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Publication Date
2019-04-01

Undergraduate
“That Means Filibuster”:

Race, Human Rights, and the United Nations Genocide Convention, 1945-1953

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History 101: American Foreign Policy
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Spring 2019
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“What gets people stirred up about the treaty is its heavy symbolism, producing reactions that are, perhaps, more interesting than the treaty itself.”

Introduction

In December 1948, the United Nations (UN) General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. The Convention defined genocide, which it banned under international law, as:

“acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.”

Ratifying nations vowed to enforce the Convention domestically and could “call upon” the UN to enforce it abroad, when necessary. In order for the United States to officially become a party to the treaty, the Senate needed to ratify the Convention, with at least a two-thirds majority vote. The Senate did not ratify the Convention until 1988; some of the most crucial reasons for the delay were the relationships between the Convention’s tenants and aspects of American racism.

The existing historiography on the Genocide Convention has either overlooked the role of race in shaping the politics of ratification or focused on American speculations that the Soviet

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Union would bring charges of genocide against the United States. This historiography provides an essential basis for the research in this thesis, but it omits two essential facets of the debate in American politics, from roughly 1945-1953, about an international ban on genocide. This thesis explores these two related subjects: the role of ratification proponents in deliberations about civil rights; and the relationship between the underpinnings of the Convention and those of American civil rights law.

This thesis will show how prominent proponents of the ratification of the Convention in the United States often presented the Genocide Convention as a more politically palatable alternative to, and at odds with, international human rights projects. They understood ratification of the Convention as an apt plank of President Truman’s liberal platform, one that would display support for persecuted peoples abroad, while also accommodating American white supremacy, by virtue of its narrow scope. At the same time, prominent opponents of ratification viewed the Convention as a threat to legalized white supremacy, because this treaty concerning a specific problem utilized relatively new legal principles that tremendously altered the relationships between individuals and international law. Ultimately, the identifying markers of the American legal regime that enabled systemic racism—namely, state control of civil rights law, and private citizens’ non-responsibility for civil rights violations—played significant, but hitherto unappreciated roles in the debate, shaping the rhetoric of proponents and animating opposition.

The Historiography

This thesis draws upon three relevant schools of historiography, the intersections of which have not been fully examined. The first school primarily studies the intellectual origins of the Genocide Convention, with a particular emphasis on the work of Raphael Lemkin, the Polish-Jewish legal scholar who coined the term “genocide” in his 1944 work *Axis Rule in*
Lemkin is a central figure in any narrative about the Convention, given his outsized role in lobbying for the creation of an international ban on genocide, and advocating for the ratification of the Convention, especially in the United States. Prominent scholars in this school of historiography include A. Dirk Moses and Martin Shaw. The works of these historians have demonstrated Lemkin’s concerns for group rights, as opposed to individual rights, and cultural preservation. Yet, this school of historiography has not examined how Lemkin’s intellectual trajectory influenced his views on American politics and civil rights, and the consequences of his views, in relation to the Genocide Convention’s fate.

The second relevant school of historiography, which includes Samantha Power’s “A Problem from Hell” and Anton Weiss-Wendt’s The Soviet Union and the Gutting of the UN Genocide Convention, studies the politics of the Genocide Convention in the United States. Power’s book touches on the role of race in the Senate’s ratification debates but does not ascribe a great degree of significance to the issue. “A Problem from Hell” does not detail the debate regarding the applicability of the Convention to the plight of African Americans, arguing that the only nexus between Jim Crow and the Convention was in the minds of fearful Southern Senators, and that this issue was ultimately inconsequential to the Convention’s fate. After all, ratification proponents, including Lemkin and the National Council of Negro Women, believed that African Americans suffered from a caste system, but not genocide. Weiss-Wendt’s work analyzes the role of race in the Senate’s deliberations only within the paradigm of the Cold War conflict between the US and the Soviet Union. As such, Weiss-Wendt asserts: “The arguments against US ratification of the genocide treaty were articulated with brutal honesty…: while the Genocide

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Convention contained vague formulations that could be used against the United States, it lacked the teeth to condemn the true and only perpetrator of genocide, Russia. Weiss-Wendt and Power’s research underscore the need for an analysis that centers the relationship between the Convention’s framing and contemporaneous debates regarding civil rights law and race relations.

The third and final school of historiography upon which this thesis draws concerns the UN’s human rights projects and American civil rights advocacy. Crucial works in this school include Mark Bradley’s *The World Reimagined*, Samuel Moyn’s *The Last Utopia*, and Carol Anderson’s *Eyes Off the Prize*. These monographs do not center on the Genocide Convention but illuminate possibilities for further research. Bradley and Moyn largely mention the Convention to distinguish it from the projects of individual human rights on which their works center. The Convention is not Anderson’s focus, but she provides context regarding the international character of the African American freedom struggle, including the NAACP’s hope to affect change through the UN. The book’s critiques of the Truman Administration’s record on human rights are important to this thesis’s analysis of the limits of liberal internationalism.

The existing historiography provides a foundation for the research presented here but overlooks significant facets of the ratification debate. Scholars have aptly examined opposition to the Convention based on fears that the Soviet Union would charge the US with genocide, due to the persistence of lynching and the Jim Crow system. However, the historiography has yet to examine the multiplicity of arguments against ratification, some of which centered peculiarities

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of American race law. Moreover, the relationships between pro-ratification advocates and campaigns for racially equality are not well documented. The place of the Genocide Convention in the Truman Administration’s agenda, as it navigated the contradictions between its aspirational human rights policy abroad, and its acceptance of the Democratic Party’s segregationist faction, also necessitates a thorough examination. This thesis will examine these hitherto overlooked dynamics, in order to better understand the limitations of postwar internationalism and the United States’ participation in international law.

**Lemkin and the Intellectual Underpinnings of “Genocide”**

Given Raphael Lemkin’s outsized role in coining the term genocide, and in lobbying for the codification of an international ban, the underpinnings of Lemkin’s concept are especially important. The historiography has studied the conceptual roots of the term, but not in the context of Lemkin’s relationship to the contemporary American political scene. Much of the historiography of human rights does not situate the Genocide Convention within the human rights movement, but some scholars of genocide still equate the two, largely because human rights proponents have, in recent decades, invoked the Convention to call for legal action against perpetrators of violent persecution. For example, William Schabas has characterized the Convention as “an international human rights law instrument,” and cites other scholars who concur.\(^9\) Indeed, Schabas rightly notes that “the…Convention has been asked to bear a burden for which it was never intended, essentially because of the relatively underdeveloped state of international law dealing with accountability for human rights violations. In cases of mass killings and other atrocities, attention turned inexorably to the…Convention because there was

little else to invoke.”¹⁰ Yet, equating genocide prevention and human rights protection obscures the deliberate, public distinction that Lemkin drew between himself and human rights activists.

Unlike the leaders of the burgeoning human rights movement of the 1930s and 1940s, Lemkin was fundamentally concerned with the protection of groups, rather than individuals. The historian A. Dirk Moses argues that Lemkin was influenced by a phenomenon that sociologist Rogers Brubaker terms “groupism,” or “the tendency to treat ethnic groups, nations, and races as substantial entities to which interests and agency can be attributed.”¹¹ His focus on collectivities is evident in his formation of the new term “from the ancient Greek word genos (race, tribe) and the Latin cide (killing)…”¹² In *Axis Rule in Occupied Europe*, Lemkin explained that this term was “intended…to signify a coordinated plan of different actions aiming at the destruction of the essential foundations of life of national groups with the aim of annihilating the groups…”¹³

Lemkin’s 1944 definition encompassed a greater range of applicable acts than would the Convention, including “disintegration of the political and social institutions, of culture, 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.”¹⁴ Abuses that one might characterize as human rights violations only constituted genocide “if actions involved are directed against individuals, not in their individual capacity, but as members of the national group.”¹⁵ The original concept of genocide was thus somewhat antithetical to, though not completely irreconcilable with, the dominant intellectual trends of the World War II era, which privileged the rights of persons against capricious abuses of power. As

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¹⁰ Schabas, *Genocide in International Law*, 11.
¹² Lemkin, *Axis Rule in Occupied Europe*, 79.
¹³ Lemkin, *Axis Rule in Occupied Europe*, 79.
¹⁴ Lemkin, *Axis Rule in Occupied Europe*, 79.
¹⁵ Lemkin, *Axis Rule in Occupied Europe*, 79.
this thesis will argue, Lemkin and other prominent supporters of the Convention in the US would later utilize this distinction to establish a case for ratification. In particular, the inapplicability of the Genocide Convention to small-scale acts of violence became crucial.

As the historian Mark Bradley notes, Lemkin’s group rights paradigm enjoyed its heyday in the pre-World War I and interwar periods, manifested in treaties between sovereigns which guaranteed the rights of nations’ minorities. These treaties, sanctioned by Europe’s imperial powers, did not offer a system of universal protection; human rights activists of the World War II era viewed this system’s patchwork nature as a major weakness.16 However, scholar Eric Weitz notes that these agreements, which “blanketed Eastern Europe, the Middle East, and other parts of the world in the interwar years,” did actually coincide with the development of an occasionally effective League of Nations mechanism for investigating minority rights violations.17 From Weitz’s perspective, the negative effects of the legal emphasis on group rights and national self-determination were the ensuing forced population transfers, such as those of Greeks and Turks in the Treaty of Lausanne (1923).18 Ultimately, unlike human rights activists who disregarded the group rights paradigm for the aforementioned reasons—in favor of a framework that supposedly applied to all of humanity, regardless of race or nationality—Lemkin sought to improve upon and universalize it.

A less explored influence on the concept of genocide is the notion of humanitarianism, which has aims distinct from those embodied in the idea of human rights. Moyn defines the humanitarian efforts of the late 1800s and early 1900s as “culturally specific and politically

16 Bradley, The World Reimagined, 60.
18 Weitz, “From Vienna to the Paris System”: 1334.
selective campaigns…not…conceptualized around notions of universal rights, and…typically philanthropic causes deployed in a hierarchical world to beat back the illicit practices of foreign peoples, religions, and empires cast as brutal and uncivilized.”

Lemkin understood American support for the Convention at the UN within the vein of humanitarian intervention. In his writings, he characterized ratification as “based upon the best tradition of American foreign policy,” with precedent including Theodore Roosevelt’s opposition to anti-Jewish pogroms in Tsarist Russia, and Woodrow Wilson’s “interest in the fate of the Armenians.” He directly quoted Theodore Roosevelt, who “in 1904 wrote: ‘Brutal wrongdoing, or impotence, which results in the general loosening of ties of civilized society, may finally require intervention by some civilized nation, and in the Western Hemisphere, the United States cannot ignore its duty.’” Here, Lemkin related the Convention to the US’s longstanding “duty” to exert authority over less powerful countries with despotic governments. Thus, unlike numerous American civil rights activists, Lemkin perhaps did not view the legal protection of minorities abroad as irreconcilable with American imperialism.

