetrators). [...] The intention to physically eradicate only a part of a group – in contradistinction to the UN Convention and most alternative definitions proposed by others- I shall not call genocide. [...] Any form of mass murder that does not conform to the definition provided here, though not necessarily less immoral or less evil, will not be identified herein as an occasion of genocide.*[69]

Although both authors have clarified their positions over the years, explicitly acknowledging the suffering of other human groups and even applying different categories to define the Holocaust, such as Bauer's use of *unprecedented* instead of *unique*, it is clear that their understanding of the Holocaust as a special tragedy still remains at the core of their analysis[70].

Attempts to perpetuate the memory of the Holocaust as exceptional are not restricted to the close circles of academic debate. The idiosyncratic nature of the Holocaust is vehemently defended by prominent names in the Jewish community, especially in the United States. They not only consider the Nazi extermination of Jews as unique, but also view any intellectual comparison of the Holocaust to other human tragedies as an expression of anti-Semitism.

According to rabbi Irving Greenberg, the founder of the Holocaust Resource Center and the first director of the U.S. Holocaust Memorial Commission, comparing other genocides to the Holocaust is considered "blasphemous"[71]. Elie Wiesel, holocaust survivor and 1986 Nobel Peace Prize recipient, considered such a comparison a "total betrayal of Jewish history"[72]. In *Denying the Holocaust*, Debora Lipstadt, professor of modern Jewish and Holocaust studies at Emory University, called equating the Holocaust with other historical events an "immoral equivalenc[y]"[73] .

This irreconcilable depiction of the Holocaust as a distinguished tragedy has been widely criticized[74]. A general counter-argument maintains that there are no historical grounds to sustain this assertion[75]. Native American scholars in the United States have developed a consistent corpus of scholarship addressing this issue. Historian David E. Stannard was one of the first intellectuals to challenge the uniqueness concept by taking into consideration Native American genocide during the colonization process. The publication of his book *American Holocaust* in 1992, in which he describes this reality of extermination, began to popularize the expression and naturally ignited the debate about uniqueness[76].

In another important piece published in 2001, *Uniqueness as Denial: the Politics of Genocide Scholarship*[77], Stannard considers the main arguments developed by those who defend the uniqueness of the Holocaust and defies them based on historical and political grounds. Among other

issues, the author analyzes the inconsistencies in the uniqueness argument taking into consideration matters such as the percentage of the population affected by the extermination process[78], the path of the genocidal campaign[79], the means of destruction used by the perpetrators[80], and the question of intent.

Other approaches that criticize the uniqueness perspective highlight the use of uniqueness rhetoric as a political tool serving as a moral justification to dismiss genocide claims. From this standpoint, the uniqueness paradigm poses obstacles to the recognition and confrontation of other genocides. More explicitly, it helps to silence the past exterminations responsible for the very foundation of modern states. In a more discrete and yet effective way, it is used as a symbolic and political shield so that the current genocidal practices can be minimized or neglected. As Lilian Friedberg points out:

> *It is not a matter of oral bookkeeping or of winners and losers in the battle of the most martyred minority. It is not a matter of comparative victimology, but one of collective survival. The insistence on incomparability and "uniqueness" of the Nazi Holocaust is precisely what prohibits our collective comprehension of genocide as a phenomenon of Western "civilization", not as a reiterative series of historical events, each in its own way "unique." It is what inhibits our ability to name causes, anticipate outcomes, and, above all to engage in preemptive political and intellectual action in the face of contemporary experiences.*[81]

In this constellation of political nuances, the insistence on the uniqueness paradigm has as particular consequences the reinforcement of the Eurocentric features of international criminal law and the symbolic overlap of genocide and the Holocaust.

3.3. NEGLECTING BLACK SUFFERING: THE SYMBOLIC IMPACT OF CRIMINALIZATION

To capture the limits imposed on the recognition of genocide given the legislative restrictions and hegemonic jurisprudential reasoning, one should consider the symbolic dimension of the prosecution of the crime. The intrinsic ambiguities of international criminal law—still considered a "very *rudimentary* branch of law"[82]—with respect to the general lack of clarification of crimes, the limitations regarding the determination of a scale of penalties, and the inconsistencies concerning procedural matters have produced systematic challenges to its legitimacy[83].

If the discussion on prevention and retribution is a challenging one, if the sacrifice of criminal law standards affects the legitimacy of the discipline, then the symbolic value of international criminal law seems to be an indisputable basis for justifying the system. This is especially true when one observes the conservative patterns of prosecution and the judicial determinations of the scope of genocide, which aim to represent an incontestable declaration of the "international community's"

repulse to what is considered the most hideous crime on the scale of mass atrocities.

