

**THE SOCIAL SELF AND SOCIAL DEATH:
RETHINKING REPARATIONS FOR GENOCIDE AND CRIMES
AGAINST HUMANITY**

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ABSTRACT: Based on a pragmatist inspired conception of the social self, the concept of reparations for the harms of genocide is reexamined. Both Raphael Lemkin, the person who invented the term “genocide,” and Claudia Card, a philosopher who examined the evil of genocide, hold similarly expansive notions of the harms inflicted by genocidal violence. Both argued that biological death is not necessarily central to genocide. For Lemkin cultural destruction of the targeted group is just as essential as the actual killing itself. Genocide is a group crime that aims to destroy the group and all the social aspects of group identity. Card similarly sees the target of genocidal violence as the social vitality of the self. This vitality is sustained by group relations. Reparations thus need to be reconceptualized in terms of the restoration of social life of the victim group and not solely on the basis of economic losses. Examples are given for the reparation of the social vitality of communities that have suffered genocide.

Keywords: reparations, genocide, social death, social self, Raphael Lemkin, Claudia Card

What follows is an application of a pragmatist conception of the self and community to issues arising from reparations for genocide and crimes against humanity. For my purposes I will not be singling out one particular pragmatist philosopher in my analysis. One could say that a pragmatist temperament is more at play here than any adherence to a particular pragmatist conception. This sketch for a reconstruction of the concept of reparations is part and parcel of a larger project on post-genocide moral duties and responsibilities. What is distinctive in the American pragmatist tradition is the idea that the self is fundamentally social and cannot be understood without taking into account the myriad of ways in which individuals interact with their environment. Whatever term of art we may choose to label this social self – whether it be the relational self, the intersectional self, John Dewey’s transactive/interactive model of the individual, or the “I” and the “Me” of George Herbert Mead, they all lie in the background of how I approach my work, both theoretical and practical.

Pragmatism has often been open to alternative philosophical voices, one of which, I will borrow for my analysis of reparations. Claudia Card’s important work on the evil of genocide will be crucial for my rethinking of reparations.

For the specific purposes of this analysis, these pragmatist insights into the centrality of the self’s relational nature will be brought to bear on the thorny issue of reparations for crimes against humanity, with a particular emphasis upon the crime of genocide. Contentious debates began more than twenty years ago with regard to reparations for the American slavery of Africans and, more recently, for our treatment of Native Americans. Advocates for reparations have often relied upon economic models of monetary compensation. In both these cases, no politically viable reparative solution has been possible. In the immediate aftermath of the American Civil War, the federal occupying power offered “forty acres and a mule” plus land along the Georgia and South Carolina coast for freed slaves. But even before the end of Reconstruction such schemes fell apart. Over the next hundred years the system of Southern Jim Crow and Northern racial discrimination actually extracted wealth from the African American community. In contrast and somewhat uniquely, reparations in the form of monetary compensation did take place after the Holocaust between the Federal Republic of Germany and the State of Israel. While limited in scope, some tangible property was restored to some victims’ descendants. When slavery reparations were debated in the United States, though never as a central or overriding concern, many questions came to the front: How many lives were lost? What is a human life worth? Is worth measured in terms of future earning potential? What is a normal life expectancy during the time of slavery as opposed to today? Does family size, whether actual or intended, matter? My concern here is not with such details but is broader and more philosophical. I will first ask what it means for a life to be taken in the context of genocidal acts of wrongdoing. If we are social selves, what does our death mean? Do all cases of human biological demise imply a social death or is there more to this story? This is where the

work of an important American feminist moral philosopher, Claudia Card, can help us.¹

Before addressing the issue of reparations, we need to be clear about the nature of the crime that calls for repair. I will focus primarily on the crime of genocide though aspects of the analysis may apply, with qualifications, to other large-scale mass atrocities. While genocide has historical antecedents going back to the dawn of recorded history, certain key events in the twentieth century led to the development of the concept of genocide and its eventual criminalization with the adoption of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide in 1948 that came into force in 1951. Civilian populations have always suffered in times of war. Criminalizing the behavior of combatants for the wrongful harming of civilians in wartime began in the late nineteenth century and were codified into international law with the 1899 and 1907 Hague Conventions. The laws of war were further refined in the course of the last one hundred years so that the deliberate targeting of civilians as a tool of war is, in theory, prohibited. Syria, Yemen, and most recently, Azerbaijan's aggression against Armenia are today stark examples of a lack of progress in this regard, especially when war is euphemistically labelled as "an ethnic conflict." Atrocities committed against the citizens of one's own nation state or acts committed by state agents outside the parameters of war, remained outside the purview of international criminal law well into the second half of the twentieth century. This is not to say that governments and individuals were not thinking about the civilian costs of conflicts. While no formal legal framework existed at the time, on May 24, 1915, the Allied Powers of Britain, France, and Russia, jointly issued a statement explicitly charging, for the first time, another government of committing "a crime against humanity." With specific reference to the Armenian

massacres that began a month earlier, the Allies stated: "In view of these new crimes of the Ottoman Empire *against humanity and civilization*, the Allied Governments announce publicly to the Sublime Porte that they will hold personally responsible for these crimes all members of the Ottoman Government, as well as those of their agents who are implicated in such massacres" (emphasis added) (Facing History). But at the conclusion of the First World War the victors only made a half-hearted effort to punish the leadership of the Ottoman Turkey.