Lemkin aimed to portray the Convention as a noncontroversial humanitarian law, in line with the values of Americans of either political party. For this reason, he actively sought the support of clergy. One letter to a New York bishop articulated his stance: “We need all possible help from religious quarters because in the campaign, I have gained the conviction that support coming from the churches is considered in the Senate not only as most humanitarian but also as

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19 Moyn, The Last Utopia, 72.
bi-partisan…” A keen observer of the American political scene, Lemkin led a pro-ratification movement that, rather than adopting the discourse of human rights, harkened back to the less contentious tradition of humanitarianism.

One might observe—as some American skeptics of the Convention’s usefulness later did—that the concept of genocide was limited, in that it did not encompass various collectivities in need of protection, such as political groups that were subject to abuse by authoritarian governments. The term’s focus on certain types of groups was largely attributable to Lemkin’s emphasis on the importance of culture. His notes on his book project, a study of genocide, explained: “The philosophy of the Genocide Convention is based on the formula of the human cosmos. This cosmos consists of four basic groups: national, racial, religious and ethnic.”

Genocide entails ramifications for all of humanity precisely because of its potential to eradicate entire cultures, each of which form a part of the aforementioned “cosmos.” The first of the “interests of mankind” harmed by genocide that Lemkin listed in a 1948 UN Bulletin piece, related to culture: “Cultural and other contributions are no longer forthcoming from human groups slated for destruction. World culture is impoverished.”

The protection both of group rights and individual freedoms are not incompatible aspirations. However, Lemkin’s ideas about groups conflicted with more contemporary intellectual trends. For example, in a 1947 radio interview with a UN newsreel, Lemkin posited that, if the “spirit and culture” of “[n]ational, racial, or religious groups” are obliterated, they

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“are reduced to the stage of robots. Their contribution to world civilization ceases… [S]uch action consists in removing by force the spiritual leaders of communities such as the clergymen, teachers, artists… in mass destruction of works of art and culture, or churches…”26 The Convention’s authors ultimately decided not to include clauses on cultural genocide27, but Lemkin’s hierarchical conception of groups provides context to his insistence that his work did not fall under the umbrella of human rights.

Other advocates for the Convention adopted the discourse of cultural pluralism and deemphasized Lemkin’s hierarchical conception of cultural communities. For example, Lemkin’s papers contain writer Pearl S. Buck’s proposed manifesto, to be issued by prominent cultural figures, which stated: “We hold that life in our world is enriched by the diversity of cultures and ideas which proceed in variety from racial, national and religious groups, whatever their size and strength, even as any community is better for variety in its citizens.”28 Buck argued that all of humanity benefits from cultural diversity, on both the global and local scales. However, Buck and other proponents of the Convention did not assert rights-related claims. In other words, the rights to existence, as a collectivity, and cultural autonomy did not automatically necessitate equal treatment in the legal and political realms.

The Ban on Genocide and Postwar Liberalism

In order to study the political life of the Genocide Convention, one must examine the place of the Convention in the Truman Administration’s foreign policy goals. Harry Truman,

28 “Correspondence from Pearl S. Buck, undated,” 2, Box 1, Folder 17: “Buck, Pearl S. Correspondence and Proposed Manifesto,” Raphael Lemkin Collection, Center for Jewish History, New York, New York.
who ascended to the presidency following Franklin Roosevelt’s death in 1945, lacked substantive foreign policy experience, but sought guidance from Roosevelt’s advisors. At the onset of his presidency, Truman inherited the nascent internationalist world order that the Roosevelt Administration had envisioned during World War II. This world order would be characterized by liberal economic and trade policies, as well as the creation of superpower-led, multilateral institutions to enforce a rules-based system of international relations. The place of the Genocide Convention in the Truman Administration’s foreign policy evolved in response to changes in the American political climate, including on the issues of race.

The story of the codification of an international ban on genocide truly beings with the Nuremberg Trials, at which the victorious Allied powers prosecuted leaders of the German government apparatus for war crimes. Supreme Court Justice Robert Jackson, the American representative to the London Conference that established the International Military Tribunal (IMT) in Nuremberg, reported to Truman: “crimes against humanity, consists of murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with crimes against peace or war crimes…” Thus, acts that the

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32 Iriye, The New Cambridge History, 211.
Genocide Convention would later criminalize, during peacetime and wartime, were mostly only prosecutable when committed in connection with an illegal war.

The IMT’s definition of crimes against humanity had both legal and political bases. In June 1945, Jackson reported to Truman that the Fourth Hague Convention of 1907 “provides that inhabitants and belligerents shall remain under the protection and rule of ‘the principles of the law of nations, as they result from the usage established among civilized peoples, from the laws of humanity and the dictates of the public conscience.’”\(^{34}\) A legal precedent for banning crimes against humanity absent an illegal war did not seem to exist, nor did Jackson want to create one. According to the minutes of a conference session on July 23, 1945, Jackson said: “We have some regrettable circumstances at times in our own country in which minorities are unfairly treated. We think it is justifiable that we interfere…only because the concentration camps and the deportations were in pursuance of…making an unjust or illegal war…”\(^{35}\) This prehistory of the Genocide Convention has largely escaped the attention of the historiography. Yet, the IMT’s formation of its charges anticipated the opposition to the Convention’s regulation of government treatment of its citizens, in peacetime and wartime.

Although the IMT thus did not create, as Lemkin supported, a “prohibition on genocide in war and peace,”\(^{36}\) the Nuremberg Trials were responsible for the entrance of the term “genocide” into the lexicon of international law. The Allied powers’ indictment included “deliberate and systematic genocide, viz., the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races

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\(^{36}\) Lemkin, \textit{Axis Rule in Occupied Europe}, 90.
and classes of people, and national, racial or religious groups, particularly Jews, Poles, and Gypsies.” Multiple members of the IMT’s prosecution team cited the term and Lemkin, during their statements before the court.

The IMT bears significance in the history of race and the Genocide Convention for one additional reason. The Tribunal’s founding document, the London Charter, essentially established a new precedent, “that individuals rather than states are responsible for criminal violations of international law and applies to such lawbreakers the principle of conspiracy by which one joins in a common plan to commit crime becomes responsible for the acts of any other conspirator in executing the plan.” The notion of individual responsibility for international law violations would later carry over to the Genocide Convention, which would be a major source of consternation for the Convention’s skeptics in the US.

Justice Jackson’s frank concerns about the legality of racial discrimination are hardly surprising, given that American law had long enjoyed global notoriety for its construction of a highly stratified nation, with rights largely defined by one’s race. According to historian James Whitman, although Nazi race law's origins are largely indigenous to Central Europe, its architects often found guidance in American law. This was particularly true in the creation of variants of second-class citizenship and anti-miscegenation law. Prior to the Supreme Court’s 1954 decision in Brown v. Board of Education, “America was particularly notable for its creation of novel forms of de facto and de jure second-class citizenship for blacks, Native Americans, Filipinos, and Puerto Ricans…” One pro-Nazi German scholar noted with interest that

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37 France et al. v. Goering et al., (1946) 22 IMT 203, 45-46, quoted in Schabas, Genocide in International Law, 43.
38 Schabas, Genocide in International Law, 43.
“American public law distinguishes between Staatsbürger (citizens), Staatsangehörige (nationals) and Ausländer (aliens)...Staatsbürgerschaft ("Citizenship") is the highest legal level...” \(^{41}\) American race law in this era was unusual not only for its discriminatory nationality system, but also for its anti-miscegenation laws, which codified widespread eugenics ideas. Similar rationales for implementing racist law existed in both countries; “The Negroes are not equal before the law,’ wrote one author in a 1935 book touting John C. Calhoun as a racist inspiration for Germany; and they never could be made equal, because ‘full political equality would obviously put an end to the sexual separation of the races…” \(^{42}\)

To be sure, racial law in pre-\textit{Brown} America and Nazi Germany bore important differences, not least the existence of the Reconstruction-era Constitutional amendments in the US. According to Whitman, scholars and officials of the Third Reich added “the ‘organization of a fascist state’” to a racist legal system. Yet, in the US, a common law system with guaranteed individual rights and freedoms actually coexisted with race-based restrictions on such rights, including citizenship.\(^{43}\) Proponents of the Genocide Convention’s ratification, particularly members of the Truman Administration, would later argue that Constitutional law and democracy ensured that genocide could not occur in the United States.

For civil rights leaders, the problem of lynching, which was endemic in the Jim Crow South, epitomized the seemingly hollow nature of the Truman Administration’s rhetoric about human rights and American democracy. According to historian Carol Anderson, "[b]y September 1940, the NAACP was investigating 11 possible lynchings. Of course, for all these murders, no one was ever brought to justice." \(^{44}\) African American activists including Walter White, the

\(^{41}\) Whitman, \textit{Hitler's American Model}, 68.
\(^{42}\) Whitman, \textit{Hitler's American Model}, 66.
\(^{43}\) Whitman, \textit{Hitler's American Model}, 144.
\(^{44}\) Anderson, \textit{Eyes Off the Prize}, 13.
Executive Secretary of the National Association for the Advancement of Colored People (NAACP), were quick to note the US government’s contradictory positions, in purporting to promote human rights abroad while ignoring lethal racism directed at minorities in the US. At one point, “White observed that, ‘as long as human beings are shot, hanged, and roasted to death...without the federal government lifting a finger to do anything about it,’ America’s… ‘Sunday school lectures to other nations’ did nothing more than expose this ‘hypocritical thing called democracy.’”\textsuperscript{45} In other words, American chauvinism in international affairs was farcical.

