

Review Essay

Colin Tatz, *With Intent to Destroy: Reflecting on Genocide*,
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Professor Colin Tatz has been one of the most prominent scholars in the field of the politics of race and genocide, and has dedicated much of his career to 'a profound appreciation of genocide as the ultimate form of racism' (p 14). His most recent book, *With Intent To Destroy: Reflecting on Genocide*, makes a valuable and impressive contribution to the many debates and issues surrounding the meaning of genocide and its possible applicability to 'advanced' nations traditionally thought to be immune from such accusations. The book draws heavily on previous published articles, papers and speeches by the writer. Within its brief 184 pages of text is an eclectic mix containing the writer's personal reflections on his life; an analysis of the inter-related evils of anti-Semitism and racism; a history of race issues in Nazi Germany, Australia and South Africa; and a discussion of some of the more complex issues surrounding genocide. Given this diverse mix, the book is clearly not intended, nor would it be suitable for, a textbook on the topic of genocide. It is also plainly not meant to be a book for beginners since much of the book relies upon the reader having at least a basic background to the history of the Holocaust and many of the issues and concepts canvassed throughout.

The phrase appearing in the title to the book 'with intent to destroy' constitutes part of the necessary mental element for the international crime of genocide found in the well-established international legal definition of the crime. Genocide has been consistently defined from the 1951 United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* (the 'Genocide Convention')¹ right up until the 1998 *Statute of the International Criminal Court* (the 'Rome Statute').² The first section of the book provides a number of alternative definitions suggested by various social scientists and found in some authoritative dictionaries. While Tatz acknowledges the strengths of these other definitions and the weakness of the international legal definition, he asserts that the legal definition should be accepted for pragmatic reasons. As he explains: 'if we venture into the realm of improved definitions, we will have no universally accepted yardstick, certainly no justiciable basis for trials of genocidal practice or for civil suits for restitution by victims' (p 71). This is a fundamental assumption of the book, one that social scientists and historians in particular may disagree with (see later). However, given that there is a need for international consensus and the international legal definition has been reconfirmed once again by the overwhelming majority of States during the negotiations for the drafting of the Rome Statute, it looks likely to remain unchanged for many years to come.

1 Opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951). The definition of genocide is found in article 2.

2 Opened for signature 17 July 1998, [2002] ATS 15 (entered into force 1 July 2002). The definition of genocide is found in article 6.

This international legal definition does require some analysis since the issue of its interpretation goes to the heart of what is probably the central point of the book. According to Tatz, perpetrators of genocide include not only obvious cases as Nazi Germany, Pol Pot's Kampuchea, and the extremist Rwandan Hutu regime, but also such advanced and 'enlightened' nations as Australia,³ America and Canada. This might seem shocking, because what Tatz suggests is that the actions of Nazis, the Khmer Rouge and radical Hutus in the deliberate killing of millions of people is to be equated with apparently far lesser crimes, such as the policies of successive Australian governments that saw the forcible removal of thousands of Indigenous children from their families. But Tatz is clearly correct. What is commonly not understood is that the international legal definition of genocide is in some ways quite broad and inclusive, and thus crimes of seemingly different levels of magnitude might fall under its ambit. The acts required to have occurred under the definition are expansive enough to cover not just physical killings, but also the removal of children,⁴ preventing births⁵ and causing 'serious' mental harm to a group.⁶ In a previous work⁷ Tatz proposed a solution to this practical problem of the legal definition encompassing vastly different actions and levels of culpability. He suggests that one should label these diverse situations differently by attaching the label of 'first degree' genocide to the most serious actions (eg. mass physical killings), 'second degree' genocide for less serious acts, and other lower degrees for even lesser acts. This is the way, for example, that the law of murder is structured in the USA. Application of this 'degree' scheme to the crime of genocide would make such actions as the removal of children from their families still considered as genocide (and rightly so in most situations), but would legally distinguish such actions from what is obviously the most common examples of genocide, namely, the slaughter of countless innocent people during the Holocaust, in Kampuchea and in Rwanda. This seems a sensible solution to the legal conundrum. In practice, however, due to the quite settled nature of the international legal definition, Tatz's proposal is unlikely to become adopted in the foreseeable future.

