When is Sexualized Violence Genocidal?

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Abstract:

To conceptualize how sexualized violence can be genocidal, I first explore how some sexualized violence creates a genocidal effect. I argue for an approach that allows us to consider rape as genocidal when it targets a member or members of an ethnic or religious group and causes harm that destroys or displaces that group. In the next part of the paper, I consider how an actor or actors can have genocidal intent that they carry out through acts of sexualized violence. I conclude that, even in some supposed problem cases, wherein an agent acts without specific individual intent, genocidal intent can be present in his act of rape when he acts as part of a group. Finally, I consider challenges to my account. I ultimately argue that a rape is an act of genocide if and only if both the effect and the intent of the rape are genocidal.

Keywords: Genocide; Sexualized Violence; Rape; Gender-Based Violence; Responsibility; Intent

Introduction:[i]

In Tigray, Ethiopia, the bodies of women and girls have been treated like a battlefield. Thousands of women have been raped, and many of these acts of sexual violence have been linked to a campaign to destroy the Tigrayan people (Feleke et al., 2021). As those who have experienced these acts of genocidal rape seek support, some of the survivors have recounted their experiences publicly. One woman explained how, as she was raped, she was told: "'We will destroy Tigray and all the Tigrayans.'" (International Commission of Human Rights Experts on Ethiopia, 2023). Throughout the conflict, members of the United Nations (U.N.) were criticized for lacking the necessary urgency and determination to stop the widespread pattern of genocidal rape (Clark & Kyte, 2021).[1]

Although the International Criminal Tribunal for Rwanda created a precedent for treating some kinds of rape as genocidal, prosecution of genocidal rape remains rare (Powell, 2017). This lack of prosecution is not merely a historical concern, as the insufficient international response to the recent conflict in Tigray illustrates. International action may be limited in cases of genocidal rape because, as I explain below, the concept itself has been contested and inconsistently defined within international law; this has led to conceptual confusion about how rape can be used to perpetrate genocide. In this paper, I employ philosophical tools to clarify how and when sexualized violence is genocidal.

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[1] There is disagreement on whether any acts carried out in Tigray were genocidal. A recent report from the non-partisan think tank, New Lines Institute concludes "… that, on the evidence currently available, there is a reasonable basis to believe that members of the ENDF, the Amhara Special Forces ("ASF"), and the EDF have committed genocide against Tigrayans." The report goes on to argue that those involved had genocidal intent (New Lines Institute, 2024). As my primary focus here is not on the war in Tigray, I leave aside further discussion of this debate.

In proposing a better conceptual framework to understand genocidal rape, I interact with different and, at times, conflicting legal theories but I will not aim to propose a new legal definition. Instead, I offer a philosophical theory. In doing so, I expand our understanding of which acts are acts of genocidal rape by employing tools from new work in social agency. In particular, I argue for a more expansive view of genocidal intent so that I can explain how rape enables, and functions as, genocide as opposed to merely being a consequence of other genocidal activity. I hope that in offering this new view, the ideas that I propose are useful for those who want to more accurately understand rape, genocide, and genocidal rape.

Those who are skeptical about the existence of genocidal rape are often concerned either that rape cannot have genocidal effects, or they doubt that rapists in the relevant cases have properly genocidal intent. In what follows, I begin by tracing the origins of the current definition of genocidal rape in international law. Then, in part two, I review and extend the case that others have made for the possibility of genocidal effect (MacKinnon, 2006; Card, 2008; Miller 2009; Nenadic 2011; Schott, 2011 and 2015). In part three, I employ work on collective action and responsibility to argue that genocidal intent does not require that individual rapists have *specific* intent to commit genocide through their acts of rape. I will instead maintain that what is required for genocidal intent is that an agent be properly coordinated with others to support ongoing genocidal projects. I argue that genocidal rape is rape that both has genocidal effect and is carried out by an agent with genocidal intent. My arguments will both make it more plausible that some such cases exist and help us identify and diagnose which cases of rape are genocidal.

Part One: A Brief History of Genocidal Rape in International Law

Some instances of rape were first recognized as genocidal in international criminal law in the 1990s after sexualized violence was used systematically as a tool of ethnic cleansing in Bosnia and Rwanda. In both conflicts, rape was inflicted on thousands of people in meticulously planned and executed efforts to harm specific ethnic groups (Scheffer, 2008). Although sexualized violence has been a part of armed conflict throughout human history, the way rape was prosecuted in the International Criminal Tribunal for the Former Yugoslavia (ICTY) and in the International Criminal Tribunal for Rwanda (ICTR) "redefin[ed] the way the world thought about the nature of both rape and genocide" (Powell, 2017, 29).

Before the ICTR and the ICTY, rape was largely overlooked in international law. Although, reports of sexualized violence were detailed during the Nuremburg Trials, these crimes were never prosecuted (Luban, 2010). It was during the Tokyo Tribunal that rape was first recognized as a criminal activity, and even then, rape was prosecuted as a lesser secondary offense. Rape was "successfully charged in that tribunal as a war crime under 'inhumane treatment', 'ill treatment', and 'failure to respect family honour and rights'" (ibid). The systematic use of rape as a tool for war and genocide was ignored by the tribunal, thus re-enforcing the prevailing "perception that sexual violence is less serious than other violent crimes" (Guilford, 2018). A perception that has continued as "where international humanitarian law instruments include sexual violence, those instruments [still] evaluate the crime based on the harm done to the victim's honour, modesty or chastity" (ibid).