Civil rights organizations, the most prominent being the NAACP, sought to utilize the UN to force the Truman Administration to confront its seemingly dissonant policies. W.E.B. Du Bois and Walter White attended the UN Conference in San Francisco from April through May 1945, since the NAACP was one of the organizations that the US delegation selected as an “official consultant.”\textsuperscript{46} The US delegation did not intend for these “consultants” to yield a great deal of influence. During a meeting of delegation members in April 1945, “[US Secretary of State] Mr. Stettinius pointed out that it would not be necessary for the official delegates to see or talk with any of these individuals, who in reality would only have ‘tickets to the balcony.’”\textsuperscript{47} At the conference, Du Bois and White pressured Stettinius to adopt forceful stances in favor of human rights and against colonialism, but political exigencies inhibited this. These included tensions with the Soviet Union, existing alliances with the imperial powers of Britain and France, the US’s desire to retain possession of islands in the Pacific, and the indispensable role of

\textsuperscript{45} Anderson, \textit{Eyes off the Prize}, 13.
\textsuperscript{46} Anderson, \textit{Eyes off the Prize}, 42.
Southern whites in the Democratic Party.\textsuperscript{48} In order to appease segregationists, John Foster Dulles, a member of the US delegation, added to the UN Charter “[a]mid an unequivocal statement 'guaranteeing freedom from discrimination on account of race, language, religion, or sex,’ …an amendment that ‘nothing in the Charter shall authorize...intervention in matters which are essentially within the domestic jurisdiction of the State concerned.’”\textsuperscript{49}

The Truman Administration was keenly aware of the paradox posed by domestic racial discrimination and pronouncements of concern for human rights abroad. Partly in response to this public relations quandary and a series of highly publicized incidents of violence perpetrated against African Americans, Truman issued Executive Order 9808 establishing the President’s Committee on Civil Rights (PCCR) on December 5, 1946. International relations figured prominently in the committee’s report, entitled \textit{To Secure These Rights}, which offered a thorough examination of discrimination against people of color in citizenship, the criminal justice system, employment, and other realms. The PCCR centered individual rights, as “[t]he central theme in our American heritage is the importance of the individual person.”\textsuperscript{50} In \textit{To Secure These Rights}, the PCCR equated prejudice with other, undemocratic forms of social organization: “We abhor the totalitarian arrogance which makes one man say that he will respect another man as his equal only if he has ‘my race, my religion, my political views, my social position.’ In our land men are equal, but they are free to be different.”\textsuperscript{51} Of relevance to the later debate on the Genocide Convention, the report honestly addressed the fact that “[t]oo many of our people still live under the harrowing fear of violence or death at the hands of a mob or of

\textsuperscript{48} Anderson, \textit{Eyes off the Prize}, 43.
\textsuperscript{49} Anderson, \textit{Eyes off the Prize}, 48.
\textsuperscript{50} \textit{To Secure These Rights: The Report of the President’s Committee on Civil Rights}, 4, Truman Library & Museum Online Documents, Truman Library, Independence, Missouri, \url{https://www.trumanlibrary.org/civilrights/srights1.htm}.
\textsuperscript{51} \textit{To Secure These Rights}, 4.
brutal treatment by police officers.” Not only were lynching and police brutality commonplace, but prosecutions against perpetrators were exceedingly rare.

According to the PCCR, the denial of American individuals’ rights, based on their race or religion, threatened not only the US’s democratic system of government, but also its relationships with other sovereigns. For instance, in Washington, D.C., “[f]oreign officials [were] often mistaken for American Negroes and refused food, lodging and entertainment.” Moreover, “human rights…has been made a major concern of the UN. It would indeed be ironical if in our own country the argument should prevail that safeguarding the rights of the individual is the exclusive, or even the primary concern of local government.” Thus, the PCCR implied that the protection of human rights could not merely be entrusted to local control.

Regarding vigilante violence: “A lynching in a rural American community is not a challenge to that community's conscience alone…the world looks to the American national government for both an explanation of how such a shocking event can occur in a civilized country…”

Furthermore, the PCCR noted the highly precarious nature of voting rights in America, and the charges of hypocrisy this could invite, as “[a]n American diplomat cannot forcefully argue for free elections in foreign lands without meeting the challenge that in many sections of America qualified voters do not have free access to the polls. Can it be doubted that this is a right which the national government must make secure?” Thus, the Truman Administration was fully aware of the entrenched white supremacy in the American political system, and its problematic implications for foreign policy.

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52 To Secure These Rights, 23.  
53 To Secure These Rights, 23.  
54 To Secure These Rights, 95.  
55 To Secure These Rights, 100-101.  
56 To Secure These Rights, 101.
Meanwhile, civil rights organizations hoped to leverage this quandary and its public relations consequences, in order to press the Truman Administration to take decisive action on civil rights. The NAACP’s use of the UN to affect change in the US reached its apex with its 1947 petition entitled *An Appeal to the World: A Statement on the Denial of Human Rights to Minorities in the Case of Citizens of Negro Descent in the United States and an Appeal to the UN for Redress*. The petition included an account of historic and contemporary mistreatment of African Americans in the realms of law, politics, and economic well-being.

*An Appeal to the World* argued that African Americans faced four barriers to enjoying their legal rights: “statutory enactments that [nullified] constitutional guarantees”; “acts and conspiracies of private individuals”; “actual mob violence”; and “decisions of the state courts and of the Supreme Court...” In line with a new postwar discourse, Leslie Perry alluded to the similarities between European anti-Semitism and American racism’s spatial manifestations: “In every city...where the Negro constitutes an appreciable part of the population, he has been relegated to the slums and tenements. These blighted areas, which have most of the marks of Old World ghettos, in America are known as Black Belts.” Perry explicitly related Jim Crow’s most violent elements to fascism, noting that “[i]n Atlanta, Georgia, the Colombians, an organization patterned after Hitler's Storm Troopers, told of plans 'to burn the Negro's house or bomb them out' of the houses in white settlements.”

Thus, *An Appeal to the World* underscored

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60 Perry, “Patterns of Discrimination in Fundamental Human Rights,” in *An Appeal to the World*, 78.
the gravity of African Americans’ plight: deary of legal protection, political and economic
disenfranchisement, and the ever-present threat of vigilante violence.

*An Appeal to the World* consciously linked violations of African Americans’ human
rights to other problems under the international community’s purview. Like Lemkin, Rayford
Logan, the writer of the petition’s final chapter, took inspiration from minority rights treaties of
the pre-World War I period. For instance, Logan cited the 1878 Treaty of Berlin’s clause
guaranteeing the rights of Romania’s Jewish population as evidence that minority rights were a
legitimate concern of the international community. 61 According to Logan, the UN General
Assembly's action on India's complaint regarding treatment of individuals of Indian descent in
South Africa established precedent for the General Assembly to hear the NAACP’s petition. 62

The NAACP leadership received intense blowback from the American delegation to the
UN, after submitting *An Appeal to the World*. Johnathan Daniels and Eleanor Roosevelt, leaders
of the American delegation, were highly opposed to the petition’s submission, and Roosevelt
almost resigned from her position on the NAACP Board of Directors. 63 Ultimately, the petition’s
greatest significance was its use of international law to craft a compelling argument in favor of
superseding American sovereignty, due to the severity of anti-black discrimination in the US,
and the federal government’s seeming unwillingness to address the matter.

**Drafting the Convention: The “Complicity” Question**

The process of drafting the Genocide Convention began after the General Assembly’s
passage of Resolution 96(I)— proposed by the Cuban, Indian, and Panamanian delegations— in

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the Decisions Already Taken under the Charter,” in *An Appeal to the World*, 85.
Decisions Already Taken under the Charter,” in *An Appeal to the World*, 93.
63 Anderson, *Eyes off the Prize*, 112.
December 1946, proclaiming genocide an international crime and calling for the codification of a treaty banning the practice.\textsuperscript{64} Just as during the Nuremberg Trials, throughout the process of drafting the Genocide Convention, from 1947-1948, domestic concerns greatly influenced the American delegation’s positions. American officials were hardly unique in this regard; other powers opposed the inclusion of provisions that could possibly criminalize their governments’ actions. The existing historiography has not thoroughly covered this phase of American attempts to reconcile a proposed Genocide Convention with the reality of violent racism.

One of the US’s major concerns related to the Convention’s potential to encompass lynching. On April 2, 1948, the US State Department issued a memo with its position on the proposed Genocide Convention. The State Department supported a clause requiring government complicity as a necessary element of the definition of genocide, with the stated rationale: “By limiting the crimes to those committed ‘with the complicity of the responsible officials of a state,’ only those offenses are included which were perpetrated as a matter of state policy, such as the German exterminations of the Jews. Such a definition would not include sporadic lynching or racial discrimination.”\textsuperscript{65} The State Department hoped that the UN would adopt a convention that would exclude vigilante or extrajudicial violence. Yet, the distinction between state-endorsed and non-state-endorsed violence could be blurry, in the American context, given the frequency of police brutality and almost nonexistent prosecutions of lynching perpetrators.

State Department officials anticipated Senate opposition to a treaty that did not include a clause about government complicity. For instance, in one memorandum from April 20, 1948, a


State Department employee, Mr. Gross in the legal department, noted a colleague’s prediction “that the definition in the form in which we have now revised it will make it difficult to secure acceptance by the Senate and… is open to a construction which would include individual murders or lynchings.” Given the widespread awareness of the problem of lynching, this prediction that the subject would arise during debates on the Genocide Convention—a law banning extreme forms of racially-motivated violence—was logical. Yet, Gross acknowledged that State Department officials changed their position, for reasons including: “the complicity formula did not get around to the lynching problem, because of the ‘negative’ aspect of this formula, i.e. the intention to include acquiescence or failure to act as an element of complicity” and “[t]he solid opposition of the other members of the Committee…”

Thus, the Genocide Convention did not include the “complicity” clause, due to its legal limitations and political infeasibility.

The historiography of the Genocide Convention has neglected the useful role of Constitutional law in understanding debates about government complicity and genocide at the State Department and, later, at the Senate Foreign Relations Committee. The State Department’s “complicity” clause represented a continuation of decades-long precedent, which prevented legal protection from civil rights violations that were ostensibly perpetrated by private parties. Since Reconstruction (1865-1877), precedent from Supreme Court cases had distinguished between private and state acts that violated an individual’s civil rights, with only the latter banned under the Constitution. The first of these cases was United States v. Cruikshank (1876), in which the

Court struck down as unconstitutional the 1870 Enforcement Act, which forbade conspiring to violate an individual’s Constitutional rights.\textsuperscript{67} The Court deemed this law unconstitutional, on the grounds that the Fourteenth Amendment to the Constitution only prohibits state violation of an individual’s civil rights, and a handful of vigilantes do not constitute the state.\textsuperscript{68} Similarly, in \textit{Civil Rights Cases} (1883), the Court struck down as unconstitutional the Civil Rights Act of 1876, which prohibited racial discrimination in access to public accommodations. The majority of the Court decreed that, under the Fourteenth Amendment, “[s]tate action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment.”\textsuperscript{69}

In combination, these rulings and the \textit{Plessy v. Ferguson} (1896) decision, which permitted state-sponsored racial segregation, provided Jim Crow’s legal backbone. Even \textit{Plessy} reaffirmed the argument that law cannot remedy private acts of racism: “If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.”\textsuperscript{70}

The State Department had thus, wittingly or not, adopted the legal construction of civil rights law that had perpetuated discrimination and racially-motivated violence.

