

# THE ARMENIAN GENOCIDE AND THE RUSE OF PROTECTIVE DISPOSSESSION

*Richard G. Hovannisian\**

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## INTRODUCTION

The Armenian Genocide, beginning in 1915, was the supremely violent historical moment that removed a people from its homeland and wiped away most of the tangible evidence of its several thousand years of material and spiritual culture.<sup>1</sup> The calamity, which was unprecedented in scope and effect, may be viewed as a part of the incessant Armenian struggle for survival and the culmination of the intensified persecution and massacres starting in the 1890s; or it may be placed in the context of the great upheavals that brought about the disintegration of the multi-ethnic and multi-confessional Ottoman Empire and the emergence of a largely monolithic Turkish nation-state. The Ottoman government, dominated by the Committee of Union and Progress (Young Turk; Ittihadist) party, came to regard the

\* Professor Emeritus of History, UCLA; Adjunct Professor of History, University of Southern California; President's Fellow, Chapman University. Portions of the non-legal and historical aspects of this article have appeared in other works on the subject by the author. For a partial list of the author's previous publications: <http://www.history.ucla.edu/faculty/richard-hovannisian>.

1. RICHARD G. HOVANNISIAN, REMEMBRANCE AND DENIAL: THE CASE OF THE ARMENIAN GENOCIDE 13 (1998).

Armenians as alien—the enemy within—and a major obstacle to the fulfillment of its political, ideological, and social goals.<sup>2</sup> The Young Turk repudiation of a plural society eventually resulted in a single society, as the destruction of the Armenians was accompanied and followed by the decimation of the Christian Assyrian and Greek populations and the suppression of even non-Turkish Muslim elements to compel their “Turkification” and complete assimilation.<sup>3</sup> The method adopted to transform Ottoman plural society to Turkish monolithic society was genocide. And, as in all other genocides, a major factor and consequence of this process was the dispossession of the victims through the forcible transfer of goods, properties, and all other forms of wealth to the side of the perpetrator.<sup>4</sup> And, just as in the case of the later Holocaust, great attention was paid to disguise and legalize the plunder through official acts and decrees, even if they were *ex post facto*.<sup>5</sup>

The practice of carrying out mass killings and forging surreptitious internal wars under the cover of major international conflicts did not begin with the Armenian Genocide. Civilian populations have frequently fallen victim to the brutality of invading armies, aerial bombings, missiles, poisonous substances, and other forms of indiscriminate killing. In the Armenian case, however, the Turkish government not only openly violated the fundamental obligation to defend its own citizenry, but also turned its might against a particular segment of its population. International law and convention at the time provided certain rules and customs of war intended to protect—at least in some measure—noncombatant, civilian populations and prisoners of war, but these regulations did not extend to domestic situations or a government’s mistreatment of its own people. It was only after the Holocaust during World War II that domestic situations became actionable as part of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).<sup>6</sup>

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2. *Id.* at 14.

3. See G. S. Garber, *Introduction to VARTKES YEGHIAYAN, THE ARMENIAN GENOCIDE AND THE TRIALS OF THE YOUNG TURKS*, at vii-xiii (1990).

4. 1 SAMUEL TOTTEN & PAUL R. BARTROP, *DICTIONARY OF GENOCIDE: A-L* 125-26 (2007).

5. See, e.g., ALAN WHITEHORN, *THE ARMENIAN GENOCIDE: THE ESSENTIAL REFERENCE GUIDE* (2015); EDDIE YEGHIAYAN, *THE ARMENIAN GENOCIDE: A BIBLIOGRAPHY* (2015); *Selected Bibliography on Armenian Genocide*, ARM. GENOCIDE MUSEUM-INST. (Oct. 9, 2016), <http://www.genocide-museum.am/eng/bibliography.php>.