Although rape, and other forms of sexualized violence, can be an affront to a person's dignity, this categorization of the harm involved is likely a relic of how rape has historically been treated as a property crime — that is, when rape has been criminalized at all. As a result, when a woman was raped any harm that resulted was understood as harm incurred by this person's male relatives because of a loss of value that occurred with the loss of her sexual "purity". In response to this concerning view on the autonomy of women, much of the feminist literature that followed

attempted to redefine rape as a crime that harms an individual and not a family or a broader group. However, as the feminist literature has evolved many scholars have recognized that we need not abandon a nuanced understanding of rape, which allows us to understand it as an act that can harm or destroy a group, to simultaneously affirm that an individual is always harmed as well (Whisnant, 2021; Luban, 2010).

This more expansive view of the harm that can result from rape was present in the creation of the ICTY. The architects of this tribunal were explicitly interested in prosecuting crimes of sexualized violence. To support this goal, they identified rape as a crime against humanity in the ICTY Statute (Powell, 2017, 34). Still, prosecutors at the ICTY largely did not prosecute rape as genocidal. In a few limited cases, "[t]he only ICTY defendants charged with such crimes [were] either… acquitted due to insufficient evidence of genocidal intent or else the charges [were] withdrawn as part of a plea bargain," (Dubin, 2003, 25).

Both the ICTY and the ICTR were created by U.N. Security Council resolutions and were endowed with a mandate to prosecute individual agents for offenses including: breaches of the 1949 Geneva conventions, crimes against humanity, and genocide (Luban, 2010). Although each of these offenses constitutes a serious violation of international criminal law, genocide is seen as the "crime of crimes" and a conviction requires a stricter standard of individual liability (ibid). The stricter standard is required because to understand an act as genocidal, prosecutors must show that an agent acted with specific genocidal intent (Gill, 2025).

Yet, instead of arguing that rape was a part of a "common criminal purpose," which would have allowed for the prosecution of acts of rape as acts of genocide, prosecutors at the ICTY argued that acts of rape were part of the "extended joint criminal enterprise" of mass forced displacement and were "natural and foreseeable consequence[s] of [that]… displacement", (Guilford, 2018, 169). As a result, prosecutors did not identify rape as a form, nor as an enabling mechanism, of genocide

but rather they considered rape to be a consequence that sometimes occurs because of genocide or war. This conception of rape is limiting; it minimizes the central role that rape can play in enabling and enacting both genocide and war. Yet, still, by successfully treating rape as a crime against humanity and as a war crime, prosecutors at the ICTY created a precedent that firmly located sexualized violence within the jurisdiction of international courts.

Prosecutors at the ICTR went a step further and in 1998 successfully prosecuted rape as a crime of genocide in *Prosecutor v. Akayesu* (Powell, 2017, 35). This case is still considered a landmark achievement by advocates and scholars who seek to establish some instances of rape as crimes of genocide in international law. It was in this case that rape was first understood as a tool that can be utilized to enact genocide. However, "…progress in prosecuting genocidal rape in the ICTR effectively stopped with this case and even regressed at times. Although the ICTR established other convictions for genocidal rape, none were as strong, and rape was eventually redefined more narrowly…, "(Powell, 2017, 36). The ICTR cases that came after *Akayesu,* along with the lack of a supporting precedent for genocidal rape from the ICTY, introduced conceptual confusion into the international legal landscape (Gill, 2025).

So, despite the early precedent created at the ICTR for genocidal rape, prosecutors at the International Criminal Court (ICC), and other subsequently created international courts, do not have a clear precedent that can be used to prosecute genocidal rape. In particular, there has been confusion over how to think of genocidal intent in cases of sexualized violence (Guilford, 2018, 169-174). Furthermore, despite the successful prosecution of acts of rape and sexualized violence as war crimes and crimes against humanity, there have not been any convictions of rape as a crime of genocide after the ICTR dissolved in 2015. Yet, as Claire Bradford Di Caro (2019) discusses, we have good reason to want to correctly classify some crimes of sexualized violence as genocidal because:

> "[t]he weight that is attached to genocide versus other types of international crimes betrays how international law views the act itself. As the Preamble to the 1948 Convention affirms, genocide is a particularly atrocious, more so than other international crimes, because it is not simply a product of war, but an 'odious scourge.' While, arguably, war can occur as a means of self-defense, genocide cannot. Correctly categorizing sexual and genital violence as genocide per the 1948 Convention definition therefore recognizes the horrific inhumanity… suffered."

Di Caro goes on to note that ICC sentences for crimes of genocide are more severe than the punishments for other international crimes that now do include, as an element, rape.