In this dynamic, the intimate relation between racism and genocide has made the discussion about the symbolic reproduction of the former in the very judicial recognition of the crime a challenging one. Actually, the absence of a deeper analysis of the impact of racism in legal decisions is hardly exclusive to the discussion of genocide, configuring a broader pattern of silence in the domains of international legal theory[84]. As Ruth Gordon points out, "traditional international discourse is framed in terms of formal equality, and race appears to be an almost non-existent factor. International legal theory rarely mentions race, much less employs it as a basis of analysis."[85]

The absence of a more articulated legal scholarship addressing the issue promotes a silence that, as Edson Cardoso points out, is "full of meanings"[86]. At the center of the crossroads is the very denial of the "institutionalized power of white supremacy"[87] as one of the most preeminent forces guiding both the perpetration of mass atrocities and the acquiescence of international institutions with the scenarios of violence[88].

It is important to clarify here that the violent expedients of white supremacy are not primarily associated with specific historical contexts, but to projects of longer, perpetual durations such as: "relations of fatal and immanently fatal dominance; inscriptions of 'the human' and its historical subjectivity; distensions of genocide as both a militarized technology for extermination and a structuring logic of social formation (encompassing and exceeding the social forms of slavery, colonialism, and frontier conquest); and so forth."[89]

This international legal horizon that formally proscribed the manifestation of racism, while paradoxically still very much informed by the dehumanizing standards of white supremacy, is responsible for a distorted administration of genocide [90].

Noticeably, both the perpetration of the crime and the passivity of the international criminal justice system in response to the horrors of genocide have a special impact on black communities worldwide in light of the peculiar historic representations that cast this social group as the antonym of humanity[91].

In this process, the high degree of vulnerability around black life is cultivated by acts of uncontested state-sponsored and state-sanctioned violence meant to control what are perceived as "untamable bodies".

Here, one should realize that the exercise of extreme forms of assault on black life in an international context that embraces the rhetoric of egalitarianism and multiculturalism could not be achieved except through investment in the symbolic dehumanization of black subjects[92]. Considering this assertion, what is argued is that, aside from the more evident process of direct claims over black inhumanity, this investment is also made in an indirect fashion by the recuperation of the notion of white humanity and its juxtaposition with the notion of humanity itself[93].

Indeed, the equating of humanity with white humanity does not bring any kind of novelty *per se* in the way white supremacy operates.

This operation can be traced to the primary waging of European colonization in the 15th century and more explicitly to the expansion of the European colonial empire in the 18th and 19th centuries, having the notion of the "white man's burden" as its more accurate image.

The superiority of whiteness forged in the formulations of the Enlightenment and the subsequent openly racist theories of the 19th century insisted on the distinctive predicaments "intellectually, aesthetically and physically"[94] of white people, carefully observing the prescriptions of patriarchy[95]. The emphasis was on the positive aspects of whiteness that would bring about the "development" and "progress" of the world's civilization, justifying the pervasive colonial and imperialist European impulses[96].

The patriarchal white supremacist construction of a sense of humanity connected to the positive features of whiteness would be wounded by the tragic events of World War II. The horrific terror materialized in gas chambers and concentration camps, meaningless extermination, and gratuitous infliction of pain inside the European perimeter added other dimensions to the meaning of humanity. Coming to terms with the Holocaust and its "speechless horror"[97] demanded a rationalization in which humanity would also be defined by its vulnerability.

Therefore, although the potential for rationality would still constitute a frame for white superiority, victimization—best symbolized by the systematic violation of the "quintquessential human being" namely the heterosexual white male—was also incorporated as a crucial distinctive mark of humanity.

If humanity, given its superior physical and intellectual attributes, was mainly characterized by the ability to govern and explore before World War II, then after it the possibility of being a victim would also constitute an important aspect of the human condition. It is in the fundamental quest to defend against harm to humans, now also identified as those who are submitted to relations of terror, that a series of international legislations such as the Universal Declaration of Human Rights[98] and the Convention on the Prevention and Punishment of the Crime of Genocide[99] were adopted.

The incorporation of white bodies into the categories of victimization had a definitive impact on the structure of international criminal justice and particularly on the judicial administration of genocide. Focusing exclusively on the symbolic dimensions of such criminalization attached to the representation of blackness, there is a clear pattern deriving from both the judicial recognition and the denial of the occurrence of the crime.

