

DEBATE

Response to my critics

PAUL BOGHOSSIAN

Reply to Berel Lang

Berel Lang flings around a number of accusations and complaints. Unfortunately, his contribution is marred by serious errors both of interpretation and of reasoning.

Lang says:

Clearly, substantive problems remain in both the concept of genocide and the UN Convention. But Boghossian's version and critique of those problems and his ensuing, sweeping dismissal of the pertinence or usefulness of the category of genocide calls attention mainly, in my view, to *symptoms* of the difficulties, not to their substance or sources, let alone the possibility of remedying them. (p 82)

His first example of this charge doesn't bode well for the accuracy of his critique:

Consider, for example, a prominent one among Boghossian's straw men: the contention that genocide is 'the most heinous of crimes.' (p 82)

The quotation marks suggest that he is actually quoting my text (the phrase appears this way twice in a single paragraph). But not only is he not doing so, he is seriously distorting the substance of what I said. Here is what I actually say:

Finally, genocide is taken to name not only a distinctive crime but one that is *distinctively heinous*, deserving of a special measure of censure. Mass murder may be bad; but mass murder done in the context of the targeting of a particular group is supposed to be morally far worse. (p 73)

In this passage, I am discussing the expectations that people have of the concept of genocide, the work that they expect it to do. As is plain, I don't say that it is claimed that genocide is the 'most heinous of crimes,' just that it is *distinctively heinous*, morally worse than mere mass murder. And there is no doubt that that is part of most people's understanding of the concept of genocide.

Having started off with this inaccuracy, Lang goes on to make a number of misguided points about it.

First, he asks why I should be bothering to assess genocide's ranking among crimes, given that I also argue that it is hard to define it so that it emerges as a distinctive crime. He apparently has not heard of suppositional reasoning: suppose we grant that genocide is a distinctive crime, would it be distinctively heinous?

Second, he admits that 'references in public discourse have indeed at times cited genocide as extreme, even as the most extreme, among atrocities' (p 82). But, he says:

Boghossian frames his discussion of genocide against the background of its *formal* characterization or definition . . . rather than of the term's 'ordinary' usage. (p 82)

He misses the point I was clearly trying to make, which is that the only explicit, widely used, definition that we have of the concept won't in any straightforward way satisfy the moral expectations that people have of it.

Third, he says (in a footnote) that I claim it to be:

. . . linguistically odd that we should be concerned with 'genocide' anyway, because it is a 'made-up word' in contrast to the established usage of such terms as 'kill' or 'harm'—as though the latter terms had no history or artifice to them and as though 'genocide' appears alone in the past sixty years or so as a 'newly coined' term that has entered moral or legal or other professional or even ordinary discourse. (p 89)

This is not even close to what I said, which was that:

The fact that the term 'genocide' is a coined technical term implies that anyone using it must either use it to mean this technical concept or must explicitly supply an alternative definition. One cannot use the word 'genocide' without supplying some definition or other, because one cannot rely, as one might with a word of ordinary language, on some common understanding that we all have of that word, whether or not we are able to define it. (p 70)

So, to reiterate: I don't say at all that it is 'linguistically odd' to be interested in the term 'genocide,' just that, because it is a coined term of recent provenance, one can't expect it to have a determinate meaning established through long usage, but must either use it with the stipulated definition or supply an explicit alternative.

Lang next turns to my discussion of the problematic confusion in the definition's talk of the intention to destroy a particular group 'in whole or in part.' He says:

Here Boghossian finds not only confusion but of such an order as amounts to absurdity, since the 'in part' qualification could presumably justify the charge of genocide for acts committed against even a *small* part or number of a group's membership (so long as the acts were committed against them because of that membership). . . . And surely an implication of this interpretation (although it remains mysteriously unspoken) is that genocide could be committed not only against a 'small number' of a group's members, but against the smallest number of all—that is against one such member . . . Now unless one assumes an unusual measure of carelessness or stupidity in the UN formulation . . . the latter implication should suffice to suggest that the proposed identification of genocide as a distinguishable crime had a heft to it that this reading misses. . . . And in fact Boghossian's reading here

reflects only a partial rendering of the concept and the UN Convention, insofar as it focuses on one condition of genocide (acting against individual persons because of their membership in a particular group) at the expense of a second one. . . the term's reference to the killing not of an individual or individuals but of the group (the 'genos'). (p 83)

Where to begin?