6. See Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277; U.N. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

Nonetheless, at the time of the Armenian deportations and massacres, many governments condemned the atrocities and termed them as brutal “crimes against humanity.”<sup>7</sup>

There has been much political and scholarly debate on the precise definition of the term “genocide” and the compromise wording as incorporated in the Genocide Convention.<sup>8</sup> Some scholars find the United Nations (UN) definition ambiguous and open to such broad interpretation so as to allow for the inclusion of nearly all cases of collective persecution.<sup>9</sup> There is a tendency on the part of victimized groups, such as the Armenians and Jews, however, to insist on a narrow definition in order to prevent what they perceive as a dilution or trivialization of their own special suffering.<sup>10</sup> Many human rights activists, on the other hand, find the UN’s definition too restrictive, especially as it excludes political and social groups from the questionable protection afforded by the Genocide Convention.<sup>11</sup> According to the 1948 Genocide Convention, genocide means the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”<sup>12</sup> in any one of the following ways:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.<sup>13</sup>

What makes the Armenian case especially compelling is that the victim group was subjected to each and every one of the five catego-

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7. David Luban, *A Theory of Crimes Against Humanity*, 29 *YALE J. INT’L L.* 85, 86 (2004); Richard G. Hovannisian, *The Allies and Armenia, 1915-18*, 3 *J. OF CONTEMP. HIST.* 145, 147-55 (1968).

8. FRANK CHALK & KURT JONASSOHN, *THE HISTORY AND SOCIOLOGY OF GENOCIDE: ANALYSES AND CASE STUDIES* 8-12 (1990); LEO KUPER, *GENOCIDE: ITS POLITICAL USE IN THE TWENTIETH CENTURY* 19-23 (1982) ROBERT MELSON, *REVOLUTION AND GENOCIDE: ON THE ORIGINS OF THE ARMENIAN GENOCIDE AND THE HOLOCAUST* 22-26 (1996).

9. Alexander K.A. Greenwalt, *Rethinking Genocidal Intent: The Case for a Knowledge Based Interpretation*, 99 *COLUM. L. REV.* 2259, 2263-69 (1999).

10. Yehuda Bauer, *Is the Holocaust Explicable?*, 5 *HOLOCAUST & GENOCIDE STUD.* 145, 145-55 (1990); Vahakn N. Dadrian, *The Convergent Aspects of the Armenian and Jewish Cases of Genocide. A Reinterpretation of the Concept of Holocaust*, 3 *HOLOCAUST & GENOCIDE STUD.* 151, 160-69 (1988); Pierre Papazian, *A “Unique Uniqueness”?*, 30 *MIDSTREAM* 14, 18 (1984). See also LUCY S. DAWIDOWICZ, *THE HOLOCAUST AND THE HISTORIANS* (1997) (discussing various historians’ views on the Holocaust’s “uniqueness”).

11. See CHALK & JONASSOHN, *supra* note 8, at 11; KUPER, *supra* note 8, at 22-39.

12. Genocide Convention, *supra* note 6, at art. II.

13. *Id.*

ries.<sup>14</sup> Such drastic and absolute methods underscore not only the calculated intent of the violence, but also the single-minded determination of the perpetrators to expunge the Armenians from the projected newly mono-ethnic, mono-linguistic, mono-cultural, and mono-religious Turkish society.

## I. THE ARMENIAN QUESTION

The Armenians are an ancient people that inhabited the highland region between the Black, Caspian, and Mediterranean seas from deep antiquity until the twentieth century.<sup>15</sup> After a long period of proto-history, Armenia emerged as an organized state in the first millennium BC, or perhaps earlier.<sup>16</sup> Situated on the most strategic crossroad between Eastern and Western worlds,<sup>17</sup> Armenia was at times independent and formidable under national dynasties,<sup>18</sup> or autonomous under native princes who paid tribute to foreign powers,<sup>19</sup> or even subjected to direct foreign rule.<sup>20</sup>

At the turn of the fourth century AD, after more than a thousand years of polytheism, Armenia adopted Christianity, becoming the first nation to proclaim that faith as the religion of state.<sup>21</sup> Christianity cost the Armenian people dearly, for the tenacity with which they held to the faith exacted from them virtually millions of lives through the centuries before the genocide itself. Their existence was made difficult both by invasion and by nature, draining and devastating the land and

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14. MARIA VAN HAPEREN ET AL., *THE HOLOCAUST AND OTHER GENOCIDES: AN INTRODUCTION* 55 (2012); Stuart D. Stein, Professor, Univ. of the W. of Eng., Bristol, *A Lecture on the Armenian Genocide* (transcript available at [https://anca.org/assets/pdf/armenian\\_genocide\\_reference/A%20Lecture%20on%20The%20Armenian%20Genocide.pdf](https://anca.org/assets/pdf/armenian_genocide_reference/A%20Lecture%20on%20The%20Armenian%20Genocide.pdf)).