Two events and one individual stand out in the conceptualization of genocide and its eventual criminalization as a crime against humanity. The two events, the Armenian Genocide and the Holocaust, are linked together in the thought of Raphael Lemkin, a Polish-Jewish jurist, who lost 49 members of his family in the Holocaust. Lemkin was the individual who coined the word "genocide" in 1944 to capture what Winston Churchill, in describing the Nazi terror in Europe, had called, "a crime without a name." The eventual linkage in Lemkin's mind of what had happened to the Armenians beginning in 1915 and the events transpiring in Europe during the Final Solution can be traced to his philosophy, philology, and law studies in the 1920s. Lemkin had followed the 1921 Berlin trial of Soghomon Tehlirian, the Armenian assassin of Mehmed Talaat Pasha, the chief architect of the genocide. Lemkin had pressed his law professors regarding the contradictions in a legal system in which an individual, such as Tehlirian, could be charged with the murder of one individual, Talaat, but where there was no legal mechanism to bring to justice Talaat, the individual chiefly responsible for the murder of a million and a half of his own citizens. His professors told him that state sovereignty was supreme and that the citizens of a nation state were property whose rulers could do to them what they willed. Lemkin was astonished that a crime of such scale and such scope could be left unpunished.² In Lemkin's mind it was not simply a matter of

¹ I had the privilege of working with Card over a decade ago on issues related to genocide. Her passing five years ago was an immense loss to our profession and to the philosophical study of genocide and crimes against humanity.

² See Lemkin's discussion in his autobiography, *Totally Unoffi-*

breaching the barrier of state sovereignty but understanding that this was a crime of a different kind. A crime against a group, a collectivity or community, was not simply a matter of aggregating crimes committed against individual members of the collectivity. There was a harm of a different kind, maybe a greater harm, when individuals are targeted simply for being the members of a collectivity. Destroying a group that was essential to the self-identity of its individual members added a unique dimension to such crimes.

Lemkin would go on to propose a new international law to capture what had happened to the Armenians during the genocide of 1915 to 1923. In 1933 he had already prepared a paper for a League of Nations conference in Madrid in which he proposed the international prohibition of acts targeting collectivities and the unique harms that such acts engender. Lemkin wrote: "In particular these are attacks carried out against an individual as a member of a collectivity. The goal of the author [*of the crime*] is not only to harm an individual, but, also to cause damage to the collectivity to which the later belongs. Offenses of this type bring harm not only to human rights, but also and most especially they undermine the fundamental basis of the social order" (Lemkin, 1933). In analyzing these acts, which he labeled acts of barbarity and acts of vandalism, Lemkin emphasized the social nature of the crime. Acts of barbarity, while entailing the physical destruction of individuals, extended beyond individual acts of murder. Lemkin claimed:

Let us consider, first and foremost, acts of extermination directed against the ethnic, religious or social collectivities whatever the motive (political, religious, etc.); for example, massacres, pogroms, actions undertaken to ruin the economic existence of the members of a collectivity, etc. Also belonging in this category are all sorts of brutalities which attack the dignity of the individual in cases where these acts of humiliation have their source in a campaign of extermination directed against the collectivity in which the victim is a member (Lemkin 1933).

The crime of brutality is not simply reducible to biological destruction. International law must take into account *how* one dies, not simply one's death. Such crimes against groups can take a further social dimension when culture is singled out for attack. Lemkin wrote: "An attack targeting a collectivity can also take the form of systematic and organized destruction of the art and cultural heritage in which the unique genius and achievement of a collectivity are revealed in fields of science, arts and literature" (Lemkin 1933). Lemkin labeled such crimes "acts of vandalism." He would go on to further develop this concept of cultural destruction in his 1944 work, *Axis Rule in Occupied Europe*, the work in which the word "genocide" first appeared in print. Today such acts of vandalism are singled out in the literature as "cultural genocide."