In other respects the international definition of genocide might be seen as too narrow. Of particular concern to many social scientists and historians is that the only protected groups under the definition are 'national, ethnical, racial, and religious', and this excludes political groups.⁸ As a result of this legal exclusion massive human rights violations carried out by Stalin in purging the Soviet Union of his political opponents (perceived and real) and of the kulaks⁹ would not be considered to be 'genocide' under the international legal definition. A similar legal result would prevail with respect to the violent oppression of political opponents throughout many areas of Latin America in the late 20th century, primarily by right wing death squads and other shadowy organisations. This under-inclusiveness problem of the genocide definition, however, is not really a dilemma for most international lawyers since such massive abuses of human rights, although possibly not carrying the stigma of the label 'genocide', would clearly fit within the definition of 'crimes against humanity'. This latter international crime now carries similar penalties to genocide.¹⁰

3 Tatz refers to the image of Australians as 'friendly, decent, democratic people' (pxv). Much later in the book (pp 136–139) he provides a deeper analysis of the difference between this benign image of Australia and the reality of Australia's past.

4 Article 2 (e) of the Genocide Convention.

5 Article 2 (d) of the Genocide Convention.

6 Article 2 (b) of the Genocide Convention.

7 Tatz, C. (1999). This proposal is also discussed briefly in the book at pp 145–146.

8 The original draft definition of Article 2 included 'political' groups, but due to pressure from the USSR, it was not included in the final text. See Paust et al (1996), p1083; and for a detailed analysis of this issue see Paust J. (1986).

9 These were the land-owning peasants.

Chapter Four of the book is the second longest, covering issues to which Tatz has devoted much of his career — namely, a detailed history of race politics in Australia. In this chapter Tatz forcefully argues that, based on the international legal definition of genocide, genocide was committed against the Indigenous people of Australia. Although a discussion of Australia's possible involvement in genocide only really became part of the public discourse after the publication of the controversial findings concerning genocide found in the *Bringing them Home Report* by the Human Rights and Equal Opportunity Commission (1997), it is clear from this chapter that this is not the only historical reason why genocide may have occurred in Australia. According to Tatz, other elements of the treatment of Indigenous people also fit within the Genocide Convention definition,¹¹ and so those who were responsible for these policies may be guilty of genocide. Tatz is also critical of the view of widely respected historian, Henry Reynolds, that there was no genocide of Tasmanian Aborigines (p 79). He asserts that Reynolds has misunderstood the legal definition of genocide under the Genocide Convention — it does not require the intent to destroy the whole group, only 'part' of a group is sufficient; and it was certainly intended to partially destroy Aborigines in Tasmania. Moreover, genocide does not have to be successful in order to constitute genocide under the definition; and under article 3(d) of the Genocide Convention, attempted genocide is equated to the crime of genocide itself.

Interestingly, in the next chapter, Tatz comes to the opposite conclusion with respect to his country of birth — South Africa. After a fascinating account of South African history from a race perspective, Tatz concludes by asserting that despite South Africa being 'a vicious society, a race-riven and race-divided society' (p 121) under apartheid, at no stage did the South African government have the requisite 'intent to destroy' Black people necessary to convict its leaders of genocide. Rather, according to Tatz, their aim was for there to be more Blacks, and for them to be 'healthy and compliant, not dead' (p 121). In Tatz's opinion, the apartheid leaders of the South African government clearly committed crimes against humanity, but not genocide.¹²

Given Tatz's background as someone born in South Africa and emigrating to Australia, it is not surprising that race politics in both these countries has clearly captured his attention for much of the early parts of his life. This is why the first chapter is a personal history of Tatz's journey from South Africa to Australia, and how he then began to connect another

10 For example, under article 77 of the Rome Statute the maximum penalty for all the crimes under the jurisdiction of the Court is life imprisonment and fines and forfeiture of property. Note that the International Criminal Tribunal for Rwanda has ruled that genocide and crimes against humanity are of equal gravity. See *Prosecutor v Serushago* (Case No. ICTR-98-39-S), Trial Chamber I, 5 Feb 1999, para. 14.