Here, there is a visible tension around the possible racial combinations of the status of victim *versus* perpetrator as genocide is addressed to reinforce the usual stereotypes, especially among those considered as racial equals.

In this peculiar symbolic scenario, the recognition of a "white tragedy"[100] like the Holocaust is made with an emphasis on the victim's role. The narratives of condemnation are to a great extent either connected

to the individual demonization of the most preeminent perpetrators or serve to emphasize that genocidal practices are a unique and inapprehensible expression of evil[101]. Even if the role of bystanders in the perpetration of the crime is also accentuated in the Holocaust literature[102], and the several restitutions provided to Holocaust victims as a result of civil-law suits[103] indicate the turn to a broader conception of perpetration and responsibility, the fact remains that censorship is still intrinsically connected to the practices of extermination.

Indeed, among the arguments that sustained the very preference of judicial trials of the Nazi leadership over the initial proposed solution of summary execution for the most preeminent perpetrators, sustained by Britain and the Soviet Union, was the need to preserve the German population from an overall depreciative depiction[104]. As Michael Scharf notes, "legal proceedings would individualize guilt by identifying specific perpetrators instead of leaving Germany with a sense of collective guilt. Finally, such a trial would permit the Allied powers, and the world, to exact a penalty from the Nazi leadership rather than from Germany's civilian population."[105]

Following this original animus, the condemnation of the horrific genocidal practices during the Holocaust did not collapse into a symbolic demonization of the white social groups in Germany and elsewhere.

With the signs inverted, it is also possible to recognize the tragedies among Africans, such as in Rwanda. In this case, the rhetoric is connected to the image of primitivism and savagery[106].

Here, the narratives portray victims and perpetrators as a kind of "lost mass of human beings" fighting irrational wars[107]. As Bhakti Shringarpure commented, "the specificities of these wars are downplayed and it is often cast as a 'contest between brutes' or an explosion of ancient 'tribal' rivalries without any connections drawn to the experience and history of European colonialism and its resounding and long-last effects."[108]

From this standpoint, genocide becomes an intrinsic creation of the "uncivilized world" in which perpetrators and victims are both liable for their irredeemable violent nature.

The least recognized cases of genocide in the political, and therefore juridical, arena are those in which the crime is perpetrated by whites and the victims are non-whites. Since the adoption of the Genocide Convention there has been a visible tendency to block access to the symbolic and material consequences of the recognition of genocide when the crime is committed as a result of white supremacist demands for the victimization of blacks.

In these cases, the historical complaints of victims stressing the existence of genocidal arrangements promoted by states that are predominantly controlled by white elites and "society-sanctioned genocidal practices"[109] have been systematically rejected. As such, the labeling of genocide to characterize these various scenarios of violence became a rhetorical and legal heresy.

This obstruction to the characterization of genocide has particularly impacted the recognition of the crime assaulting blacks in the Diaspora.

The scholarship on genocide against blacks in the Diaspora is, as João Vargas points out, "disappointing"[110]. Both in the genocide studies field or the legal sphere, the claims of genocide that have the lowest degree of visibility are those connected to this social group.

In short, all the noise created around this issue becomes almost a complete silence when genocide is approached in the historical and current social experience of blacks in the region.

Here one can visualize the restrictions of the international legal framework on the recognition of black suffering. This pattern is reproduced both in the overall exclusion of blacks from the effective set of protections and guarantees of the human rights legal paradigm and in the refusal of international criminal justice to recognize the systematic assaults on black communities as genocide.

This process of denial has been sustained essentially by the imposition of a legal armor around genocide that indicates the impossibility of recognizing the crime. There is a specific administration of genocide that aims to frame political resistance to recognizing the crime as a technical legal matter. Here, one refuses to recognize the historical indifference of the legal system to black suffering and the consolidation of the mandates of white supremacy as a key basis for the exclusion genocide as a viable category in the Diaspora.

Therefore, if the apparent barriers to the recognition of genocide are connected to normative rhetorical issues, such as the discussion of intent, in practice they lie on the fact that the convictions have indisputably represented a symbolic condemnation of the systems of extermination.

Following this line of reasoning, it is easy to conclude that the representatives of white elites in the Diaspora do not fit the perpetrator standards in the destruction of black communities because the systems of white supremacy are not supposed to be challenged.

Ultimately, what one observes is the overall detachment of international legal provisions from black suffering. There is a clear naturalization of State terror targeting black bodies despite the celebration of the imperative value of international human rights law, which has the proscription of genocide as one of its most celebrated bastions.