Understanding the collective social dimension of such crimes is central to Claudia Card's concept of social death. Social death is the unique harm of genocide and will serve as the basis of my preliminary rethinking of the concept of reparations. Card opens her chapter on genocide in her last book, *Confronting Evils*, with these words:

The intentional production of social death in a people or community is the central evil of genocide. That is so not only when a genocide is mainly cultural but even when it is homicidal on a massive scale. Social death distinguishes the evil of genocide, morally, from the evils of other mass murders. Even genocidal murder can be understood as an extreme means to the primary goal of social death (Card 2010, 237).

For Card, social death is the death of the social self, not the death of a biological individual per se. As I remarked early, relations are paramount in understanding the conception of the self at work here. Selves are spatiotemporal creatures. Justus Buchler captures this notion in his introductory discussion of human query in *Nature and Judgment*: "The human self, as some philosophers have recognized, is spread out in space as well as time. Its principal power is action at a distance. It is connected with other selves and with the world by unseen ties – of obligation, intention, representation, conflict, memory,

cial: The Autobiography of Raphael Lemkin, Donna-Lee Frieze, ed., Yale University Press, 2013, 20.

and love... The self's spread, its relatedness, is the basis of sociality" (Buchler 56). While Buchler's claim is a metaphysical claim about human experience based upon his ordinal ontology, it helps us see the multiple ways in which we are related to others and the environment. It is this spread of relations that is attacked in genocidal violence, not just the biological/physiological relation we have with the world, the termination of which we normally identify with death. If we apply recent feminist literature on the idea of the self as intersectional, we can see that certain primary identities and roles are singled out for attack and eventual destruction in the crime of genocide. Card uses the term "social vitality" to characterize the depth and spread of relatedness. In her conceptualization, one can have degrees of social vitality. While acknowledging that not all of life's meaning is dependent on social relations – one may have spiritual vitality in social isolation (e.g., the self-chosen isolation of religious hermits) – social relations do play the central role in selfhood:

Social vitality exists through relationships, contemporary and intergenerational, that create contexts and identities that give meaning and shape to our lives. Some of these relationships are with kin, friends, and coworkers. Others are less personal and mediated by basic social institutions – economic, political, religious, educational, and so on. Loss of vitality comes with the loss of such connections (Card 2010, 237).

Social death is the death of these socially vital relations. Card contends that "Genocide is the extreme [form] of social death" (Card 2010, 237). Social death is possible in less extreme forms than in genocide but the important point to reiterate is that biological death is not a prerequisite of social death. It is partially on this basis that Card restricts the scope of genocide. Large numbers of deaths by themselves do not determine whether we are in the presence of genocide. Mass death, even when intentionally inflicted by others, may not qualify as genocide. The mass death involved in the September 11th attacks would not count as an instance of genocide while the killing of Bosniak men and boys in Srebrenica would, even though in both these instances we are talking

about deaths only in the thousands.³ Body count is not determinate of genocide.

One could object to this distinction by claiming that in both instances, the September 11th attacks and Srebrenica massacres, the social vitality of the individuals killed was destroyed. Why then is the former event not genocide while the latter is? A further distinction is required. While most scholars accept the notion that genocide is a crime against a group or a collectivity, the debate often centers on how to identify what kinds of groups count for protection, that is, what order of social relatedness is worthy of protection. When Lemkin's ideas were incorporated into international law in the debates about the Genocide Convention in the aftermath of the Second War, controversy centered on whether to include political groups under the protection of the Convention's operative clause of "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such" (United Nations). Ultimately "political" groups were excluded because of pressure from the Soviet bloc. Card and many other genocide scholars are more flexible or expansive in establishing the subject of genocide. Yet not all collectivities count for these purposes.

The question still remains as evidenced by the contrast between the deaths on September 11th and in Bosnia: Why is the collectivity killed in the September 11th attacks treated only as an aggregate of individuals while the Srebrenica victims are a group whose identity is the prime target and major casualty of the Serbian slaughter? A finer-grained understanding of groups or collectivities is required. While selves may have an indeterminate number of constitutive relations, some are more essential and less easily rejected. Lemkin had created the word "genocide" by combing the Greek word *génos* ("people or race") and the Latin suffix *-cide* ("the act of killing"). Card answers our question by focus-

3 This was borne out in the International Criminal Tribunal for the Former Yugoslavia (ICTY) ruling regarding the killings in Srebrenica as meeting the criteria of the crime of genocide under the Genocide Convention. See the case of Radislav Krstić: <https://www.irmct.org/specials/srebrenica20/>

ing on what it means to be a people. She draws upon a contrast developed by Iris Marion Young between structural and social groups:

Occupants of those bombed buildings did not constitute a people. A people is not an aggregate. Nor is it only a *structural group*, in Iris Marion Young's sense of a serial collectivity united by the relationships of members to externals, which gives them common interest. . .

