

CAUSES OF GENOCIDE

by

Howard Adelman

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Preface:

In their volume, *Genocide and Gross Human Rights Violations in Comparative Perspective* (New Brunswick, N.J.: Transaction Publishers, 1999), Kurt Johnassohn with Karin Solveig Björnson state: "the law is only marginally relevant in matters of prevention. There are several reasons for this. The perpetrators of modern genocides are collectivities, and it is much harder to prosecute a collectivity rather than an individual. These collectivities are almost always states that victimize their own citizens." (p. 103) The authors go on to elaborate on the functional difficulties in prosecuting regimes rather than individuals. I want to argue that the reasons for prosecuting individuals rather than states are conceptual as well as functional. Further, that conceptual reason can be located by understanding the conception of cause used in scientific investigations versus those used in law. The former document the necessary and sufficient conditions which bring about genocides and which can be counter-acted by other preventive measures. The lessons learned studies provide explanations for events and actions and failures without which the events would not have taken place. However, holding individuals responsible is very different than explaining why they took place, even if there is some inter-dependency between these two realms of discourse. Further, the greater the elaboration of causes, the more diluted the responsibility seems to be for those who conceived, organized and executed the genocide. Scientific explanation and attributing causal responsibility to individuals seem to be working at cross purposes.

However, scholarly scientific research is necessary for the investigation of genocidal crimes. After all, without scholarly research we could not objectively determine the numbers killed, the way people were killed or the reasons for the slaughter. Even the application of the taxonomy of different degrees of responsibility for different types of participants requires research to determine objectively whether an individual belongs to one category or another. Thus, research can help sort out the determination of different degrees of responsibility. Research can help differentiate among those who were coerced into killing, those who participated willingly but only under direct orders, those who sought out victims and initiated the killings and those who set the policy and plans of the killing machine in motion.

But the issue is not so simple. I want to first describe the negative effects and limitations of scholarly research before I set forth its positive contribution to criminal law. I will do so by first summarizing a distinction H.L.A. Hart and A.M. Honoré made in their classic book, *Causation in the Law* (Oxford: Clarendon Press, 1959).

Four Senses of Cause

In science, there is a fundamental conception of cause – depicting the necessary and sufficient conditions without which an event would not take place. This sense of scientific cause plays an indirect role rather than a direct role in establishing the responsibility of an agent for harming another. That role can be negative as well as positive. But Hart and Honore concentrate on distinguishing three other senses of cause that are used more directly in law. The first is a contingency, in law, usually a voluntary intervention that initiates a series of physical changes. In this sense, **the** cause of an event is distinguished from ‘abnormal’ events that can also be causes and mere conditions. Further, in this first sense of cause as an intervening initiative, there is a negative version, the *failure* to initiate a physical process. The second sense of ‘cause’ refers to the provision (or the failure to provide) opportunities to harm or prevent harm to another. The third sense of cause refers to a situation in which an individual who, by words or deeds, provides others with reasons for their actions. It too has a negative side – a *failure* to provide others with reasons to prevent an action. Thus, in addition to scientific causation, there are intervening causes, causes as the provision of opportunities and causes as reasons. Each of the latter three has a negative as well as positive variation. And the first has a negative as well as positive contribution to make to law, in particular holding an individual criminally responsible for harm to another.

The Negative Role of Scientific Causation in Law

Scientific causation plays a negative role in the law by implicating a wide array of participants in a genocide. In the case of Rwanda, Uganda either planned, participated actively, knowingly permitted, or, at the very least, failed to take reasonable actions to either prevent or reverse the RPF invasion of Rwanda initiated on 1 October 1990. That event set off the violent conflict between the Tutsi led invasion force and the Hutu regime of Habyarimana, without which it is doubtful whether a genocide would have taken place in Rwanda. France supported the Habyarimana regime diplomatically and supplied arms and military advisers to it. Further, Russian-Israeli arms merchants through a firm in the Isle of Man continued to supply arms to the cabal that pulled off the coup on 6 April 1994 even after the genocide started. Without these arms and military advice, it is highly doubtful whether the Habyarimana regime, and the extremists at its core, could have survived as long as it did the attack of a far better disciplined force. The RPF had a greater sense of morale than the larger and better equipped military leadership behind the Habyarimana regime. If the American Congress had not been so dominated by an anti-UN Republican Party and if the Americans had not been so traumatized for the debacle in Somalia in the fall of 1993, for which they bore a primary responsibility, then the United States might not have played such a prominent role in weakening, withdrawing and then delaying the deployment of UNAMIR II to Rwanda. Belgium initiated the withdrawal of the most effective component of the peacekeeping force when ten of its soldiers were massacred immediately after the coup took place. Without that withdrawal, the genocide could have been mitigated or even stopped in its tracks, certainly if the force had merely been doubled in size with the provision of another 2500 soldiers.