\textbf{Senate Deliberations: Lynching, Race Riots, and American Democracy}

On June 16, 1949, six months after the UN General Assembly adopted the Convention, Truman transmitted a certified copy of the Convention to the Senate, along with a message urging ratification. Truman proclaimed: “America has long been a symbol of freedom and


democratic progress to peoples less favored than we have been and that we must maintain their belief in us by our policies and our acts.” For Truman, refusal to ratify the Convention was tantamount to abandonment of the US’s commitment to global human welfare. He lauded “the leading part the United States [had] taken in the UN in producing an effective international legal instrument outlawing the world-shocking crime of genocide.” Thus, Truman asserted, the US needed to maintain its status as a leader in the new, postwar international system and “demonstrate that the United States [was] prepared to take effective action on its part to contribute to the establishment of principles of law and justice.” The role of the US in the postwar world that the Truman Administration propagated—a force for the creation of universal norms within supranational organizations—necessitated the Convention’s ratification.

Proponents of ratification understood that, despite Truman’s staunch support, Senate ratification was far from assured. Beginning in 1949, leaders of the pro-ratification movement in the US worked through the organization eventually named the US Committee for a UN Genocide Convention, to prepare for the Senate Foreign Relations Committee’s hearings on the Convention. The organization included representatives from civil society groups that were advocating for ratification, with the National Conference of Christians and Jews most heavily represented. The US Committee for a UN Genocide Convention constructed a narrative about the Convention that they deemed palatable to politicians across partisan and regional lines.

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During a meeting on October 11, 1949, the committee decided to “encourage testimony before the Senate sub-committee by (1) outstanding lawyers and such leaders as General Eisenhower and Harold Stassen and (2) organizations which have large memberships and which have not been closely identified with the Civil Rights legislation…” The committee also concluded that “interpretation and support of the Genocide Convention” needed to “be considered quite apart…from the Universal Declaration or Covenant on Human Rights and…from Civil Rights.” The organization leading the pro-ratification movement had determined that the Convention’s political viability was inexorably linked to its association, or lack thereof, in political discourse with the causes of human and civil rights. As such, the organization’s brief to the US Senate argued: “The Convention is not to be classed as one for the protection of human rights but for the preservation of international peace.” Even though the Convention banned genocide in wartime and peacetime, the committee perhaps hoped that the mention of “international peace” was lead the Senators to associate genocide with armed conflict, rather than with discrimination.

However, other liberals and Truman Administration officials already linked genocide prevention with international human rights protection. During the committee’s October 18, 1949 meeting, Chairman Roger Baldwin reported that the Committee on Tactics decided “[t]hat Genocide should be considered by this Committee as a question apart from any complications or associations with Human Rights and Civil Rights…” However, at the same meeting, Baldwin

reported “that the State Department [was] holding an all day [sic] Conference in Washington, D.C. on the subject of Human Rights with one round table on Genocide.”78 On the one hand, the State Department appeared to view the linkage of the Genocide Convention with human rights as politically sound, perhaps with the goal of presenting a cohesive foreign policy strategy. On the other hand, the committee was concerned only with the Genocide Convention, not broad foreign policy aims, and thus aimed to minimize any possible controversy surrounding the Convention.

Internal conflict hampered the US Committee for a UN Genocide Convention’s efforts to present a single narrative about the Convention to the public. The group’s primary tension was between Lemkin and James N. Rosenberg, who briefly served as the committee’s Chairman. Lemkin’s personal papers include writings in which he accused Rosenberg of publicly associating the Convention with the UN’s human rights projects. Lemkin wrote that “in two consecutive drafts of a brief to the Senate…Rosenberg called the genocide convention ‘a multipartite treaty on Human Rights.’ Rosenberg was successfully stopped in submitting this brief to the Senate. Such a brief would scuttle ratification of the Genocide Convention.”79

According to Lemkin, Rosenberg’s errors were so grave, because “[t]he U.N. Human Rights project has its counterpart in the U.S.A. in Civil Rights…Some people who are opposed to the Genocide Convention confuse on purpose genocide with human rights. This is one of the ways to scuttle the convention because of possible filibuster in the Senate.”80 Lemkin not incorrectly assumed that some Americans viewed UN human rights projects as vehicles for domestic civil

rights reform. For this reason, in his correspondences instructing those who planned to testify before the Senate, Lemkin repeatedly emphasized that human rights and civil rights were not to be addressed. For instance, Lemkin suggested the following in a letter to Robert E. Van Deusen of the National Lutheran Council, in January 1950: “We try not to confuse genocide with human rights which have their counterpart in the controversial issue of civil rights. Obviously discrimination is not destruction, obliteration and annihilation.”

Efforts to create a narrative of the Genocide Convention as completely distinct from human rights projects included not only coaching of those testifying before the Senate, but also careful attention to Lemkin’s public appearances. For example, in April 1950, Lemkin spoke to high school students attending a conference on human rights, sponsored by the UN Educational, Scientific and Cultural Organization (UNESCO) Council of Teachers College of Connecticut. A letter to Lemkin, written before the conference, from the Chairman of the council, Lawrence D. Greene, explained: “We made every effort to follow your wishes in the matter of keeping the topics of Human Rights and Genocide separate.” Greene attached a copy of the conference program, which included a note at the bottom: “(The topic of Genocide would not ordinarily be discussed with Human Rights; however since we have the opportunity to have with us the person who is most closely associated with the [Genocide Convention] we have included it as a separate part of our program.)” This anecdote illustrates the clumsy relationship between the Genocide Convention and the UN’s human rights projects. They differed in their conceptual origins, but

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82 “Correspondence from Lawrence D. Greene, April 15, 1950,” Box 2, Folder 3: “Lemkin Correspondence, 1950,” Raphael Lemkin Collection, Center for Jewish History, New York, New York.
83 “Correspondence from Lawrence D. Greene, April 15, 1950.”
much to the consternation of the Convention’s promoters, the topics were similar enough that their association seemed quite logical.

In January and February of 1950, the Senate Foreign Relations Committee convened a subcommittee to conduct hearings on the Genocide Convention, during which individuals representing government departments and civil society organizations offered testimony. The American Bar Association (ABA) led the opposition, but the Convention enjoyed support from a number of noncontroversial organizations, such as various Christian churches. However, the Senators’ questions and remarks indicated deep concern about the Convention’s implications. Their worries spanned multiple subjects, but many were those that the State Department anticipated, regarding the culpability of the US for lynching.

As the historiography has documented, the politics of the Cold War and its relationship to the subject of lynching greatly impacted the Senate’s deliberations. In his testimony, Deputy Undersecretary of State Dean Rusk never mentioned the Soviet Union by name, but he did assert: “millions of human beings are still subjected to the domination of ruthless totalitarian regimes, and that the specter of genocide still haunts mankind.”

Senator Hickenlooper challenged this strategic rationale, questioning the applicability of the Convention to the Soviet Union’s brutality against civilian populations. Hickenlooper raised the subject of “Russia, where millions of people, simply because they grumble a little about the existing government, are put in concentration camps and starve to death…” Rusk subsequently equivocated from his previous stance, condemning “totalitarian governments,” while acknowledging: “since these great political issues get into the whole field of political freedom and human rights and free speech and

political agitation, it was thought wise to limit this convention to the specific subjects of national, ethnical, racial, or religious groups.”86 This precise issue, that the Convention may have been unenforceable with regards to the Soviet Union’s crimes against its citizens, formed a crucial component of the opposition to ratification.87

Despite this fact, the existing scholarship has ascribed a disproportionate amount of weight to the Cold War, in discussions of American racism’s influence on the ratification process. Weiss-Wendt is correct, that much consternation arose from the idea that “while the Genocide Convention contained vague formulations that could be used against the United States, it lacked the teeth to condemn the true and only perpetrator of genocide, Russia.”88 Yet, the Senate’s hearings revealed a more varied set of arguments regarding American racism, including ones that centered Constitutional law and the US’s federal system.

The primary manifestations of racism that the Senators on the subcommittee mentioned were lynching and race riots. The first to broach the subject was Senator Thomas of Utah, who vaguely remarked to Rusk: “I am thinking of a situation which might easily arise…where it is decided to clean up Chinatown in a given city…and the people themselves just decide that that cannot be any longer…”89 Senator Pepper also asked if “a sort of riot and violence” directed against a handful of Chinese people would be genocide. Solicitor General Philip Perlman responded that this would not constitute genocide. Pepper subsequently inquired: “Or, if there were to be what is commonly called a lynching, obnoxious as it is and infamous as it is, that might occur in the [US], that would not be genocide...?” Perlman replied in the negative.90

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86 The Genocide Convention: Hearings Before a Subcommittee, 22.
87 The Genocide Convention: Hearings Before a Subcommittee, 196.
88 Weiss-Wendt, The Soviet Union and the Gutting of the UN Genocide Convention, 8.
Despite the history of anti-Chinese racism in the US, the historiography has neglected the question of violence against Chinese-Americans, in the context of the Senate’s debates.

Truman Administration officials and other proponents of ratification were adamant that genocide had never and could never possibly occur in the US, due to its democratic governmental system. For instance, Solicitor General Perlman asserted: “Under our form of government, [genocide] can never exist. Our Constitution and our Bill of Rights contain guarantees of the rights and the status of minorities which make anything approaching genocide impossible.”

As a retort to ratification opponents, Shad Polier of American Jewish Congress stated: “We do not need a genocide convention for the [US]. We have plenty of troubles and plenty of problems, but genocide is not one, has not been one, and unless and until someday a Fascist [sic] force were to take over the government of this country we will never have one…”

These individuals argued that the Convention only encompassed acts that were possible under dictatorial governments, not ones with legally safeguarded civil rights.

The testimony of a woman identified as Mrs. William Duck Sporborg, representing the General Federation of Women’s Clubs, is particularly notable for the extent to which she addressed civil and human rights. Sporborg opined to the subcommittee: “[t]here is great confusion in the public mind between the civil-rights [sic] issue, which is a factional controversy in our country today, and the [UN UDHR]...and the Genocide Convention...”

To mitigate this “confusion,” she subsequently said: “the Genocide Convention...deals with obliteration, with destruction, and annihilation of peoples. The civil-rights [sic] program...and the [UN UDHR], deals with a much larger question of political and civil rights of individual people within...”