In what follows, I will clarify how individual instances of rape, embedded in a systematic pattern of conduct, can be part of genocidal projects. In doing so, I will also help clarify our conception of genocide. I reject an overly simplistic understanding of the act of rape.[2] So, I reject conceptions of rape that have ignored the potential for genocidal harm and, as a result, definitions that have, when utilized, made these acts more difficult to decry using the established international structures that have been put in place to condemn and prevent genocide. To understand how and when acts of rape can be considered genocidal a more thorough explanation of the phenomenon is required.

But before exploring further *how* rape can be genocidal, it will help to look at how "genocide" is currently defined in international law. For the purposes of this paper, I will primarily focus on the ICC's definition. The ICC was created by the Rome Statute, a treaty adopted in 1998 and then brought into force in 2002. The ICC draws on much of the legal thought developed at the

[2] I do not argue for any one overarching definition of rape in this paper. My account that will establish when acts of rape are acts of genocide is compatible with various definitions of rape.

ICTY and the ICTR and functions as a central institution for the enforcement of international criminal law. The ICC (2002, 4) prosecutes four major types of crimes: crimes against humanity, war crimes, crimes of aggression, and genocide:[3,4]

> "[T]he crime of genocide is characterised by the specific intent to destroy in whole or in part a national, ethnic, racial or religious group by killing its members or by other means: causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group."

Importantly, I am not claiming that all rape is genocidal, and further, I am not claiming that all rape in war is genocidal. Genocidal rape is, as Catharine MacKinnon (2006, 107) puts it, "…not rape out of control. It is rape under control. … It is rape to drive a wedge through a community, to shatter a society, to destroy a people." Notably, in both the ICC definition and MacKinnon's description, genocidal rape contains two necessary elements: genocidal effect and genocidal intent. I will now consider each of these elements in turn.

Part Two: The Genocidal Effects of Rape:

[3] I attempt to clarify conceptual confusion embedded in international law on how rape can be genocidal in this paper by considering the ICC's definition of genocide. Although there is debate over the legitimacy and efficiency of the ICC, I leave aside further discussion of these issues in this paper.

[4] While there is work to be done in examining problems with the ICC definition of genocide, in this paper I only explicitly reject the use of "specific intent" in this definition while adopting the rest of the definition. I discuss the "specific intent" condition in more depth in part three of the paper.

In 1994 Victoire Mukambanda was raped in Kigali, Rwanda, in public and in front of her community (Darehshori, 2019). She was targeted because she is a member of Rwanda's Tutsi minority group (Moore, 2016). While she was being assaulted, a highly ranked official made a disparaging comment about her ethnic background and Tutsi group membership. Mukambana, as one of the first three women to testify in an international court about her experience of genocidal rape, recalled, "I would just sit, silent, crying all the time. That thing ruined our hearts, our bodies, even our intelligence, our ability to think," (ibid). Many other women — some estimates place the number of women raped during the genocide in Rwanda in the hundreds of thousands — can recount similar experiences (Paquette, 2017). By raping members of the Tutsi ethnic group, the perpetrators of this wartime crime were generating a genocidal effect.

Robin May Schott (2015, 398-9) argues that sexual violence is antithetical to conditions necessary for the existence of a human group. MacKinnon has a similar account "emphasizing that sexual violence is unlike other forms of violence and that sex is especially suited to serving a genocidal function because of what it does to the group," (Schott, 402-3). This leads us to the question: How can rape harm or destroy a group?[5] In what follows, I explore how rape, when

[5] In this paper, I largely leave aside questions of what conditions are required to regard collections of people as groups that can be destroyed through genocide. I do follow Card in that:

> "[S]ocial death is central to the harm of genocide [and so], it really is right not to count as genocide the annihilation of just any political group, however heinous. Not every political group contribute significantly to its numbers cultural identity. Many are fairly specific and short-lived, formed to support particular issues. But then, equally then annihilation of not just any cultural group should count, either. Cultural groups can also be temporary and specialized, lacking in the continuity and comprehensiveness that are presupposed by the possibility of social death," (Card, 2003, 77).

embedded in a systematic pattern of conduct, can create a genocidal effect through causing 1) psychological harm 2) physical harm and/or 3) reproductive harm that destroys or displaces a group.

1) Psychological Harm:

To begin, rape can generate serious psychological harms. MacKinnon (461- 491) argues that when women are targeted in genocide, it is because of their ethnic or religious group membership and further because of their membership in the group *as* women. We need to understand the multi-dimensional position women occupy within their ethnic and religious groups to understand what function rape serves in the destruction of those groups and in the destruction of the individuals' social identities. To start, the rape of a woman or women can serve as a form of humiliation. MacKinnon (223) argues that rape is "…a humiliation rite for the men on the other side who cannot 'protect' their women." If both groups adhere to a narrative that requires men to protect the women in their group, highlighting how powerless the group is to stop violence against women can cause severe harm. This harm is only increased when it is combined with the harm that can result from the humiliation that a woman may feel at her lack of control in this situation. Not only does the act of rape cause humiliation, but it also re-enforces the group's lack of autonomy and generates terror.

At times, rape of men in the non-dominant group is used as a "method of emasculation," (Fairbanks, 2019, 119). So, while undermining the masculinity of those in the targeted group, those in the majority group utilize rape to re-enforce their masculinity and thus dominance. The gendered aspects of rape are unavoidable in these contexts. Not only are women, and in some cases men, targeted for being members of their ethnic or religious group but also because of their gender. These gendered aspects create further harms of dehumanization.