11 Including 'killing members of the group' (Article 2 (a) of the Genocide Convention) and 'Causing serious bodily or mental harm to members of the group' (Article 2 (b) of the Genocide Convention).

12 It is clear that apartheid was considered to be a crime against humanity. See Clause 1 of United Nations ('UN') General Assembly Resolution 2202A dated the 16 December 1966 ('condemns the policies of apartheid practices by the government of South Africa as a crime against humanity') and reiterated by Clause 1 of UN Security Council Resolution 556 dated the 13 December 1984 and Article 1 of the 1973 *International Convention on the Suppression and Punishment of the Crime of Apartheid*. Furthermore, this was the unambiguous view of the South African Truth and Reconciliation Commission — see South Africa: Truth and Reconciliation Commission (1999), Appendix to Chapter 4. However, the question of whether apartheid was also genocide is much less clear. The Preamble of the *International Convention on the Suppression and Punishment of the Crime of Apartheid* notes that several of the defining elements of apartheid conform to the defining elements of the separate crime of genocide, but genocide is not mentioned in the substantive articles of the Convention itself. The Ad Hoc Working Group of Experts of the UN Commission on Human Rights believed that apartheid did not fall within the scope of the definition of Genocide (UN Doc. E/CN.4/1075, para 161). See also the discussion in Schabas W (2001), at pp 201–203. One influential book that takes the view that apartheid was genocide is Asmal K, Asmal L & Roberts R, (1997), at pp 198–202.

significant aspect of his life, namely his Jewish background¹³ and concern for the Holocaust, with race issues. This is an interesting chapter as it explains Tatz's major motivations for his work. Chapter Two then more directly covers Tatz's interest in the Holocaust. Here he tackles some of the key Holocaust issues, such the appropriateness of the terminology,¹⁴ the 'uniqueness versus universal' debate, the question of 'intentionalism versus functionalism', and many other disparate topics based loosely under the headings History, Philosophy, Religion and Psychology. Much of this material is inspired by Tatz's participation in the compelling three-week course held at Yad Vashem in Jerusalem,¹⁵ which this reviewer has also attended and can vouch for its powerful and memorable effect.

Chapter Three focuses on Germany and particularly the Nazi regime as the instrument of genocide. It includes an analysis of the anti-Semitic origins in pre-Nazi Germany; a discussion of *Kristallnacht*¹⁶ in 1938 combined with a year-by-year analysis of the number of Jews that left Germany between 1933 up until the end of WWII; and finally a speech Tatz gave in 1999 on the role of the churches during World War Two. This is probably the most eclectic chapter in the book. It jumps from topic to topic without much explanation as to its choice of material.

Chapter Six, the book's longest chapter, is entitled: 'Reflecting on Genocide: Denialism, Memory and the Politics of Apology'. Each of the elements of this chapter is a very important and topical issue in its own right. Clearly one of Tatz's dominant concerns is the phenomena of denialism, and here he provides a list of possible reasons for denialism of both the Holocaust and the Armenian genocide; he also spends a significant amount of time analyzing the reasons for Australian denialism of its past treatment of Indigenous Australians. One of his most important points is that the traditional notion of there being a triangle of actors for each genocide — perpetrators, victims and bystanders — needs to be extended to include, in some situations, beneficiaries,¹⁷ and most significantly, the deniers of the event. This discussion, one of the most significant in the book, illustrates how strong denialist tendencies within a state impact on the extent to which a state can move forward to provide some measure of justice to previously victimised communities. In this respect, the section connects up with a later section on reparations, where Tatz puts forward some strong pragmatic arguments in favour of the principle that financial reparations are appropriate in situations of past injustice. These are arguments that seem to have been forgotten in Australia under successive conservative government principles of 'lets forget

13 At p141 Tatz states that his Jewish origins are at the 'foreground of my existence which compels me morally to investigate all manners and matters of genocide'.

14 Tatz prefers the word 'Judeocide' (p18).

15 Yad Vashem is the principle museum and memorial to the Holocaust in Israel. See <<http://www.yad-vashem.org.il/education/international.html>>.