It was primarily the United States that ensured that the peacekeeping force sent to Rwanda was as small as it was, was so underequipped and did not receive even the monies to pay the soldiers deployed until just two days before the genocide started and six months after the troops had been deployed. It was the United States that, along with Belgium, provided the leadership for voting in the Security Council for the withdrawal of most of the peacekeepers after the genocide had already started. The US also refused to consider applying the term 'genocide' to the massacres underway and then procrastinated and stalled the actual deployment of peacekeepers until the genocide was virtually over. And what about the United Nations Secretariat? Among all the intelligence received about a planned genocide, the most explosive warning, the 11 January cable of Force Commander General Dallaire, was put into a separate Black Filing Box. That cable provided information from an extremely high placed informant of arms caches and their locations, on the plans of the extremists to kill Belgian peacekeepers to induce them to withdraw and, most significantly, on the plans of the extremists to kill all the Tutsis in Kigali at the rate of 1000 every twenty minutes. The Secretariat not only buried the information but vetoed Dallaire's request to investigate the location of the arms caches to establish whether the informant and the information provided was bona fide. Even after the genocide started, UN Secretary-General Boutros Boutros-Ghali continued to describe the events in Rwanda as a spontaneous inter-ethnic conflict between Tutsis and Hutus for three weeks after the genocide was underway. Yet, at that time, every scholar on Rwanda could have attested to the fact that the slaughter was central planned, organized and directed against moderate Hutu leadership and the Tutsi civilian population.

The North American media not only failed to accurately and adequately report the events in Rwanda, providing no reports prior to the 6 April coup in 1994, but mis-reporting the events afterwards as inter-tribal mutual slaughters. In fact, large scale and persistent coverage only began when the Hutu refugees led by the defeated genocidaires crossed into Zaire in July and when the genocide was virtually over.

What about Canada? Was it not Canada that was the first country to cut off aid to Habyarimana regime using the human rights violations of the regime as an explanation? Did Canada not play a positive role in initiating the investigation of human rights violations by the Habyarimana regime in January of 1993, an investigation which first labeled the slaughters of the regime as genocidal? Canada provided the military leadership in both UN headquarters and in the field as well as a communications unit for the peacekeepers. Canada seems simply to be a good guy except when scholarship reveals that the Habyarimana regime was one of the most favoured countries as an aid recipient in the eighties. Canada provided the intellectual and material resources that financed the university in Butare that trained those who became the intellectual leaders of the extremist nationalist Hutu cause. It is not by accident that an ideological leader of the extremist Hutu regime returned to Laval University, claimed and won refugee status and is now fighting an order to strip him of his landed status and expel him from the country.

There are many to share the blame to various degrees. There is a tendency to conclude from this assessment of multiple necessary and sufficient causes that these

mitigate the responsibility of those who committed and initiated the actions, provided the opportunities or created the ideology, plans and policies for carrying out the genocide. The principle seems to be the more parties involved, the less responsibility any individual has for them. But this common error mixes up scientific causation, which has nothing to do with assessing responsibility for harm done to another, with causation as a physical intervention, causation as providing an opportunity and causation as giving reasons for an action.

Causation and Responsibility – Legal and Moral

All of the latter are associated with responsibility to different degrees. Further, if some individuals were as much forced to kill as they were killers, the evidence for coercion on them mitigates their crimes and puts such individuals in the category of those least responsible for the events that occurred. At the other end of the spectrum, research discloses not only that the genocide was centrally conceived, planned and directed, but that there were some who worked at providing the intellectual rationale for the genocide and the propaganda which justified and rationalized the slaughter. The rationalizers are those most guilty even though they never killed or even directly ordered anyone to kill. Further, those mayors and church leaders who provided the opportunities for the killing in local municipalities were also guilty even if they did not conceive of the genocide. The least responsible group of those who actively committed crimes were those who acted physically to kill the Tutsis and moderate Hutus. And, under the circumstances, it is not surprising that those coerced into committing the atrocities who confessed to their actions were allowed to go free.

It is also interesting to note that the same categories of causation help us to understand why we hold different parties morally though not legally responsible to different degrees. Thus, most observers view the United States as a prime moral villain for being the principle party creating the atmosphere and ideology which prevented action from being taken that could have prevented or mitigated the crime. France and the United Nations secretariat run a close second for either providing opportunities for the genocidal act to proceed or for failing to set in place conditions which could have initiatives which could have mitigated or even prevented the genocide. Least responsible morally are those who could have intervened more than they did or who did not do as much as they could have to remove the conditions that allowed the genocide to be conceived and be initiated.