Dehumanization can be used as a tool to help perpetrators of rape to act violently when, in other contexts, they may not. As Livingstone Smith (2022) puts it, "[o]ur inhibition against killing

other human beings gets switched on automatically when we recognize another person as a human being. And when this mechanism gets overridden, dampened down, or switched off entirely — whether by dehumanization or some other process — this clears the way for viciously destructive moral fury." So, dehumanization is both caused by, and clears the way for, the use of genocidal rape. Concurrently, a person who is dehumanized by others may experience dehumanization as a harm in itself.

Both through gendered and non-gendered attacks, rape can be used to dehumanize those targeted in a multitude of ways. By raping members of the Tutsi group, the goal was to illustrate that they were "literally Inyenzi — 'cockroaches'," (Mullins, 2009, 26). When people are treated as sexual objects that can be mutilated, possessed, and discarded, they can be seen as, and sometimes even see themselves as, stripped of their humanity and relegated to mere things. Here, people experiencing sexualized violence experienced a change in their understanding of their personhood. This change in self-understanding is itself a harm and is a form of dehumanization.

Rape can also be used as a tool of terror. Members of the Tutsi group detailed how they constantly feared for their lives and safety. Their thoughts become focused on remaining unnoticed. Many people changed how they lived their lives and adopted new habits. They lived in constant fear for themselves and their communities, (Mullins, 26).

2) Physical Harm:

Beyond these psychological harms, which can destroy or displace a group, genocidal effects of rape can include physical harms. Rape itself can cause physical harm, including intense pain and death. In other cases, rape can transfer diseases that can lead to physical harm. As an example, in Rwanda in 1994, multiple people testified that there was purposeful transmission of HIV (Aginam, 2012).

HIV/AIDS spread throughout the region has been linked to these rapes (Hilsum, 2004, 328). The spread of this deadly disease contributed to genocide.

More recently, survivors of widespread sexualized violence in Tigray have reported that they were threatened with deliberate HIV transmission and HIV infection has been documented in women who have survived sexual violence in this region. As "a woman raped by ENDF and EDF soldiers after being detained at a checkpoint recalled, 'They said to me, 'Your husband is junta and a traitor. You're agame. We want to destroy your womb so you can't give birth to a Tigrayan fighter. We will infect you with HIV.'" (International Commission of Human Rights Experts on Ethiopia, 2023, 28). While the physical harms of rape are straightforward, and so require less discussion, these harms should not be underemphasized.

3) Reproductive Harm

In addition to physical harm, and more controversially, reproductive freedom is often the target of rape in war. Forced pregnancies, forced destruction of reproductive organs, or interference with social reproductive processes are all ways in which rape can be genocidal (Schott, 2011). This kind of genocidal rape is often targeted at women, although as Di Caro (2019) notes men are also targets of harms to reproductive self-determinacy. As an example, men in the former Yugoslavia and in Rwanda were targeted for the destruction of bodily organs and other forms of genital violence. These acts of sexualized violence were expressly carried out to prevent men, from specific groups, from fathering children.[6]

[6] Less has been written on non-binary people and their experiences of genocidal rape. However, non-binary people, like men and women could have their reproductive processes impacted by rape in the same ways I have described. There may be further harms generated by genocidal rape that are experienced uniquely by those outside of the gender binary, but I am unable to consider those unique experiences in-depth here.

In both Bosnia and Darfur, forced pregnancies were a well-documented form of genocidal destruction (Kaiser & Hagan, 2015). In these cases, offspring from rape were seen not as a part of their biological mother's ethnic group but as a part of their biological father's ethnic group. As one person from Darfur explained to a journalist, "Babies born following the rapes are called 'Janjaweed babies' who rarely have a future in the mother's ethnic group. Infanticides and abandonment of such babies are common. … 'They kill our males and dilute our blood with rape. [They] ... want to finish us as a people, end our history.'" Even when the children are accepted by their mothers, these children are often still seen as tainted by the rest of the group, (Scheffer).

Reproductive harms were experienced more recently by women in Tigray. There, pregnant women were targeted because of their pregnancies and their group membership. These women were raped, beaten, and told that their future children would be killed (International Commission of Human Rights Experts on Ethiopia, 2023). Furthermore, rape can serve to "taint" people so that they are no longer desirable sexual partners (Card, 2008). In Tigray, it has been reported that "[s]ome survivors were divorced by their husbands or rejected by their families after being raped," (International Commission of Human Rights Experts on Ethiopia, 2023). This form of ostracism indirectly impacts the reproductive self-determinacy of the group.

As I've discussed above, rape can create genocidal effects by targeting a member or members of an ethnic, racial, or religious group and causing mental, physical, or reproductive harm that destroys or displaces that group. Rape is not merely incidental in these cases but is a form of genocidal harm. Correctly identifying rape as having a genocidal effect can help us properly understand the acts of both genocide and rape.

4) Other Concerns

When one, some, or all of these effects are present, the perpetrator of rape may have brought about a genocidal effect. However, how should we understand the person who orders that a rape be carried out to a genocidal end but does not personally engage in the act of rape himself? Has this person engaged in genocide?