>> ENDNOTES

[1] United Nations Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

[2] G.A. Res. 96(I), U.N. Doc. A/RES/96(I) (Dec. 11, 1946).

[3] *Id.*

[4] Churchill, 2001:363-98.

[5] See Lemkin, 2005.

[6] Fitzmaurice, 2008:55-56.

[7] One of the most complete studies developed by Lemkin regarding the application of the notion of genocide in the colonial world was an analysis of what he described as "Spanish colonial genocide". His descriptions of genocide in the colonial arena were profoundly influenced by Bartolomé Las Casas, who recognized the existence of rights for indigenous populations based on principles of natural law. Some points of Lemkin's analysis in the Spanish colonial context are worth noting. Considering the physical aspect of genocide, Lemkin referred to three sorts: massacres to conquer territory, massacres to put down rebellions, and gratuitous exhibitions of violence. One important observation is that Lemkin considered slavery as part of the physical element of genocide. He viewed the "deprivation of livelihood" as "genocidal slavery". With respect to the attribution of responsibility for the crime, Lemkin accentuated the role of the colonists in the process. He considered the military officers as "the enforcers of genocide" and also blamed the indigenous collaborators of the Spanish for the extermination. For him, the Court in Madrid also shared responsibility because "they had the power and duty to interfere on the basis of royal orders". Lemkin also considered the cultural assault on indigenous populations an essentially genocidal one. His drafts highlighted the fact that the conquerors developed strategies to destroy the indigenous culture and replace it with their own. This is the same argument he used to justify the existence of genocide in Europe with the German occupation. This framework enabled Lemkin to theorize about the Holocaust and the Spanish colonial experience using genocide as a main category, confirming that Lemkin's formulation was developed to qualify a vast range of historical episodes marked by generalized social destruction. See McDonnel, Moses, 2005:501, 503-14; Moses, 2008:3, 9.

[8] Lemkin, *supra* note 5, at 79.

[9] Fitzmaurice, *supra* note 6, at 75.

[10] Moses, *supra* note 7, at 8-10.

[11] Shaw, 2007.

[12] *Id.* at 19.

[13] Lemkin, *supra* note 5, at 79.

[14] Moses, *supra* note 7, at 13, 37.

[15] Lemkin, *supra* note 5, at 79.

[16] Churchill, *supra* note 4, at 363-64.

[17] *Id.* at 365.

[18] *Id.*

[19] *Id.* at 364.

[20] *Id.* at 365.

[21] *Id.*

[22] Lippman, 2001: 467-75.

[23] Verdirame, 2000:578-81.

[24] Churchill, *supra* note 4, 367.

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[26] *Id.* at 365.
[27] Docker, *supra* note 6, at 81, 82.
[28] *Id.*
[29] Lippman, *supra* note 22, at 477-78.
[30] Churchill, *supra* note 4, at 388.
[31] *Id.*
[32] *See id.* at 365.
[33] *See id.*
[34] *See id.*
[35] *See id.* at 368.
[36] *See id.*
[37] Costa Vargas, 2008.
[38] Lippman, 1994.
[39] Fein, 2006.
[40] *Id.* at 75.
[41] Vargas, *supra* note 36, at 6.
[42] Van Schaack/Slye, 2007.
[43] Ratner/Becker, 2006:345.
[44] Bazyler, 2003.
[45] Ratner & Becker, *supra* note 42, at 346-47.
[46] *Id.* at 348.
[47] Bazyler, *supra* note 43, at 23
[48] *Id.*
[49] Newborne, 2003:615-616.
[50] *Id.* at 617.
The exceptional character of the reparations litigation for Holocaust victims in the U.S. gains special relevance when one considers the failure of the reparations litigation for slavery. The legal parameters that dismiss the reparatory claims for the enslavement of Africans and their descendents rest on two fundamental pillars. The first refers to temporal limits imposed on the recognition of the rights. In this case, the official argument inverts the reasoning of responsibility and asserts that compensation cannot be granted because there was delay or negligence by African Americans in addressing the issue. Best/Hartman, 2005:8. This position disregards the historical efforts of African Americans to make the state accountable for the brutalities and the illegal labor exploitation that took place during slavery. Indeed, litigation seeking monetary compensation for the unjust enrichment of the American state for the exploitation of slave labor in the country dates to the 1800s. This narrow understanding also contradicts the reasoning of the plaintiffs who see the passage of time and the lack of any recognition of or reparations for the wrongs committed as an intensification of the original violation, rather than the evasion of the right to sue the state. One should also take into consideration conflicting perspectives on the "time of slavery." Here, the strict legal parameters are challenged by a notion that advocates slavery as a continuous violation, a "death sentence reenacted and transmitted across generations." *Id.* at 4. In this context, the right to pursue reparations cannot be dismissed because the time of slavery is the present with the vivid agonies that are reproduced by the institutional omission to address the past and the engagement in new forms of violence targeting this social group. The second legal argument refers to the judicial models of redress that respond to individual rights. This understanding determines that the claims of redress must be able to identify "victims and perpetrators, unambiguous causation, limited and certain damage, and the acceptance that the