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91 The Genocide Convention: Hearings Before a Subcommittee, 53.
92 The Genocide Convention: Hearings Before a Subcommittee, 103.
93 The Genocide Convention: Hearings Before a Subcommittee, 112.
nations.”\textsuperscript{94} In line with the US Committee for a UN Genocide Convention’s strategy, Sporborg distinguished the Convention from human and civil rights by characterizing the former as a noncontroversial, narrow treaty meant to address instances of large-scale extermination, and the latter as contentious subjects with broad social implications.

The only individual who testified on behalf of an organization representing a racial minority group was Eunice Carter of the National Council of Negro Women. Carter stated that “[t]he situation of the Negro people in this country [was] in no way involved. The lynching of an individual or of several individuals has no relation to the extinction of masses of peoples…” Carter explained that her organization supported the Convention, because “[w]omen and children, weak and defenseless, are usually the first victims of genocide,” and “[w]e are members of a minority. The victims of genocide are minorities…” Yet, despite admitting a logical sense of identification with genocide’s victims, she assuaged the Senators’ qualms by noting that the members of her organization “[had] pride in our great nation and its leadership in world affairs.”\textsuperscript{95} While acknowledging that African Americans were invested in the global cause of minority rights, Carter ultimately argued that genocide only encompassed large-scale types of racially-motivated violence.

A major aspect of opposition to ratification that the existing historiography has neglected was the legal standing of civil rights claims against individuals. While Supreme Court precedent had distinguished between state and private civil rights violations, arguing that only the former were unconstitutional, the Genocide Convention followed the precedent of the IMT, which tried individuals rather than states. The lack of a clause on government “complicity,” or a similar stipulation, in the Convention spawned opposition by those who feared a destruction of Jim

\textsuperscript{94} The Genocide Convention: Hearings Before a Subcommittee, 114.
\textsuperscript{95} The Genocide Convention: Hearings Before a Subcommittee, 131-132.
Crow’s legal underpinnings. Representatives from the American Bar Association (ABA) were the most prominent individuals who testified in opposition to ratification at the subcommittee’s hearings. In his statement, Alfred Schweppe, the Chairman of the ABA’s Special Committee on Peace and Law through the UN, cited his Jewish law partner as well as his prior work with the American Civil Liberties Union (ACLU) and the Urban League as evidence of his opposition to discrimination.96 Schweppe explained that while “we are all vigorously opposed to genocide,” the subject of the hearing was whether the Convention would actually “accomplish the prevention of genocide…”97

The resolution of the ABA House of Delegates in opposition to the Convention— included in the record with Schweppe’s statement— implied that the Convention was antithetical to the American legal system, as it stated: “economic conditions…are forcing nations to demand sacrifices of their individual freedoms to conform to Socialist [sic] states or alien ideologies…”98 An element of the Convention that particularly worried the ABA House of Delegates was “the new premise that international law is no longer the law of states but that of individuals.”99 Despite the efforts of ratification proponents, the ABA extensively discussed the proposed UN Covenant on Human Rights in its resolution on the Genocide Convention. Per the resolution, if the Covenant on Human Rights became international law, “the entire field of civil or human rights” would have been “taken from the states and vested in Congress.”100 Notably, this prediction centered on a change to the US’s federalist balance of power, rather than threats to national sovereignty. Indeed, arguments concerning the latter were certainly present in

96 The Genocide Convention: Hearings Before a Subcommittee, 156.
98 The Genocide Convention: Hearings Before a Subcommittee, 159.
100 The Genocide Convention: Hearings Before a Subcommittee, 163.
ratification opponents’ testimony, and the historiography has extensively analyzed the issue of national sovereignty in debates about the Convention. Yet, the ABA also seemed to worry that, if the US were to ratify the Convention, the ability of states to regulate the rights of its citizens could be greatly diminished, due to greater federal control.

In his testimony, Schweppe emphasized the supposedly dire prospects for minority rights claims that ratification would engender. After implying that the murder of a single Chinese individual could be considered genocide, under the Convention’s definition, he stated: “Let us not delude ourselves that genocide as defined in this convention, which omits the essential element ‘with the complicity of government,’ could not happen here.”101 He dismissed the accurate explanation that “the ‘mental harm’ phrase…is said to have originated with a Chinese statement that the Japanese deliberately plied subject peoples with narcotics…,” and thus indicated damage to neurological faculties. Rather, he hinted that “mental harm” actually meant “mental anguish” or “mental suffering,” and thus would be applied much more broadly than many supporters realized.102 Near the end of his testimony, Schweppe explicitly stated: “I…believe that forceful action against part of a colored group, with intent to destroy part of the group, would be genocide.”103

Moreover, Carl B. Rix, the Vice Chairman of the ABA Committee on Peace and Law through the UN, extensively addressed the responsibility of individuals, under the Convention. According to Rix, “[t]he traditional concept of international law was that of the relation of states to each other… A determined effort is now being made, following the Nuremberg trials, to change that concept to the relations of states and individuals in the states, thereby imposing

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101 The Genocide Convention: Hearings Before a Subcommittee, 199.
individual liability for international law…”  

Rix was largely concerned with the ramifications of this new legal principle for domestic civil rights law. Yet, in this domain, Rix’s main worry was not legal action by a foreign power, but states’ rights. He cited the provisions of To Secure These Rights about “the added power which may be given to Congress in the field of civil rights if the human-rights [sic] treaty is ratified and approved.”

In his statement, George Finch, a member of the ABA’s Special Committee on Peace and Law through the UN, echoed Rix’s arguments. Finch also emphasized the distinction between crimes committed by individuals and those committed by government, stating: “There is not a word in the convention which denounces as genocide the mass killing and destruction of peoples by governments.”

Finch reiterated Rix’s concern regarding the application of international law to individual conduct, instead of strictly to government policy. He noted: “Article IV limits the application of the convention to persons committing genocide. We are…met with a bar against accusing governments, totalitarian or otherwise, of genocide.”

By emphasizing that governments as entities could not be held responsible, Finch and other ABA representatives insinuated that individuals not in positions of power, in the government, could become defendants in genocide cases. Finch directly discussed the US delegation’s original position, during the Convention’s drafting, that genocide could only occur with government support. Yet, “[f]or reasons best known to our own Government [sic] officials, this approach was later abandoned…”

To Finch, the idea that genocide could occur absent governmental involvement was preposterous: “How can an individual or group of private individuals undertake to destroy a

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104 The Genocide Convention: Hearings Before a Subcommittee, 206.
whole national, racial, ethnical, or religious group within the country without governmental approval, connivance, or acquiescence?” He either did not know or did not mention the State Department’s conclusion that such a clause would not preclude accusations that lynching constituted genocide. Lastly, Finch articulated the same fears as Rix, regarding states’ rights, namely that the Convention constituted “a further attempt on the part of the Federal Government [sic] to increase its power at the expense of the States [sic].”

The District Attorney of Louisiana, Leander Perez, offered the argument that was most explicitly grounded in Supreme Court precedent, of any individual who delivered testimony. His statement noted: “[a]fter the adoption of the fourteenth and fifteenth amendments there were those who contended for the United States Government [sic], that its authority had been extended over the legal rights of individual persons…,” a direct reference to proponents of legal equality for newly emancipated slaves. Citing cases including *Cruikshank*, Perez explained that “the… Supreme Court held in various cases…that while the fourteenth amendment protected citizens…against any State violation of their civil rights, individual invasion of individual rights was not the subject matter of the amendments …” Thus, the same reasoning that prevented federal prosecution of the Ku Klux Klan and other violent white supremacist groups also inhibited the codification of an international ban on genocide.

On May 23, 1950, the subcommittee did recommend ratification, with understandings, to the full Foreign Relations Committee. These understandings included, most relevantly, one that indicated that genocide would “affect a substantial portion of the group concerned,” thus

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110 The Genocide Convention: Hearings Before a Subcommittee, 220.
111 The Genocide Convention: Hearings Before a Subcommittee, 224.
decreasing the possibility the lynching and other episodes of race-based violence could be considered genocide. Throughout 1950, the Foreign Relations Committee discussed the subcommittee’s hearings on the Convention. During these meetings, issues of race and civil rights figured prominently in the State Department’s remarks and the Senators’ deliberations.

At a convening of the Foreign Relations Committee, on April 12, 1950, the State Department expressed bemusement at the seemingly contradictory nature of ratification opponents’ qualms. A State Department memorandum argued that “the fact that the genocide convention [sic] may not be immediately effective everywhere in the world should not deter the United States and other democratic countries from endorsing the convention.” The memorandum then raised a noteworthy point: “The above contention, made in conjunction with the contention that the convention is unconstitutional because it contemplates an international penal tribunal, is the most puzzling aspect of the opposition to the convention.” The opposition to ratification seemed to some to rest on irreconcilable pillars, thus calling into question its true reasoning.

The Chair of the Foreign Relations Committee, Democrat Tom Connally of Texas, expressed a great deal of consternation about the Convention’s ramifications. Notably, civil rights activists were largely opposed to Connally’s powerful role in US-UN relations. The Executive Secretary of the NAACP, “[Walter] White knew Connally's position on racial equality and justice all too well, because the Texas senator had led the ‘determined opposition’ that ‘sidetrack[ed] the anti-lynching bill’ in 1937, 1938, and 1940.” During the Foreign Relations Committee’s May 23, 1950 meeting, Connally responded to Truman Administration representatives: “I don't appreciate and don't regard with any weight at all fellows from the

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114 Anderson, Eyes off the Prize, 32.
departments coming up here and lecturing to Congress about the morals or morality of the United States. We have been able to take care of our morality for 150 years.”\footnote{115 Executive Sessions of the Senate Foreign Relations Committee (Historical Series), 391.} In Connally’s view, ratification of the Convention was not necessary to confirm the United States’ stature in foreign affairs. Connally remained pessimistic about the effects of ratification. During a Foreign Relations Committee meeting on September 6, 1950, Senator Henry Cabot Lodge, a Republican from Massachusetts, suggested: “it helps us all over the world with people that are in doubt, the people who care about racial discrimination, and there are millions of people who care about racial discrimination.” Connally retorted: “As soon as it is ratified every country will be clawing us whenever there is a little local row, wanting us to intervene and stop it.” Lodge simply replied: “I don't think that will happen.”\footnote{116 Executive Sessions of the Senate Foreign Relations Committee (Historical Series), 653.} While Lodge viewed ratification as a means to prove to the international community that the US did not condone racism, Connally saw ratification as a burden, which would do little more than oblige the US to enter numerous conflicts abroad and enable erroneous charges against the US.