Yes. The ICC recognizes this form of genocidal activity explicitly. In article 25(3) of the Rome Statute, four levels of participation in a criminal activity, including genocide, are delineated. In 25(3)(a), "instigation and ordering" are explicitly recognized as a form of participation that result in criminal liability for genocide. To understand how this works in cases of genocide, it may help to think of a more familiar case. Imagine in a war that a general orders a bomb dropped on a civilian village. The general does not actively drop the bomb himself, but he designates someone else to drop the bomb. Rightly, we would still say that he has created the effect of loss of civilian life, the result of the bombing. In the same way, a person who actively encourages or orders rape that results in genocide has, indirectly but in a way that carries equal, if not more moral blameworthiness than the person who physically engages in rape, caused a genocidal effect. Genocidal orders, like other kinds of orders in war, are still caused by the person who orders that his will be carried out.[7]

Finally, we may be concerned that the notion of "genocidal effect" as I've argued for it above is too broad. Consider the following case: A black man rapes a white woman in the mid-1930s in rural Mississippi. He does not have any genocidal intent when he engages in this act. This crime is then discussed broadly in the local town and this woman is no longer considered a desirable sexual

[7] I leave aside many questions about assigning responsibility, blame, and punishment here. However, there are significant questions about what sort of action should be taken against the various perpetrators of genocidal rape.

partner by men in her white ethnic community. It seems that this rape has the tainting effect I described above. But do we want to say that this rape has brought about a genocidal effect?[8]

It may be this rape is not located within a pattern of conduct that would appropriately allow us to consider it to be contributing to a genocidal effect. The act of rape I described above, the rape that takes place in a racist society, has impacted the reproductive determinacy of only one individual within the majority white ethnic group. Perhaps harming only one individual is not sufficient to destroy or displace a group.

However, the harms of genocidal rape can be understood as harms to individuals when the act causes the destruction of an individual's social identity. It seems then that in the racist society case, the sexualized violence may have destroyed an individual woman's social identity. So, this rape may have brought about genocidal effect even though the rapist did not have any genocidal intent. This is not a problem for my view. As I will argue in part three, genocidal effect is not independently sufficient for some act to be considered genocidal. For some rape to be understood as genocidal there must be both genocidal effect and genocidal intent.

Part Two: The Genocidal Intent of Rape:

In part one of this paper, I explored how rape can create a genocidal effect. However, returning to the ICC definition, genocide *must be* intended. How should we understand genocidal intent in cases of genocidal rape? In many cases, genocidal intent seems straightforward: a person engages in rape, or orders another to do so, with the goal of destroying or displacing a specific a national, ethnic, racial or religious group. However, as I discussed above, there are some cases that complicate this straightforward picture. In what follows, I consider how agents intend together and

[8] My thanks to Michael Rea for both this example and for raising this concern.

why we ought to care about this in determining when an act of rape is genocidal. I conclude that if an agent has genocidal intentions, which are developed through coordination with others, then those others may *also* be responsible for intending to enact genocide. I argue that this can occur even when someone does not form specific intentions to enact genocide when we consider her individually. "Specific intent" is a term of art in law. To say an individual has specific intent requires that an individual has formed an intention to bring about a particular end (Dressler, 2018). So, a rapist will only have specific intent to commit genocide if she has consciously formed the intention to commit genocide herself.

An expanded understanding of genocidal intent is not supported by the approach to criminal intent that is employed by prosecutors at the ICC. Yet, it is more similar to the way those at the ICTY relied on an "extended joint criminal enterprise" (JCE) doctrine and expanded what might count as within the "common criminal purpose" to identify which individuals can be convicted of crimes (Guilford, 169-170). This legal explanation was developed during the tribunal's tenure to determine which agents can properly be understood to have relevant individual liability for a joint criminal activity. A more expansive view of individual liability allowed for those at the ICTY to prosecute acts of sexualized violence more widely (Guilford, 169). However, those at the ICTR relied, and those at the ICC rely on, a narrower conception of individual liability and both define what counts as a "common criminal purpose" more narrowly (Guilford, 170-171; 177-178). In particular, the requirements for genocidal intent are very strict. In my argument below, I demonstrate the advantages of using a more expansive view of individual liability; in this way I support the expansive approach adopted by those at the ICTY. In what follows, I also develop a more expansive view of genocidal intent – a step the ICTY never took.

Turning back now to think more broadly about genocidal intent, to begin, what should we say about cases where we might want to call an act of rape genocidal based on the effects but are

limited by an individual actor's specific intent? Take this example: Bob is encouraged to engage in rape by a superior officer who has genocidal aims during wartime.[9] Bob does engage in rape, but he does so without knowing the superior officer's genocidal goals. Is Bob engaging in genocide? Remember, under the Rome Statute, prosecutors at the ICC are required to show that genocide must be strictly intended, and let's posit that Bob does not straightforwardly intend genocide when he engages in rape given the way we've defined genocidal intent so far.