A people is a *social group* in Young's sense, that is a collectivity united by internal relationships and traditions, such as common language and practices. Relationships that constitute a people include connections of kinship and citizenship as well as cultural and social relationships created by such things as a common literature, cuisine, humor, and by sharing in the creation and maintenance of laws and traditions (Card 2010, 247).

Here I would not follow Card in her adoption of Young's terminology, though conceptually I do accept her distinction between structural and social groups. Identifying the former, structural groups, with external relations and the latter group, social groups, with internal relations, doesn't add anything to our understanding of such groups. Yes, some relationships are harder to deny and more enduring. Aside from the feeling that some relations are more determinate of who we are or have greater value, external versus internal adds nothing to the analysis. But the dead end and conceptual muddle of employing such internal-external terminology is a topic for another essay.

For Card, the practices and relationships she here identifies with social groups "create the social vitality that gives meaning to the lives of members of peoples" (Card 2010, 247). The social vitality of the World Trade Center victims and their relatives come largely from their membership in other groups, not from their membership in the group that happened to be in those buildings when airplanes crashed into them. World Trade Center group membership is secondary to the vitality of this set of victims.

For Card, the target of genocidal acts is the social vitality of the group: "To the extent that relationships that define the group are important sources of meaning and identity in the lives of its members, destruction of the

group is for them a serious loss. By the same token it is a loss of the possibility of such meaning and identity for descendants" (Card 2010, 247–8). As we will see, this loss of meaning and identity for descendants of genocide victims plays a role in justifying the reparative work that is required in post-genocidal societies. The loss of social vitality extends beyond the direct victim to those in generations to come.

While the U. N. Convention on the Prevention and Punishment of the Crime of Genocide provides no direct conceptual analysis of the meaning of genocide, it does provide support for the notion that genocide is not reducible to the mass killing. Only the first ("Killing members of the group") of the five types of genocidal acts identified in Article II of the Convention involves killing, while the remaining four do not:

- (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;⁴
- (e) Forcibly transferring children of the group to another group. (United Nations)

Our analysis thus far has brought Lemkin and Card into agreement: it is not the biological individual who is the victim of genocide but the social self.

We can now turn directly to the outline of my position regarding reparations for genocide. This will have to be a sketch since much detail needs working out. While commonalities abound, all genocides have unique elements that determine the particular nature of the reparative actions that must follow. My thesis, simply put is: Reparations must be directed toward the restoration of the social vitality lost in the social death of genocide.

⁴ With regard to (d) Card has written a number of important articles about rape both in the context of war and genocide. See: "The Paradox of Genocidal Rape Aimed at Enforced Pregnancy" in *Criticism and Compassion: The Ethics and Politics of Claudia Card*. Robin S. Dillion and Armen T. Marsoobian, eds., Wiley, 2018.

While reparations entail costs for the perpetrator community, these costs are not determined by the costs of simply compensating victims and their descendants for the material losses that resulted from the crime. Where practical, private property, both movable and immovable, should be returned or compensated. Yet we know that in most cases, we cannot return to the status quo ante. As a form of compensatory justice, reparations should provide the means, that is, all the resources necessary for revitalizing the collective life and social vitality of the victim community. I can only here list some components of what a true reparative program should entail. The list of actions is far from exhaustive and is not presented in order of importance:

1. A full acknowledgement and official apology by the perpetrator community. These acts need to be enshrined through both legislation and executive decree.
2. If individual perpetrators are still alive, they must be arrested, tried, and punished by the appropriate judicial authority (national courts under the Genocide Convention or the International Criminal Court).
3. A full and thorough historical account of the genocide must be written and incorporated into the national education curriculum of the perpetrator community.
4. The cultural and religious heritage of the victim community must be preserved and/or restored in consultation with the experts and the victim community (e.g., the restoration of Jewish synagogues in Prague which is in stark contrast to the intentional destruction of Armenian churches and monasteries in eastern Turkey, Nakhijevan, and Artsakh in Azerbaijan).
5. Resources to allow for the flourishing of the arts and literature of the victim community. Support for the arts in all its forms. This is more than historical preservation of the artistic and literary heritage but provides for resources for making new art and literature. (e.g., the

Smithsonian's National Museum of the American Indian and its programs and exhibitions of contemporary Native American art.)

6. Language preservation when threatened with extinction due to victim dispersal (diasporas) and the death of language speakers. (e.g., Yiddish, Western Armenian).
7. Economic viability of survivor communities wherever they may be located.
8. Medical and mental health requirements of the survivor community (e.g., public health and social work resources).
9. No statute of limitations for the reparative acts required to restore social vitality. The reparative process is an ongoing process with no fixed end point.

The above is merely a preliminary sketch for a complex process of reparative action. Each of the above items call for further theoretical and practical elaboration. As has already been stated, each genocide has unique features that require reparative actions tailored to the specific harms inflicted.

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