First, Lang's discussion conflates the question whether an act would count as genocide if there were only *one actual victim* with the distinct question whether an act would count as genocide if it were committed with the *intention* of having only one victim. We are actually discussing the latter question, but his discussion concerns the former.

About the *former* question—whether an act could be one of genocide, according to the UN's definition, even if it only has one actual victim—there is no doubt that the accepted answer is 'yes'. That is the way in which most legal experts understand the concept framed by the UN Convention. Here, for example, is what the distinguished lawyers of the International Center for Transitional Justice said in the course of discussing whether the events of 1915 constituted genocide:

As it has been developed by the International Criminal Court (whose Statute adopts the Convention's definition of genocide), the crime of genocide has four elements: (i) the perpetrator killed one or more persons; (ii) such person or persons belonged to a particular national, ethnical, racial or religious group; (iii) the perpetrator intended to destroy, in whole or in part, that group, as such; and (iv) the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.¹

This itself is a counterintuitive consequence of the UN concept, but it isn't the one that I was discussing. To take issue with the point that I was discussing, Lang ought to be focused not on the question whether the actual number of victims could be as small as one, but whether the *intended* number of victims could be as small as one, for the act to count as genocide.

Now, *obviously*, the framers of the concept would not have wanted their definition of genocide to be satisfied by an act committed with the intention that it harm only *one* person. We don't need to make a meal out of this, as Lang does, by talking about the other clauses in the definition that talk about the prevention of births in groups, and so forth. We *know* that the project is to define the notion of the 'intentional murder of a group' and we *know* that that is not intuitively best captured by talking about intentionally killing one person.

The point that I was making, though, that Lang seems to have completely missed, was that there is a dilemma here. Either you restrict the notion of genocide to acts committed with the intention of destroying a group in its *entirety*, or you use the vague qualification adopted by the UN concept, 'in whole or in part.'

If you opt for the first horn, you so restrict the notion that virtually nothing will fall under it, with the possible exception of the Holocaust of the Jews (and possibly some Biblical examples).

If you opt for the second horn you face the task of saying what counts as an appropriate ‘part’ of the group, so that an act counts as genocide if the intention with which it is carried out crosses that particular threshold. And the question that I pressed is: How is that to be done in a way that’s not ludicrously arbitrary? When do we cross over into genocide? When the number of intended victims is 10, 100, 1000, 3000, 300,000; one, five fifty percent? What is going to look like a sensible answer here?

As I said in the paper, the problem is that the murder of an *individual* is a clear enough notion. It is much less clear what it is to talk about the murder of a group, unless one is willing to so restrict it that it amounts to the attempted destruction of each and every member of that group. Anything else is going to seem arbitrary.²

Lang also seems to have missed the point behind my discussion of the ‘as such’ clause in the definition of genocide: the intention must be to destroy a particular group, either in whole or in part, as such.

I thought my argument here was clear enough:

The problem is that to say that you need to have a certain motive is ambiguous between saying that that motive must be *part* of your overall motive and saying that it must be the whole of it. And there are problems no matter which way the condition is disambiguated.

Suppose we pick the weaker reading, so that harming the group just because it is that very group simply has to be *part* of the overall motive. This would have the unwanted effect of classifying Dresden as genocide, since part of the motive for selecting that target was, of course, that it was a German city full of Germans.

This pushes us to the stronger reading according to which, in the intended sense, an intention is genocidal when someone is moved to inflict harm on certain individuals *merely* because of their membership in a given group. It’s not enough that their membership in that group enters into it; it’s that their membership *alone* explains why they are being attacked. And, of course, as previously emphasized, Dresden wasn’t like that. The Allies did not bomb that city *just* because it was German, but because there was a war going on.