It seems that considered independently, Bob does not have strict genocidal intent to destroy in whole or in part a group in the case described above. However, how should we understand Bob's intent when we consider Bob as part of a larger group? We can imagine that Bob was encouraged to engage in rape because the organization he is a part of has genocidal aims. In this case, Bob's superior officer is committing an act of genocide. He is causing a genocidal effect by ordering Bob to rape, and he intends this effect. Now is it fair to say that Bob is committing an act of genocide as well?

One way to answer this question is to consider other cases where an individual helps bring about a more complex group action. It is intuitive, in many such cases, that even an agent who lacks a specific individual intention – such as the intention to commit armed robbery – can nonetheless bear responsibility for the way the group intends this end. This is plausible if said agent willingly coordinated with others in the group – perhaps she drove the getaway car. We should understand individuals as morally responsible, to some degree, for the intended actions of groups with which they willingly participate.[10] More examples may help illuminate these ideas.

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[9] By discussing "Bob" and by using gendered pronouns, I do not mean to suggest that only men are perpetrators of rape.

[10] I favor a view that understands the way that agents intend together by appealing to a network of causally interacting individual intentions.

To illustrate, consider this armed robbery case: Sue is one of three people involved in an armed robbery. Sue drives the getaway car. Sue knows that Sally is pulling the gun, and that Sam is breaking into the store and grabbing the money. Has Sue committed the armed robbery, or is she merely engaged in driving the getaway car? Many philosophers and legal scholars agree that Sue has committed an armed robbery. Her part of the robbery is only the driving of the car, but when understood as part of the group, she is committed to and engaged in the group activity, the armed robbery. Furthermore, neither Sue, Sally, nor Sam's actions taken independently constitute armed robbery; only when we consider all their actions together can we fully describe the shared activity.

Still, in the armed robbery case, everyone intended to be a part of the robbery. Given this kind of specific intent, all these actors are committing an act with a common criminal purpose. This understanding of individual liability aligns with both the ICC and ICTY approaches to legal culpability. Yet, if we consider a case where someone is unaware that she was a part of the way a group committed a crime, this may help generate a case closer to the genocidal rape case that lacks specific intent.

Consider this variation of my case above: Sue is told that Sam and Sally are just going to shoplift. She still drives the getaway car. Yet is she responsible for further crimes committed during the commission of the agreed upon plan when, for example, Sally decides on her own to pull a gun and demand money from the cash register? Sue's actions causally contributed to the group's action of an armed robbery. So, it does seem that Sue has committed an armed robbery — even if we think she is less blameworthy for this crime than Sally given the way she was involved in bringing about the act.[11] At least, this is the case if we consider Sue's individual liability by adopting the ICTY

[11] Sue's legal responsibility may not be mitigated in this case. I am leaving aside questions of legal responsibility and complicity here.

standards established in the JCE doctrine. Sue might not be liable for the escalation at all if we consider this case through the lens of the ICC's conception of individual liability, which is detailed in the Rome Statute. There, Sue is only responsible for the armed robbery if she knew of the broader aim of the armed robbery and intended the outcome.

In Bob's case, he is not, himself, aware of the larger genocidal aims that have contributed to the way his action has come about. Yet, he may be aware of the genocidal aims of his group. To consider the importance of group aims, consider the following case involving a hate crime instead of an act of genocide: Sam joins a white supremacy group. He shares in the ideology of the group and works with the other group members to promote their worldview. The group wants funds and so they decide to rob a house nearby. Sam is on board. He knows the house they target will be a house owned by a person of color. The group did not plan to rob this house to terrorize the homeowners but because the group has heard of a safe in the house. Sam is an active participant in the robbery. The operation could not have taken place without Sam. The group leader tells another member to burn a cross in the backyard. Sam does not burn the cross and, in fact, does not even know about the cross burning until later. As a result, the group has committed a hate crime but has Sam?

Yes, intuitively, Sam has committed a hate crime. Sam's actions helped to bring about the hate crime and concurrently Sam is coordinating with others to promote the group's ideology. Sam has committed a hate crime because of the way he is coordinated with others to help create and sustain the way the group intends. And beyond being responsible for merely the way the group intends, Sam is also responsible for the group activity given his causal contributions that help to bring it about.

Hate crimes, like genocide, are dependent on ideology. So, what if Sam was not a part of the white supremacy group, but merely connected with them because he wanted to make money. Is he engaged in a hate crime then? We can imagine white supremacists learning that Sam is the best lock-

picker in his part of town. The white supremacy group contacts Sam and offers him a cut of the money to pick a front door lock. Sam has no idea this is a white supremacy group. As in the previous example, the leader of the group tells someone to burn a cross in the backyard. Sam has no idea about the cross burning until later.

In this version, Sam was not engaged in the hate crime. At first glance, this seems like an odd conclusion as Sam is carrying out the same actions as in the first case when he *was* committing a hate crime. However, if he does not share in the group's ideology or use the ideology as a convenient end, he is not a part of the hate crime. This is because Sam was not involved in the way the group came to intend to commit a hate crime. Although, in this case Sam was causally involved in how the group enacted a hate crime, he lacks the necessary kind of intent. In the initial version of the case, Sam was differently coordinated with the other members of the group. He helped to enable the other members of the group by promoting and sustaining the hateful group ideology. So, he did have the right kind of intent in virtue of the way he was involved in the way the group intended. Similarly, someone who engages in rape but does not act to sustain the ideology necessary for genocide is not engaged in genocidal rape, although, they are, obviously, engaged in a crime.