The Foreign Relations Committee’s meeting on April 12, 1950 was notable not only for the Connally’s intense criticism of the Convention, but also for a startlingly blunt admission by Senator Smith of New Jersey. Senator Smith predicted that “the first charge [Russia] would make is that we genocided \textit{sic} the American Indian, and it is pretty nearly true, too...I am not raising that as an objection. We are open to a possible charge of that kind…”\footnote{117 Executive Sessions of the Senate Foreign Relations Committee (Historical Series), 399.} Given the history of violent treatment of Native Americans, one would think that this subject would have arisen during the subcommittee’s discussion. Power’s “\textit{A Problem from Hell}” mentions fears that the Convention would spawn scrutiny of the brutal treatment of Native Americans in the 1800s,
concluding that “the convention, which was not retroactive, could not be used to press the
matter.” Overall, however, the historiography has little to say on this subject.

Although the subject of Native Americans did not arise frequently during debates on the
Genocide Convention, the State Department worried about international scrutiny of human rights
violations against Native Americans. Weiss-Wendt mentions that, in 1947, “the State
Department…filed a…position paper on the status of Native Americans,” which “concluded
that…[d]iscriminatory state laws denying the right to vote and/or to hold public office…paled in
comparison with the segregation of indigenous peoples on reservations (decried by the former
US secretary of the interior Harold L. Ickes as the most ‘shameful page in our whole history’)…”
As a result of these conditions, “[t]he State Department forecast a 50 percent chance that the
plight of Native Americans might invite international intervention.” Indeed, as the historian
Benjamin Madley notes, regarding descendants of survivors of the genocide of California’s
Native Americans: “Historical trauma, access to natural resources, control of land, and federal
recognition are just some of the important present-day issues connected to the genocide that their
ancestors endured.” The debates on the Genocide Convention were, in fact, only a few
decades removed from the United States’ most violent military campaigns against Native
Americans west of the Mississippi River.

Lemkin may have been aware of the politically controversy that would ensue, were he or
others to mention violence against Native Americans as an example of genocide. His writings
indicated his interest in what he considered the genocide of the Americas’ indigenous peoples,

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119 Weiss-Wendt, The Soviet Union and the Gutting of the UN Genocide Convention, 117.
120 Benjamin Madley, An American Genocide: The United States and the California Indian Catastrophe, 1846-1873,
(New Haven: Yale University Press, 2016), 348, http://eds.b.ebscohost.com.libproxy.berkeley.edu/eds/ebookviewer/ebook/bmx1YmtfXzEyMjc1MDJfX0FO0?sid=009ad02d-f50b-41bd-b634-9f2b7e2f7a8b@sdc-v-sessmgr04&vid=2&format=EB.
including the damage to their cultures.\textsuperscript{121} Yet, in public statements, Lemkin and other leaders of the pro-ratification movement did not mention the Americas as a historical site of genocide, even though they would note examples from the far more distant past, such as persecution against early Christians in the Roman Empire.\textsuperscript{122} Indeed, that Americans trying to convince the US government of the merits of ratification would not make their case using the sins of American history is not shocking.

To understand why American officials worried so little about culpability for genocide against indigenous peoples, one might point to the lack of general consciousness of the subject among non-indigenous people in the mid-twentieth century. Historian Gregory Smithers argues that, “[d]uring the early years of the Cold War, the idea that English colonial authorities or the US government had ever acted with genocidal intentions toward Native Americans undermined the notion of American exceptionalism…”\textsuperscript{123} Even in later debates, between the early 1950s and the Convention’s ratification in 1988, the subject of Native Americans hardly arose. Yet, in 1970, an ABA panel unsuccessfully recommended that the organization reverse its longstanding opposition to the Convention, with the reasoning that “nothing in the history of the United States since the early Indian wars quite adds up to genocide within the meaning of this convention.”\textsuperscript{124} While the genocide of Native Americans received far less attention in Congressional hearings than did anti-black and anti-Chinese racism, in the cases of these infrequent admissions, no one present offered a denial. Ultimately, the coexistence of relative silence and rare, blunt remarks

\textsuperscript{122} The many references to this instance include the Statement of Robert P. Patterson, US Committee for a UN Genocide Convention, in Genocide Convention, Jan. 23-25, Feb. 9, 1950, 57.
\textsuperscript{123} Smithers, “Rethinking Genocide in North America,” 323.
\textsuperscript{124} Quoted in Large, “Senate is Due to Vote on a Treaty Soon—One Submitted in 1949,” 466.
regarding the mass murder and displacement of Native Americans perhaps indicated the verboten nature of this subject in public debate, outside of indigenous circles.

Truman, Connally, and the Korean War

The aforementioned antipathy that Connally expressed toward the Convention did not seem to dissipate. Senator Brien McMahon of Connecticut, who chaired the subcommittee, wrote to Connally multiple times, urging him to permit the Foreign Relations Committee to vote on the question of ratification, which would then allow for a full Senate vote. On September 6, 1951, McMahon asked “to have the matter voted upon at the next meeting of the Committee,” emphasizing that he was not alone in this opinion; “I am pressed constantly by friends of the Convention for action in the Senate…”125 In a January 17, 1952 letter, McMahon informed Connally that, “[l]ast week one hundred Republicans of the House of Representatives are reported to have addressed the Secretary of State in a letter urging him to bring a charge of genocide against the Soviet Union.” To McMahon, this action signaled the US’s need to ratify the Convention; “Under this kind of domestic pressure it does not seem wise for the United States to remain outside the Genocide Convention, which incidentally has acquired a sufficient number of ratifications to enable it to go into effect.”126 Indeed, the Convention received ratification by the necessary number of countries, to officially become international law, in

January 1951. McMahon implored Connally to consider the international and domestic consensus on the Convention, as well as geopolitical circumstances, which seemed to necessitate ratification. Lastly, McMahon’s letter underscored the responsibility of Connally’s role: “As Chairman of the Committee on Foreign Relations you are aware of the tremendous disadvantages which accrue to us from the misrepresentations by the Soviet Union of our failure to act on this Convention.”

McMahon was not the only individual to press Connally on the subject. On August 30, 1951, Senator Paul Douglas of Illinois similarly addressed abuses in communist-controlled countries, including “[t]he mass abduction of Greek children, and the atrocities being committed against Polish women and children…,” which constituted “amply impetus to urge early action on the ratification of the Genocide Convention.” Connally did respond to at least one letter urging ratification, from C. R. Dukes of Houston, the President of the Industrial Union Council. Connally explained: “the Genocide Convention is now being considered by the International Court of Justice, and it seems prudent to wait until the Court renders its advisory opinion…before taking further action.” However, even after the Court gave its opinion regarding the ability of countries to add reservations to their ratifications of the Convention, in 1951, Connally still did not hold a full committee vote on the Convention. Given the support

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128 Brien McMahon, Correspondence to Tom Connally, January 17, 1952, 2.
for ratification within the Senate, Connally’s role in delaying ratification of the Convention may be of much greater significance than its place in the historiography would suggest.

Simultaneously, although Truman did not personally address the Senate during its hearings, he did mention the Convention’s importance in public remarks. For example, during an October 1949 address at the cornerstone laying of the UN building in New York City, Truman referenced the lessons of World War II: “…disregard of human rights is the beginning of tyranny and, too often, the beginning of war. For these reasons, the UN has devoted much of its time to fostering respect for human rights. The General Assembly has adopted the Universal Declaration of Human Rights and the Convention on Genocide.” In his 1949 address to the National Conference of Christians and Jews, Truman remarked: "We must strive abroad, as well as at home, to defend human rights and to expand the enjoyment of freedom….we have been able to play an important part in the UN in developing such historic international documents as the Declaration of Human Rights and the Convention on Genocide.” Truman publicly espoused the belief that the Convention and the domestic civil rights debate as inevitably linked. He presented his advocacy of civil rights at home and of human rights abroad as two prongs of a vision of the US as a leader in shaping the priorities of supranational entities, especially the UN.

For Truman, ratification of the Convention became more urgent once hostilities in Korea commenced, as his August 1950 correspondence to Senator Connally underscored. Truman enclosed a letter from the Ambassador to the Republic of Korea regarding “the imminent danger

81-1, Box 12, Folder: “United Nations Documents), National Archives and Records Administration, Washington, D.C.
to the Christian population of Korea from the communist invaders.”\(^\text{134}\) Echoing the debates during the Senate’s hearings on ratification, Truman wrote to Connally: “Genocide has not occurred in the United States, and I cannot believe that it would ever occur here. But in other parts of the world various national and religious groups still face this threat.”\(^\text{135}\) Like his subordinates who testified at the Senate Committee on Foreign Relations’ hearings, Truman argued that opposition to ratification, based on fear that the US could be charged with genocide, was utterly baseless. Perhaps the Senate’s delay in ratifying the Convention prompted Truman to shift his rhetoric away from broad arguments regarding the prevention of atrocities similar to those that occurred during World War II. Instead, Truman began to center specific geopolitical concerns, in order to assuage fears that universalist rights claims would sound the death knell of Jim Crow.

**Ratification Versus Civil and Human Rights**

Lemkin and other pro-ratification advocates began to forcefully address the issues of civil and human rights, ostensibly to protect the Convention’s political viability. However, their critiques periodically indicated at best a misunderstanding of, and at worst antipathy toward these causes. The record of the Senate Foreign Relations Committee’s April 12, 1950 meeting includes a letter from Lemkin, arguing that the Convention’s definition of genocide could not possibly encompass lynching and race riots, which aptly exemplifies this tendency. In the letter, Lemkin posited that “lynching is…an act of local terrorism which intends to frighten away local


Negroes from doing certain things which the whites do not like them to do. The basic policy of the South is not to destroy the Negro but to preserve the race on a different level of existence.”

Lemkin advanced a demographic argument, that violence does not qualify as genocide if it does not threaten to eradicate a population. He subsequently wrote:

What are race riots? Local disturbances which occurred two or three times in connection with the endeavor of the whites to keep the Negroes out of certain housing projects. Assault and battery resulted. Both the whites and the Negroes were affected. Obviously there was no specific intent to destroy the Negro race in whole or in part by this type of spontaneous trivial outbreak. The Negro race in America certainly feels humiliated by this type of occurrence but it does not feel endangered in its very existence as the Jews in Germany or the Armenians in Turkey did…

Ultimately, Lemkin and other proponents of ratification not only denied any nexus between American white supremacy and genocide. They often actively undermined the work of civil and human rights activists, by denigrating their objectives, in the hope of creating a political environment more conducive to ratification.