The trouble with this stronger reading is that it is nearly never the case that the *sole* explainer for why someone acts to kill or harm large numbers of people is *just* the identity of those people. (pp 77–78)

It’s not easy to figure out exactly what Lang thinks is wrong with this argument. As best as I can tell, he seems to opt for the first horn, adopting the view that it’s fine for there to be multiple motives for genocide, alongside the motive based on group membership:

Is there a conflict between a variety of motives and the intent to commit genocide against a group and its members because they are that group’s members? Does the latter become less distinctive or distinguishable or culpable a motive because others are found to conspire with it? Why? (p 88)

This fails to address the argument that I gave which was that if one takes the ‘as such’ condition to mean that the group’s identity had to be only *part* of one’s motive for attacking it, then too many cases that no one wants to count as genocide would end up falling under it including, Hiroshima, Nagasaki, Dresden, September 11, the 2006 Israeli attack on Beirut, and many others.

Lang has nothing to say to counter that objection.

Reply to William A. Schabas

I am grateful to William Schabas for his thoughtful, interesting and constructive commentary. I was also pleased that he is in broad agreement with me that it is neither necessary, nor particularly helpful, to frame the debate about 1915 as concerning the applicability of the single word 'genocide'. Schabas recommends that we focus instead on the alternative concept of a 'crime against humanity'.

In this connection, I would like to emphasize a point of great importance to me. *So long as one doesn't question the validity of the concept of genocide, as defined by the UN Convention, there is absolutely no question but that it applies to the persecution and destruction of the Armenian people by the Ottoman Turks in 1915.* No 'genocide denier' of the ordinary sort, who simply denies that the events of 1915 meet the conditions laid down by the UN concept, should take comfort from the argument I present.

My claims are instead: (a) that the concept defined by the UN Convention is deeply flawed; and (b) that there are no good remedies to those flaws.

My sense is that Schabas agrees with both of these claims. At any rate, he thinks that our energies are better focused on the notion of a 'crime against humanity,' that this notion has a fine pedigree, and contains many fewer problematic aspects than that of genocide.

Although I have thought much less about this proposal than Schabas has, his claims strike me as *prima facie* plausible. I was very interested in his nuanced discussion of why the notion of a 'crime against humanity' doesn't have the same resonance as 'genocide,' and his way of addressing worries that one may have about the potential downsides of shifting to it.

There is only one point at which I thought that Schabas got my views wrong, when he says that I fall in with the practice of scholarly work in the humanities and social sciences in attaching too much 'significance to the personal views of Raphael Lemkin'. I don't see myself as doing that at all, and work only with the explicit definition of the concept of genocide as laid out by the UN Convention. Schabas says:

Legal academics don't tend to dwell so much on Lemkin, because they see him as a contributor to a law-making process. It is the result that we are interested in. What individual participants in the process hoped for is of interest, of course, but adds little to our understanding of the norm itself. Here, Professor Boghossian may remind me he is speaking of the 'concept of genocide' rather than genocide as defined in the Convention. But is there really a 'concept of genocide' that can be detached from the Convention? The 'concept' is expressed in the Convention. (p 96)

As should be clear in the passage that I cited in my reply to Lang above, I myself emphasize that the concept cannot be detached from the Convention. So Schabas and I are in complete agreement here.

I will be very interested to see what will come of the efforts to refocus attention on the notion of 'a crime against humanity,' both with respect to 1915 and a host of other cases.

Reply to Eric D. Weitz

Eric Weitz efficiently raises a number of interesting challenges to my skepticism about the concept of genocide.

Weitz is, of course, right to say that I don't consider the political costs of abandoning a term that has acquired such standing throughout the world. I'm not really qualified to make such an assessment. My aim was to write a philosophy paper, and to put in the clearest possible way both what most people expect of the term 'genocide' (the three 'constitutive purposes') and the substantial difficulties that there are satisfying those purposes, either with the current concept or with some amended version.

It's not quite fair to say that I don't supply an alternative way of talking about, say, the events of 1915. It's true that I don't provide a one-word label, but rather a 158-word (Schabas's count) description. Many of the acts mentioned in that description would have been recognized, even in 1915, both as morally reprehensible and as crimes. I understand that, for political or legal purposes, a word or short phrase is sometimes needed. I am hopeful that Schabas is right that the phrase 'crime against humanity' might fit the bill.

Weitz finds my account of the point of having the concept of genocide illuminating—it's supposed to be a distinctive act, analytically morally objectionable and distinctively morally heinous—but is much more optimistic than I am about our being able to fashion an amended version of the UN concept that fulfills that point.