Here I want to use "sustaining" loosely. A person need not believe in the genocidal goals on some deep level. It is enough that someone accepts the genocidal aims of a group enough to tolerate them so long as those ends are, and the group is, useful in their own projects. In these cases, the agent in question is still sufficiently coordinated with others and is responsible for enabling the way the group intends genocidal ends. So, imagine that Sam is not deeply committed to white supremacy. Left to his own devices, he would not do anything to make the lives of people of color worse. In fact, Sam is only a part of the white supremacy group because he makes more money with them than he could working elsewhere. In this case, Sam has committed to the group's aims insofar as those aims support and sustain his own interests. Sam's commitment to these goals as a means to his

own ends are sufficient to say he has a part in furthering the genocidal aims of the group. Furthermore, if the group commits a hate crime and Sam helps make that crime possible, Sam has committed a hate crime.

Returning to Bob and the case of genocidal rape, if Bob is engaged in an act of rape that brings about genocidal effects and Bob is a part of a group invested in genocidal aims, then Bob himself, should be understood to have engaged in an act of genocidal rape. While Bob does not have *specific* intent to commit an act of genocide, Bob is partly responsible for the way the group intends genocide. Furthermore, Bob's act of rape is causally linked to the way the group intends to carry out genocidal aims. So, when Bob acts, we can understand Bob's action as being driven by the necessary kind of intent to enact genocide.

To adopt this approach to genocidal intent — an approach that appreciates how genocide is a shared activity that is perpetrated by many people intending together — those at the ICC would need to embrace a more expansive approach to individual liability than the approach that is currently codified in the Rome Statute. An expanded approach to individual liability would allow for a similar expansion of genocidal intent in international criminal law. This kind of expansion is not without precedent, as the expanded approach to individual criminal liability employed by those at the ICTY illustrated. Still, adopting this approach, which is normatively fitting, would likely require legal reform to enact at the ICC. Yet, the international community would then have the tools necessary to properly prosecute more cases of genocidal rape. In doing so, we would be in a better position to fully appreciate how rape is not a mere consequence of genocide but rather how rape can function as a form of genocide.

Part Four: Classifying Nearby Cases:

What I've said in parts two and three may indicate that we have defined all rape in and around armed conflict as genocidal rape. This would be too broad a definition and, if codified in law, would likely result in over-criminalization. We need to be able to distinguish acts of genocidal rape from nearby acts of non-genocidal rape. To respond to this concern, I now turn to consider cases that, at first glance, appear to be problems for my account of genocidal rape. To start, how should we think about rape during war that did not cause a genocidal effect and was not done with specific genocidal intent but that was made possible because of background genocidal conditions?

Imagine the following case: Claire, part of a religious minority group, flees her home because she fears for her safety. While traveling, she is apprehended by a man who is a part of a task force that is systematically wiping out her religious community. The man takes advantage of the background conditions of genocide. He targets this woman he has found who is alone and far from her local support network, and he rapes her. The rape does not create a genocidal effect, Claire had said goodbye to her family, and they assume she safely made it to her destination. So, the rape does not cause psychological harm to the group. Furthermore, Claire physically recovers and can continue on her way, she eventually reaches her planned destination safely, so there is no physical destruction of the group. As for genocidal intent, the man who raped Claire did not intend genocide with his act. It was not part of a larger planned strategy. We could even go so far as to say the man was unaware that the woman he has targeted is part of the religious minority group he seeks to eradicate. This was a crime of convenience.

In this case, a heinous crime has clearly been committed. However, that does not make the crime genocide. Just as this man would not be committing genocide if he were to steal a computer from a local store, left vacant because the shop owner has fled from genocide, the man has not

committed genocide when he rapes Claire.[12] In this case, the rape was made possible by genocide; however, we do not typically define everything made possible by a crime as a form of that crime. So, just because Bailey can sneak into a nightclub after she poisons a bouncer, sneaking into the club is not an act of murder. So too, a rape lacking genocidal effect and intent is not an act of genocide.[13]

Turning to the second kind of problem case: has someone committed an act of genocide if genocide is intended, but the rapist's actions do not bring about a genocidal effect? Picture a man named Tim. Tim intends to contribute to the genocidal efforts of his military group by raping a man who is part of an ethnic minority group. However, Tim accidently targets a man who is not a member of the minority group, and there is no genocidal effect from Tim's actions. In this case, has Tim committed an act of genocide?

In this case, there may actually be a genocidal effect. There may be psychological harm to the minority group because Tim has identified the group as an appropriate target of destruction. These psychological harms could result in the destruction or displacement of the group causing a genocidal effect. This is the case even if no particular member of this group is the subject of an individual harm because of this rape.