agreed remuneration shall be final." *Id.* at 8. From a legal standpoint, this liberal individualistic approach is considered to be the main obstacle to the effective grant of reparations to African Americans. As Stephen Best and Saidiya Hartman explain: "First, this paradigm's standard of accountability renders all claims for black reparations null and void, as the victims and perpetrators of slavery have been long dead. Second, the focus on the individual in liberal legal formulas for remedy makes difficult an account of the group oppression and structural inequalities. Third, and finally, the focus on identifiable victims and perpetrators foregrounds the law's indifference to tangled and complicated webs of causation". *Id.* Therefore, the very structure of the legal action is grounded in biases that proscribe African Americans for the articulation of their reparatory claims. Here, one can observe the erasure of the victims' collective voice and the denial of the engagement of multiple actors, including the state, in the brutalities of the slavery enterprise. In the end, this arrangement serves as a confirmation that the real grief of slavery, sacrificed in the limited conceptions of law and property, did not
[51] penetrate the legal domain. *Id.* at 9.
[52] Churchill, *supra* note 4, at 19-20.
[53] *Id.* at 20.
[54] *Id.* at 19-21.
Harwood, 2005.Availabe in: http://www.vho.org/aaargh/fran/livres5/harwoodeng.pdf. Access
[55] on: April 2011.
[56] *Id.*
[57] *Id.*
[58] Churchill, *supra* note 4, at 21.
[59] *Id.*
See Lipstadt, 1994; Seidel, 1986, Saul Stern, 1993. It is important to highlight that although the works of these intellectuals constitute an important response to the Holocaust denial claims, they also engage with a perspective that celebrates the uniqueness of the Holocaust. In this line of reasoning, censorship is not directed solely at the arguments that try to discredit the Holocaust, but to any comparative perspective that is established between the Holocaust and
[60] other cases of genocide. *See* Churchill, *supra* note 4, at 25-36.
[61] *See* generally Kahn, 2004.
[62] Lawrence Douglas, 1995:367-73.
[63] Fein, *supra* note 38, at 75.
Some of the important authors in this debate who subscribe the uniqueness of the Holo-
caust are: Steven Katz, Yehuda Bauer, Lucy Dawidowicz, Leni Yahil, Michael Marrus, Deborah
[64] Lipstadt, and Martin Gilbert.
[65] *See* Katz, 1992; Dawidowicz, 1997; Bauer, 2002.
[66] Katz, *supra* note 64, at 162-92.
[67] *Id.* at 30.
[68] *Id.* at 35.
[69] Katz, 1994.
[70] *Id.* at 128-33.
[71] Dirk Moses, 1999:7-15.
[72] Friedber, 2000:353-54.
[73] Finkelstein, 2000.
[74] Lipstadt, *supra* note 59, at 212.
Some of the authors that challenged the concept of Holocaust uniqueness are: Hannah Arendt, Irving Louis Horowitz, Israel Charny, Helen Fein, Simon Wiesenthal, Peter Novik, Ward Churchill, David E. Stannard, Lilian Friedberg, Boas Evron, Arnold Jacob Wolf, Jacob

[75] Neusner, João Vargas, Joy James among others. *See* Friedberg, *supra* note 71, at 357.

Dan Stone argues that the uniqueness hypothesis relies on Jewish identity politics and not historical evidence because the uniqueness argument tends to change in response to every posed challenge. In his words: The fact that the uniqueness hypothesis has less to do with historical explanation than with identity politics is clear when one traces the changing criteria that have been offered in its defense. Every time the hypothesis is challenged, the criteria are changed. Whether it is numbers, the role of technology, the role of the state, or the inten-
[76] tion of the perpetrators, all can be and have been questioned by valid comparisons.

[77] *See* generally Stannard, 1993.