Weitz says that the most important condition is the third for, he claims, the first depends on it, for how else could genocide be distinctive except by being distinctively heinous?

I think this is a mistake; the dependence runs the other way. Something couldn't be distinctively heinous without being distinct (from other crimes), but a crime can surely be distinct without being worse than another (breaking and entering is distinct from a mugging, but you might think they are morally on a par).

He criticizes me for not dwelling on the issue whether we could explain why targeting a group is morally worse than merely killing large numbers of people. I thought I made it clear that, although I regarded the matter as less than obvious, I was least skeptical about this aspect of the notion of genocide.

Weitz indicates how he would go about making the case: 'deliberately annihilating a specific population group diminishes the diversity that is an intractable reality of human existence.' (p 102)

I think that's a reasonable avenue to explore, though I don't see that mere diversity will suffice. We don't bemoan the passing of the Third Reich, even though it undoubtedly contributed to the diversity of human existence. Furthermore, this specific way of trying to capture the distinctive heinousness of genocide would seem to depend on genocide being an attempt to eliminate the group in its entirety and not just in part.

A propos of this further issue, Weitz says:

Boghossian's claim that, based on the current definition, killing one person of a group can constitute genocide is, in my view, not sustainable. At the very least, case law has developed in such a way as to give more precision to the 'in whole or in part' phrase. (p 102)

His point here is similar to Lang's, and so is my reply. I would emphasize again that the issue is not about the actual number of victims, but about the *intended* number. And that the difficulty here is to supply a non-arbitrary cut-off that will allow us sensibly to say that we have moved from destroying members of a group to destroying the group itself.

Weitz also fails to see as troubling the dilemma that I formulated for the 'as such' condition. He says:

That is what the drafters intended: a specific group was targeted for genocide because of its being that very group and for no other reason. (p 103)

This grabs the other horn of the dilemma than the one opted for by Lang. Instead of saying that the group's identity can be thought of as just part of the motive for targeting it, Weitz embraces the idea that it is essential to genocide that it be the whole of the motive behind it ('and for no other reason').

What do we do, then, with the fact that there usually seem to be a number of other motives at work in paradigm cases of genocide? Weitz's solution is to see those motives as packed into the *definition* of the target group by the perpetrator:

Moreover, I do not see any definitional problems with the fact that people are rarely killed just because they are Armenian or Jewish or Tutsi or whatever. Those identities always carry signifiers of great import, and it is the identity ascribed to people by perpetrators that is the key point. To be Armenian was, by the definition imposed by the Young Turks, to be an exploiting banker or landholder, a devious Christian, and, ultimately, an existential threat to the Ottoman Empire. (p 103)

This makes it *essential* for an act to count as genocide that its perpetrators have a racially derogatory view of their victims. While this might seem to fit the infamous cases of the Armenians and the Jews, it is doubtful that those who want to defend the category of genocide would want the notion restricted in this way.

In the paper, I actually gave a counterexample to this sort of suggestion, imagining a dictator who rules over an enormous empire and who chooses to demonstrate to his subjects that he is their undisputed master by picking an ethnic group at random and destroying it in its entirety. He spins a wheel of misfortune and whichever group the wheel happens to stop on, he sets out to destroy. Given the category of genocide, it would be strange not to class this as genocide; but the dictator may have had nothing against the chosen group; it was just his way of showing the others who is boss. This is usually thought to be the kind of point that only a philosopher could love. But it is in fact effective in showing that it would be a mistake to attempt to define genocide as a 'hate crime.'

Notes and references

- 1 *The Applicability of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide to Events which Occurred During the Early Twentieth Century. Legal Analysis Prepared for the International Center for Transitional Justice. Executive Summary.* (International Center for Transitional Justice (ICTJ) Publication.), p 4.
- 2 As for the claim that I leave it 'mysteriously unspoken' that, on my interpretation, genocide could be committed even if only one person is targeted, it would seem that Lang is not a very careful reader, for on p 71 I say: 'The "in part" qualification means that you don't need to have intended to kill every last one of them. (In fact, if you are being very literal minded, even one Armenian counts as 'a part' of the Armenian ethnic group).'