However, we can posit that in the Tim case these kinds of psychological harms do not occur. Perhaps no one ever learns of the rape or Tim's intent to target the ethnic minority group. Then, it seems that while there is an attempted genocide, Tim has not successfully committed an act of genocide. Notably, this is not a case of attempted rape as Tim was successful in raping someone. We consider other kinds of crimes in this way. Remember Bailey from the last problem case? Well, if she intends to kill the bouncer by poisoning him, but he survives her attack, she has still poisoned

[12] I do not mean to imply that rape is equivalent to the loss of property.

[13] This act of rape *is* likely a war crime and is potentially a crime against humanity.

him. She has not committed murder, but attempted murder.[14] Similarly, a case of attempted genocidal rape is not a case of actual genocidal rape. Still, we ought to take such cases of attempted genocide seriously.

Let's move now to the most difficult of these three types of problem cases: rape that causes a genocidal effect, but where the rapist does not have specific genocidal intent, nor does he belong to a group that has genocidal intent. Should we change the definition of genocide so that genocidal effect is sufficient to call something an act of genocidal rape? If someone does not intend to commit genocide, and she does not belong to a group or sustain an ideology that would enable us to classify her intent as genocidal, but she brings about genocide anyway, should her conduct be classified as genocide? I hesitate to give up on intention as a necessary condition for genocide. If we turn again to hate crimes as a parallel for genocide, intention emerges as essential in defining this crime. A hate crime is unlike a murder in the same way that genocide is unlike rape. In both hate crimes and genocide, a certain ideology is necessary.

Imagine a case where a serial killer, Whitney, decides to kill ten people in a small town. Whitney decides to select her victims by walking down the street and selecting every third house with an even-numbered street address that she comes across. Whitney unknowingly selects ten people from a minority ethnic group, and she fails to notice this similarity as she has been committing these crimes at night when it is pitch black. After Whitney has killed these ten people, panic breaks out in the town. People begin to fear that there is a serial killer targeting people in this specific ethnic minority group.

[14] There are interesting questions of how to treat, or whether to prosecute, attempted acts of genocide but they are outside the scope of this paper.

Has Whitney committed a hate crime? I do not believe she has as she was not motivated by malice toward a specific group. In the same way that a hate crime must be motivated by some intent to bring about a hate crime effect, so too must an act of genocide be motivated by genocidal intent. In the serial killer case, Whitney's victims are random. For there to be a parallel genocide case, the victims would also have to be wholly random. Whitney, the serial killer, has randomly identified people all of the same ethnic group. It may be possible to concoct a thought experiment where a rapist manages to destroy a group by randomly selecting victims. However, this kind of case is harder to develop – although maybe not theoretically impossible.

Still, let's grant that in any actual conduct that leads to a genocidal effect, the people engaged in that conduct are aware of their impact. We do not need to assume that they are deeply aware, that is, aware so that they take note and think about the impact of what they are doing. It would be sufficient that, if prompted, such people would be able to confirm that their actions are focused on a specific group and that those actions have a detrimental impact on that group. Then the question becomes: is someone engaged in genocide if they are aware of the impact their conduct has but do not care? Yes, being aware of and continuing to engage in activity that furthers group ends, pursued because of genocidal aims, is sufficient for an individual agent's conduct to count as contributing to the way the group intends. In virtue of knowingly sustaining the way that the group intends, an agent bears some responsibility for the genocidal intent of the group.[15] Yet, if an individual, who is not part of a larger group with genocidal aims or sympathies, acts with the same awareness that her actions are causing harm to a specific group, she may not have the proper kind of genocidal

[15] This is not to say that a person who has always been a part of a community engaged in genocide, a person who has never had the opportunity to reckon with the meaning of the impact of her actions, is always fully responsible for her actions. This agent may not be completely morally responsible for her act of genocide, even if she is fully responsible for her act of rape. Responsibility aside, this agent has committed genocide.

intention to enact genocide. She may carry-on with an awareness of these genocidal effects without any responsibility for intending to commit genocide.

This is a grey area between the Whitney case I describe above, wherein Whitney does not have the appropriate kind of intention to enact a hate crime because her victims are totally random, and cases wherein mass murder is not explicitly brought about because of genocidal aims. There may be cases where members of a minority group are targets for rape because of their group membership. The rapist or group of rapists may not want to destroy or displace the minority group, but they may see the group as appropriate targets of this sort of sexual violence because of their group membership. The effect may be genocidal even though no one individual intends genocide. In these cases, the acts of rape are clearly abhorrent and may be rightfully categorized as crimes against humanity, war crimes, or crimes of aggression. However, unless there is a genocidal intention held by someone in the group, these acts are not acts of genocide. Each of the cases above details a variation of genocidal intent and effect as aspects of an act of rape. After considering these cases, it is clear that rape is an act of genocide if and only if both the effect and the intent of the rape is genocidal.

Conclusion:

Throughout this paper, I have argued that cases of genocidal rape exist, and I have clarified and expanded upon existing accounts to help identify and diagnose when acts of rape are acts of genocide. My account may be useful for those interested in clarifying how genocidal rape should be conceptualized and prosecuted within international law. More specifically, my approach may help to illuminate the potentially genocidal impact of the recent widespread sexualized violence in Tigray, Ethiopia. Finally, I hope that I have offered a meaningful conceptual framework for any survivors of genocidal rape, or anyone who is looking to support survivors, to further name and describe their experiences.

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