[78] *See* generally Stannard, 2001.

Stannard points out that the usual argument that considers the Holocaust as a unique event from a quantitative perspective—that is, the unprecedented process of extermination of human beings—cannot resist a serious historical analysis. The death rates of the Gypsies during the Holocaust and the Armenian population in the Turkish campaign from 1915 to 1917, for example, have similar numbers regarding human loss. In general terms, Stannard remarks that the genocide of native peoples in the pre-twentieth century was visibly more aggressive in terms of both proportionate losses and the gross number of people exterminated than the Jewish genocide during the Holocaust. According to Stannard, just in the Americas, a total of fifty to 100 million people collapsed as a result of European colonization, resulting in
[79] the annihilation of 90-95% of the hemisphere's indigenous population. *Id.* at 251, 263.

According to Stannard, in other genocidal campaigns, such as in Cambodia and Rwanda, the destruction of human lives was made in a superior path than during the Holocaust. The main question for Stannard is whether the duration of the genocidal practices and the correlated effectiveness of the exterminatory practices should even be considered as relevant criteria when comparing the different cases in terms of gravity. After all, however short or long the process, the results are the same—the final destruction of human lives. According to him, this leaves no moral ground, aside from Eurocentric hierarchization purposes, for this kind of
[80] distinction to be made. *Id.* at 254.

Stannard also argues against the differentiation of the Holocaust from other tragedies, especially the genocide of Native American peoples, using the means of destruction as a criterion. According to the Stannard, the common allegation that the native societies were largely decimated by the introduction of diseases in the colonization process, which is perceived by some as an "unintended tragedy," does not reflect the reality of the time. The extermination of indigenous peoples in the Americas followed a pattern that combined a series of lethal agents that included direct killing, disease, starvation, exposure, and exhaustion, among others. Moreover, if some historical investigations indicate that "deaths from disease may exceed those deriving from any other single cause," *id.* at 255, in the case of Native American genocide, so do the ones that consider the deaths among Jews in the Holocaust. Therefore, the greater cause of death during the Holocaust can also be "attributed to the same so-called natu-
[81] ral phenomena." *Id.* at 254-60.

[82] Friedberg, *supra* note 71, at 368-69.

[83] Cassese, 2008.

[84] *Id.*

[85] Gordon, 2000.

[86] *Id.*

[87] Lopes Cardoso, 2010.

[88] James, 1996.

[89] *Id.* at 45-46.

[90] Rodriguez, 2011.
[91] *See id.* at 49.
[92] Woods, 2009:31, 35-363.
[93] Carneiro, 2005:125-36.
[94] *Id.* at 125-36.
[95] Carrington, 2010.
[96] *Id.* at 67-68.
[97] *Id.* at 70.
[98] Arendt, 2003.
[99] Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).
[100] Genocide Convention, *supra* note 1.
[101] The representation of the Holocaust as a "white tragedy" aims to accentuate the ultimate violation of European bodies in the context of World War II. However, this appreciation does not endorse the much-criticized depiction of the Jewish community as a monolithic one. Indeed, the overwhelming focus on the Holocaust and European anti-Semitism in the affirmation of contemporary Jewish identity has been viewed by many as a powerful ideological instrument that silenced the non-European and non-white Jewish histories. This arrangement reflects the high degree of racism experienced by non-white Jews within the Jewish community worldwide. Peto, 2010.
It is also important to stress that from the standpoint of identity politics, the Holocaust is considered a decisive historic event in a process that would result in the whitening of European and European-descendent Jews. The assimilation of Jews into the category of whites has as its ultimate consequence the engagement of the privileges of whiteness and the concomitant appeal to a past victimization imposed on their non-white ancestors. This powerful duality helps to explain the solidification of depictions of the Holocaust as a unique event and the impressive reparation policies conceded to Jewish communities. For a more detailed discussion on this particular issue, *see generally* Goldstein, 2006; Brodkin, 1998.
[102] For an analysis that highlights the idiosyncratic nature of the Holocaust as a unique expression of evil *see generally* Katz, *supra* note 68; Lipstadt, *supra* note 59.
[103] For an introduction to the role of bystanders in the Holocaust *see generally* Hilberg, 1992.
[104] *See* Ratner & Becker, *supra* note 42, at 345.
[105] Scharf, 2010.
[106] *Id.*
[107] Shringarpure, 2009.
[108] *Id.*
[109] *Id.*
[110] Vargas, *supra* note 36, at xxvi.
Id. at 5.

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