In his writings, Lemkin expressed his disapproval of civil rights activism, which he believed diminished the prospects for ratification. He seemed to view pro-ratification and civil rights advocacy as incompatible, even though civil rights organizations including the NAACP supported the Convention. In a memorandum to the American Zionist Council, written on June 14, 1950, Lemkin predicted: “the next General Assembly will adopt a covenant on human
rights,” which “would then be submitted for ratification to the next Session [sic] of the Senate. Human rights are identified in the eyes of the southern Senators with civil rights and that means filibuster. A confusion would be created…and this will result in the defeat of both projects.”

Lemkin hoped to convince allies that immediate ratification was necessary, in order to avoid the backlash that an association with human rights could entail. He further asserted: “Several organizations, while supporting in general the Genocide Convention, concentrate now their main efforts on the fight for fair employment commission [sic] and very little is done now directly by organizations in approaching Senators and in asking them to act on the Convention.”

Lemkin was clearly frustrated with this perceived tendency of civil society organizations to focus on domestic anti-discrimination causes, rather than ratification of the Convention. However, his desire for these groups to engage in pro-ratification activism would seem to conflict with the US Committee for a UN Genocide Convention’s aforementioned strategy of not recruiting individuals associated with civil rights to testify before the Senate.

Lemkin’s skepticism regarding human and civil rights may have stemmed in part from his insecurities about the place of the Convention in international law. Notes in his personal papers claimed that “some private organizations…[were] supporting a Covenant on Human Rights. These groups would like to substitute for the Genocide Convention Articles VI, VII and XXVI of the Draft Covenant on Human Rights…”

Lemkin understood this project as a threat to the Convention, given the overlapping nature of the Convention and the following proposed

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articles of the Covenant on Human Rights: “nobody shall be arbitrarily deprived of his life… no
one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment…any
advocacy of national, racial or religious hostility that constitutes an incitement to hatred and
violence shall be prohibited…”142 Unlike the Genocide Convention, the Draft Covenant on
Human Rights would prohibit violations of individuals’ rights, regardless of whether the abuses
in question purposely affected an entire national, racial, ethnic, or religious group. Lemkin’s
fears regarding the Convention’s fate, as a standalone treaty, were not completely baseless. On
September 30, 1948, Ernest Gross of the US delegation suggested to the UN Sixth Committee
that “[t]he provisions of the convention may later be incorporated into a general draft code of
offenses against peace and security.”143 Thus, the broad nature of these proposed treaties—one
on human rights and the other on the principles the IMT formed in the Nuremberg trials—
seemed poised to diminish the relevancy of the narrowly focused Genocide Convention.

Some ratification proponents advanced arguments about national sovereignty that closely
paralleled the positions of the Convention’s opponents. For example, a resolution that a
Ukrainian émigré group passed January 1954 stated: “Civil rights organizations…are now
lobbying in the UN for an official investigation of the problem of American racial
discrimination…” The organization opposed “[t]hese investigations” on the grounds that
“constitute an intervention in the domestic affairs of the USA and are in flagrant violation of
article 2 of the UN Charter. The investigations are intended to vilify the USA in world public
opinion and to divert attention from the Soviet crime of Genocide [sic]…”144 The contempt for

142 Notes, undated, 6, Box 3, Folder 6, Raphael Lemkin Papers, 1947-1959, New York Public Library Archives &
143 Ernest A. Gross, “Genocide,” in Human Rights and Genocide: Selected Statements, United Nations Resolutions,
Declaration and Convention, (n.p.: Department of State, n.d.), 47.
144 “Protest Against Investigation of American Race Problems By the Soviets,” January 1954, Raphael Lemkin
American civil rights activists on the part of prominent ratification proponents highlighted the extent to which the latter viewed themselves as apart from broader human rights causes. The movement for ratification became one concerned not just with a single treaty, but also with a specific geopolitical problem, from which public attention risked being distracted.

In late 1950 or early 1951, the American Jewish Committee’s (AJC) Community Service Department published a pamphlet by UNESCO anthropologist Ashley Montagu entitled *Antidote to Barbarism*, which attracted the ire of pro-ratification advocates for its universalist vision and unequivocal condemnation of racism’s various related manifestations. An office memorandum from Dorothy Nathan of the AJC described *Antidote to Barbarism* as “of the greatest important to all the peoples of the world and particularly to those engaged in the fight against discrimination and bigotry.”\(^{145}\) As the pamphlet’s cover image indicated, Montagu addressed the global problem of racially-motivated violence, including genocide.

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\(^{145}\) Dorothy M. Nathan, Memorandum, American Jewish Committee Community Service Department, New York, New York, January 18, 1951, Box 5, Folder 7: “Genocide Convention Writings,” Raphael Lemkin Collection, Center for Jewish History, New York, New York.

Antidote to Barbarism offered war, genocide, and race riots as examples of the same phenomenon, not as problems distinct from each other, as proponents of ratification presented them. Montagu’s main thesis was the statement below a photo of a “USA race riot victim, 1949—’all men belong to the same species, Homo sapiens.’”\textsuperscript{147} According to Montagu: “For all practical social purposes ‘race’ is not so much a biological phenomenon as a social myth. The myth of ‘race’ has created an enormous amount of human and social damage. In recent years it has taken a heavy toll on human lives and caused untold suffering.” The pamphlet ended with a plea for “[t]he unity of mankind from both the biological and social viewpoints…”\textsuperscript{148}

Even though Montagu did not discuss specific pieces of international law, his work was of great interest to Lemkin and other ratification proponents, due to the cover image’s reference to genocide. A State Department memorandum from January 15, 1952, detailing a meeting of State Department officials and the Lithuanian American Council (LAC) leadership, indicated the LAC was concerned about the effects of Antidote to Barbarism on the ratification debate in the US. The meeting’s subject was the LAC’s request “that the United States charge the Soviet Union, in the General Assembly of the UN, with the crime of genocide.” Near the end of the meeting, the Secretary of the LAC “produced a copy of a pamphlet, ‘Antidote to Barbarism,’ by Ashley Montague [sic], published by The Community Relations Service… The pamphlet contains pictures of negroes and alleges that ‘persecution’ of negroes in the United States falls within the meaning of the word genocide.”\textsuperscript{149} However, the pamphlet advanced no such claim.

\textsuperscript{147} Montagu, Antidote to Barbarism.
\textsuperscript{148} Montagu, Antidote to Barbarism.
Rather, it established racial prejudice as a cause of violence, including genocide and race riots, but did not equate the two. The LAC hoped not only to address the plight of Lithuanians under totalitarian Soviet rule, but also to distinguish themselves from human rights activists. In the same vein as the ratification proponents who testified before the Senate subcommittee, the LAC made clear that they would not use pro-ratification advocacy as a springboard to condemn violent racism in the US. In advocating for ratification, the LAC would not threaten postwar liberalism’s tenuous political settlement—the accommodation of legalized white supremacy.

UN leaders noticed the tenuous relationship between pro-ratification and human rights activism. In January 1950, John Humphrey, the Director of the UN Secretariat’s Human Rights Division, and Benjamin Cohen, the Assistant Secretary-General of the Department of Public Information, corresponded on the issue. On January 9, Humphrey replied to Cohen’s “note…in which you [suggested] that we study an effective campaign to clarify the meaning of the Genocide Convention.” He wrote to Cohen:

Your note was, I take it, inspired by an article in the Catholic Review, America… It is asserted in this article that the Genocide Convention is something quite different from the proposed International Covenant on Human Rights or the Universal Declaration of Human Rights… It is emphasized that, while the programme [sic] of the UN is for many senators [sic] synonymous with the civil rights programme [sic] of President Truman, the Genocide Convention has nothing to do with either.150

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As in other cases, the article promoted the Convention by presenting it as a politically viable alternative to the UN’s human rights projects—a treaty that would punish certain government abuses without threatening to incriminate any manifestation of American racism.

Humphrey was concerned about this article and other “propaganda activities, the object of which [was] to convince the… Senate that the Genocide Convention [was] harmless…” From his perspective, these “activities” were problematic because of their “theme: that, while there are justifiable objections against the human rights instruments of the UN from the point of view of American sovereignty and also of certain peculiarities in the American political and social system, nothing of the kind can be said of the Genocide Convention.”\(^\text{151}\) Humphrey argued: “propaganda of this character cannot but fail to prejudice the chances of the human rights programme \textit{sic} of the UN being endorsed by American public opinion and…the chances of the International Covenant on Human Rights ever being ratified by the United States.”\(^\text{152}\) This strain of activism likely, to some extent, alienated itself from the UN, as Humphrey concluded: “we should be very careful before supporting any campaign for the ratification of the Genocide Convention, the effect of which might prove to be detrimental to our other and I think more important work. I am assuming that you will endorse this view.”\(^\text{153}\) By focusing singularly on the American political scene, ratification proponents either purposely or incidentally neglected the potential ramifications of their work for projects that other supporters of the Genocide Convention viewed as at least equally crucial to the protection of the world’s persecuted peoples.

\(^{151}\) "No. 284,” 176.
\(^{152}\) "No. 284,” 176-177.
\(^{153}\) “No. 284,” 177.
Halting the Debate

The relevant historiography has documented the remaining events to be discussed, which contributed to the Eisenhower Administration’s temporary halting of the ratification debate. The first, the 1951 publication of the communist-leaning Civil Rights Congress’s (CRC) petition *We Charge Genocide*, was a significant benchmark of the relationship between the Convention and racial justice. However, it likely affected the Convention’s fate to a much lesser degree than did another event, a California court case that struck down the state’s Alien Land Law and spawned the last development: the proposal of the Bricker Amendment.

_We Charge Genocide: The Crime of Government Against the Negro People_ accused the federal government of genocide against African Americans, from the historical crime of slavery to the contemporary Jim Crow system. The petition’s evidence of the federal government's "intent to destroy" African American people included: the incitement of violence by Southern politicians; conditions that contributed to African Americans' markedly lower life expectancy, compared to whites; and violence against African Americans, such as lynching and the disproportionate use of the death penalty. The end of the petition contained the CRC’s major request, for the UN General Assembly to take action and condemn the US.154

Historians disagree regarding the legitimacy of the CRC’s arguments and tactics. Anderson argues that “_We Charge Genocide_ was a deftly crafted [Communist Party] document that skillfully used the plight of African Americans to meet the major legal and financial objectives on the CRC’s 'Free the Communist 11' agenda,” and “the CRC was not fully prepared…to directly advance the cause of black equality.”155 On the other hand, Weiss-Wendt

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155 Anderson, _Eyes off the Prize_, 185-186.
contends: “the book represented a well-researched document. The CRC had assembled a
damning record of racial discrimination in the United States in the immediate postwar years.”

The Senate’s debates heavily influenced the CRC’s argument, especially the fact that “that the
American Bar Association [believed] that the crimes against the Negro people in the United
States [came] within the provisions of the Genocide Convention.”