16 In English this is 'The night of the broken glass'. On the night of the 9/10 November 1938, in alleged retaliation for the killing of a German diplomat in Paris by a Jew, Nazi gangs attacked Jewish shops, dwellings, schools, and set alight many synagogues throughout Germany, killing scores of Jews and arresting about 30,000.

17 Tatz probably has apartheid South Africa primarily in mind here, where many in the white population could not be labeled as direct perpetrators, but would be the beneficiaries of apartheid in an economic and educational sense. This is one of the points a number of writers and the South African Truth and Reconciliation Commission make in arguing that the costs of redressing the imbalances of the past should be funded by some sort of a tax on these beneficiaries. See Terreblanche S, (2000); Hamber B & Rasmussen K, (2000); and South Africa: Truth and Reconciliation Commission(1999), Volume Five, Chapter 8, Recommendations under 'Business', and see also the later Final Report, South Africa: Truth and Reconciliation Commission, (2003), Volume Six, Section 5, Chapter 7, Recommendation 6 ('The Commission recommends and urges that government impose a once-off wealth tax on South African business and industry'), p277.

the past, everybody should be treated equally now'. This, of course, conveniently ignores the history of Indigenous dispossession, racial discrimination and child removal policies, and the resultant continuing disadvantage these policies entail.

The main point of the section on 'memory' in Chapter Six is that war crimes trials, regardless of whether there has been a conviction or not, are important in and of themselves, since they constitute 'humanity's appeal to law, and a major avenue to public awareness that something terrible indeed has happened' (p 152). While not necessarily disagreeing with the sentiments here, they seem to imply that the findings of other bodies, such as Truth or investigatory commissions, civil courts and the International Court of Justice,¹⁸ are unable to provide similar benefits. In fact, it could be argued that because criminal trials are specifically directed at the individual criminal liability of individuals for specific crimes, and are not aimed at looking at patterns of abuse and/or making recommendations for future prevention of criminality, these other types of bodies might be better equipped to provide a broader account of history and to recommend how society can avoid such catastrophes in the future. Furthermore, the high burden of proof required for a criminal conviction might also mean that those who are found 'not guilty' can proclaim their total innocence and exoneration — hardly an ideal result.¹⁹

The book concludes with an Epilogue on teaching genocide. One part of this chapter — a detailed account of what topics Tatz includes in his genocide course — perhaps did not need to be included in the book. However, the rest of the Epilogue is compelling reading since Tatz returns to his personal history and the motivations for his work. In particular, Tatz explains that a long time ago he decided to 'do' something about genocide by being involved in teaching and researching at the university level. He admits: '... thoughts about genocide assail me daily. I read about it, think about it, teach about [it]. ... genocide is inspiring enough to make me want to examine it, explore it, deconstruct it, explain it, lay it out for the world to see, and perhaps learn from it' (p 183). Clearly, this is not everyone's cup of tea as to what they want to do with their lives, and one must respect Tatz's devotion to the cause of educating as many people as possible on genocide and the many questions that the concept raises.

This is a book that is densely populated with facts, questions, analysis and the writer's views on a myriad of issues concerning genocide and the twin evils of racism and anti-Semitism. While one is unlikely to agree with each and every opinion of the writer, the book clearly succeeds in what is its primary mission — to incite readers' thinking about the issues surrounding genocide, racism and anti-Semitism. These are vital concerns that all students of law, criminology, and for that matter, any social science, should and need to be aware of. Thought-provoking books such as this one are amongst the best weapons in the fight against the greatest injustice of all — that of genocide — and it is thus highly recommended.

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18 Ironically, in the midst of the discussion on criminal trials, Tatz (pp150–151) refers to Bosnia's application before the International Court of Justice (which is basically a civil court where one state seeks reparations against another state) for interim measures against Yugoslavia (Serbia and Montenegro).

19 This is precisely what occurred following the acquittal of the former Defence Minister of South Africa, Magnus Malan, and 19 other defendants in a high profile criminal trial in 1996. The trial concerned the alleged murder in 1987 of 13 friends and relatives of United Democratic Front activist Victor Ntuli in what was known as the 'KwaMakutha massacre'.

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