The CRC also noted what their political adversaries likely knew: “The similarity between Hitler’s Nuremberg Laws against
the Jews and white supremacist laws in the United States against the Negroes has often been
remarked upon.” Whether or not the plight of African Americans fit the legal definition of
genocide, the petition advanced a strong case that American white supremacy bore similarities to
the ideology of a government widely acknowledged as genocidal.

The General Assembly did not take up the CRC’s petition, which faced widespread
condemnation, including from other civil rights organizations. NAACP leaders, for instance,
issued a rebuttal arguing that the US had witnessed recent progress in African Americans' rights,
and that communist Eastern Europe was home to far worse human rights violations than anything
that occurred in the US. Given that no country, not even a member of the communist bloc,
took up the petition to bring to the General Assembly, We Charge Genocide was more
consequential for cementing divisions within the African American civil rights movement than
for the geopolitics surrounding the Convention.

A major development in the story of the Genocide Convention in America, the case of Sei
Fujii v. California, did not pertain directly to the Convention. In 1950, a California court ruled
that the state’s Alien Land Law— which forbade landownership by immigrants ineligible for

156 Weiss-Wendt, The Soviet Union and the Gutting of the UN Genocide Convention, 234.
157 We Charge Genocide, 39.
158 We Charge Genocide, 153.
159 Anderson, Eyes off the Prize, 192-193.
citizenship on the basis of national origin—violated provisions of the UN Charter concerning racial discrimination.\textsuperscript{160} According to Bradley, “[w]ithin days of the announcement of the California court’s decision [in \textit{Sei Fujii}], it was denounced on the floors of the U.S. House and Senate.”\textsuperscript{161} The California Supreme Court ultimately overruled this determination, stating: “…the provisions of the preamble and of article 1…which are claimed to be in conflict with the alien land law…state general purposes and objectives of the UN…and do not…impose legal obligations on the individual member nations or…create rights in private persons.”\textsuperscript{162} However, the California Supreme Court did not completely disregard the UN Charter’s relevance, ruling that “[t]he humane and enlightened objectives of the UN Charter are, of course, entitled to respectful consideration by the courts and legislatures of every member nation, since that document expresses the universal desire of thinking men for peace and for equality of rights and opportunities.”\textsuperscript{163} In short, the UN Charter was not binding, but could offer guides to the legislative and judicial branches.

The \textit{Sei Fujii} ruling intensified domestic opposition to international human rights treaties, even after the California Supreme Court declared the UN Charter’s non-discrimination provisions non-binding. Bradley notes that, prior to the \textit{Sei Fujii} decision, “the ABA was something of an outlier” in its opposition to international human rights projects and the Genocide Convention.\textsuperscript{164} Yet, amidst the backlash to the \textit{Sei Fujii} ruling, including among those who wanted to preserve legal white supremacy, Republican Senator John Bricker of Ohio introduced a constitutional amendment that received the ABA’s backing. Anderson explains: “The

\textsuperscript{160} Bradley, \textit{The World Reimagined}, 106.
\textsuperscript{161} Bradley, \textit{The World Reimagined}, 108.
\textsuperscript{163} \textit{Sei Fujii v. The State of California}, 3.
\textsuperscript{164} Bradley, \textit{The World Reimagined}, 109-110.
amendment would require all treaties and executive agreements first to be ratified by two-thirds of the U.S. Senate, … by both houses of Congress, …, and finally … by all 48 state legislatures.” Walter White of the NAACP observed that the amendment’s congressional support greatly increased following the Sei Fujii decision. Thus, regardless of the wishes of Lemkin and other prominent supporters of the Genocide Convention, the Convention became a centerpiece of a debate regarding international oversight of domestic racial discrimination.

The Senate held hearings on the Bricker Amendment from February to April 1953, during which the subject of the Genocide Convention often arose. The Bricker Amendment’s supporters worried not only about charges of human rights violations by foreign countries, but also about American activists and judges being influenced by international law’s ideals. For instance, Eberhard P. Deutsch, a member of the New Orleans Bar Association, Louisiana Bar Association, and ABA Committee on Peace and Law Through the UN, pontificated: “The Charter of the UN itself has already given rise to a threatened destruction of local self-government by a near-successful attack on the alien land law of California; and the same instrument has recently been cited with great force as a prohibition of race segregation…”

Bernard Fensterwald, an assistant to the State Department’s legal advisor, was particularly bothered by these arguments. In a statement expressing his own views, not those of the State Department, Fensterwald commented that Frank Holman of the ABA “[assigned] great significance to the sentence in the opinion of Chief Justice Gibson which says that courts must

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165 Anderson, Eyes off the Prize, 220.
166 Anderson, Eyes off the Prize, 235.
167 Treaties and Executive Agreements: Hearings Before a Subcommittee of the Committee on the Judiciary of the United States Senate, 83rd Congress, First Session on S.J. Res. 1 and S.J. Res. 43- February 18, 19, 25; March 4, 10, 16, 27, 31; April 6, 7, 8, 9, 10, & 11, 1953, 116, https://congressional-proquest.com.libproxy.berkeley.edu/congressional/result/pqresultpage.gispdfhitspanel.pdflink/S2fapp-bin$S2fgis-hearing$2fS2f8S2fS2f2fS2ffhrg-1953-sis-0014_from_1_to_1273.pdf+/Bricker++amendment+treaties$40S2fapp-gis$2fhearing$2ffhrg-1953-sis-0014S40Hearings$40Hearings+Published$40February+18,+1953$407pgId=46265bcf-40de-4ad8-993f-d07a091e8264&rsId=1638E0603BA.
give respectful consideration to the humane and enlightened objectives of the United Nations Charter…He also [seemed] to imply that there is something insidious about the process of reevaluating the constitutionality of the alien-land [sic] law as of 1952.”\footnote{168} Fensterwald, however, appeared to welcome a legal challenge to the law, given that “[t]he question of ‘equal protection of the laws’ is not a static one. ‘Equal protection of the laws’ represents a set of values which have been accepted in relation to the circumstances of contemporary life.”\footnote{169} He concluded by stating: “If a danger to the United States exists, it lies not in the constant judicial reevaluation of our rights, but in the possibility that the courts will discontinue this process and freeze our rights in an out-dated [sic] and rigid mold.”\footnote{170} With this statement, Fensterwald provided a direct rebuttal to the Bricker Amendment’s proponents, who feared that innovations in thinking about human rights, especially at the UN, could offer judges new frameworks for evaluating the legality of the US’s race-based civil rights restrictions.

The critical blow for the Genocide Convention occurred during Secretary of State Dulles’s remarks, when he explained the stance of the new Eisenhower Administration: “The Soviet Union and its satellites have either refused to ratify or ratified it with serious reservations. I believe that the solution of the problem which must be envisaged by that treaty could better be considered at a later date. I would not press at the moment for its ratification.”\footnote{171} The Bricker Amendment was never ratified, which Anderson attributes to the Eisenhower Administration’s desire to preserve the executive power contained in the existing treaty ratification process.\footnote{172}
Yet, the Bricker Amendment’s popularity confirmed that ratification of the Genocide Convention would need to wait years, and ultimately decades.

Conclusion

Arlen Large of the *Wall Street Journal* may have been correct when he asserted, during another round of Senate debates in 1974, that the Convention’s “heavy symbolism” was responsible for much of its controversy.¹⁷³ Over the course of the four decades of American debate on the Convention—from its drafting to its 1988 ratification during the Reagan Administration—the treaty served as a flashpoint for various contemporary controversies, including the My Lai massacre during the Vietnam War¹⁷⁴ and the Arab-Israeli conflict.¹⁷⁵

However, the problem of American racism never disappeared from the debate. Skeptics of the Convention, such as conservative North Carolina Senator Jesse Helms, would later argue that, absent any understandings, the Convention could enable charges against the US for the compulsory teaching of English in schools and other cultural assimilation initiatives.¹⁷⁶ For this reason, consideration of the period 1945-1953 is essential to understanding the politics of the international ban on genocide, in the US. These early years set many of the terms of the debate, including the focus on the place of racial and ethnic minorities in American politics and society.

¹⁷³ Large, “Senate is Due to Vote on a Treaty Soon—One Submitted in 1949,” 466.
To proponents of ratification, during these crucial years, the Convention promised to be a compromise between the internationalist tenants of postwar liberalism and the bipartisan consensus to limit international or federal oversight over racial discrimination. With ratification, the US could affirm an ostensible concern for victims of persecution, without needing to change its own racially-stratified legal and political systems. Leading proponents and opponents of ratification ultimately disagreed over whether or not such a compromise was even feasible. Ironically, far-left activists, such as the CRC’s membership, might have agreed with conservatives seeking to protect white supremacy, that such a compromise was impossible, and that the codification of an international ban on genocide would necessitate drastic changes to the treatment of the US’s racial minorities.

To conclude, one might consider the unusual coexistence, in the American legal system of the early to mid-1900s, of individual freedoms along with a plethora of race-based limitations. The debate over an international ban on genocide, from 1945-1953, and the contemporaneous activism of peoples of color, long subject to grave injustice, placed this peculiarity at the front and center of political discourse. The Genocide Convention perhaps only outlawed the most extreme forms of persecution, but it did assert the rights of minorities to exist and placed some upper limit on the degree of legally permissible racially-motivated violence. Thus, regardless of its proponents’ political posturing, the Convention symbolized the possibility for a rupture in the status quo.
Bibliography

Archival Collections

Committee on Foreign Relations Treaty Files. National Archives and Records Administration, Washington, D.C.


Digitized and Published Primary Sources


Treaties and Executive Agreements: Hearings Before a Subcommittee of the Committee on the Judiciary of the United States Senate, 83rd Congress, First Session on S.J. Res. 1 and S.J. Res. 43- February 18, 19, 25; March 4, 10, 16, 27, 31; April 6, 7, 8, 9, 10, & 11, 1953, 116. https://congressional-proquest-com.libproxy.berkeley.edu/congressional/result/pqresultpage.gispdfhitspanel.pdflink/$2fapp-bin$2fgeois-hearing$2f8$2f8$2f3$2f1$2fhrg-1953-sjs-0014_from_1_to_1273.pdf+/Bricker+amendment+treaties$40$2fapp-gis$2fhearing$2fhrg-1953-sjs-0014$40Hearing$40Hearings+Published$40February+18,+1953$40?pgId=46265bcf-40de-4ad8-993f-d07a091e8264&rsId=1638E0603BA.


**Secondary Sources**


Smithers, Gregory D. “Rethinking Genocide in North America.” In The Oxford Handbook of Genocide Studies, 322-341.