15. Lilia A. Arakelyan, *Quo Vadis, Armenia? The South Caucasus and Great Power Politics, in RUSSIA, EURASIA AND THE NEW GEOPOLITICS OF ENERGY: CONFRONTATION AND CONSOLIDATION* 64 (Matthew Sussex & Roger E. Kant, eds., 2015).

16. See 1 *HISTORY OF HUMANITY: PREHISTORY AND THE BEGINNINGS OF CIVILIZATION* 1-2 (S.J. De Laet et al. eds., 1994) (“proto-history” refers to the history of people or inhabitants of a region who had an oral literary tradition but did not take to literary writing); see also Arakelyan, *supra* note 15, at 64.

17. Arakelyan, *supra* note 15, at 64.

18. See JAMES BRYCE & ARNOLD TOYNBEE, *THE TREATMENT OF ARMENIANS IN THE OTTOMAN EMPIRE, 1915-1916: DOCUMENTS PRESENTED TO VISCOUNT GREY OF FALLODON BY VISCOUNT BRYCE* 602 (His Majesty’s Stationery Office, 1916) available at <http://libcdm1.uncg.edu/cdm/ref/collection/WWIPamp/id/3842>.

19. *Id.* at 603.

20. *Id.* at 600.

21. MALACHIA ORMANIAN, *THE CHURCH OF ARMENIA: HER HISTORY, DOCTRINE, RULE, DISCIPLINE, LITURGY, LITERATURE, AND EXISTING CONDITION* 10 (G. Marcar Gregory, V.D. trans., 1912) (2015); see also LEON ARPEE, *A HISTORY OF ARMENIAN CHRISTIANITY FROM THE BEGINNING TO OUR OWN TIME* (1946).

compelling many Armenians to seek safety in distant realms. Most Armenians, however, stayed firmly planted on the Armenian highland, maintaining their separate ethno-religious identity and culture.<sup>22</sup>

The Turkic incursions into Armenia began in the eleventh century AD, and the last Armenian kingdom in the region of Cilicia fell three centuries later. Most of the territories that had once formed the ancient and medieval Armenian kingdoms were incorporated into the Ottoman Empire in the sixteenth century.<sup>23</sup> That empire was a theocratic state based on Islamic precepts.<sup>24</sup> The Turkish ruling classes controlled a multi-national, multi-confessional realm in which—and this may be a clue to potential genocide—there was a plural, not pluralistic, society where various groups lived side-by-side yet separate and distinct.<sup>25</sup> Ottoman citizens belonged to a common state, but the theocracy was founded on the institutionalized separation of the population into true believers and non-believers.<sup>26</sup> The non-believers were *gâvurs*, a pejorative term meaning “infidel.”<sup>27</sup>

According to the precepts of Islam, tolerance of Christians and Jews was to be accorded on condition that these groups submit to an inferior second-class status with various financial, political, and social restrictions.<sup>28</sup> The testimony of a nonbeliever, for example, could not be admitted as evidence against a true believer.<sup>29</sup> In lieu of military service, because religious minorities were not allowed to bear arms, a poll tax was imposed on every male child.<sup>30</sup> This was one of the rea-

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22. Dickran Kouymjian, *Armenia from the Fall of the Fall of the Cilician Kingdom (1375) to the Forced Emigration under Shah Abbas (1604)*, in 2 *THE ARMENIAN PEOPLE FROM ANCIENT TO MODERN TIMES* 2-8 (Richard G. Hovannisian ed., 1997). For a concise historical survey of Armenian communities in Armenia and those in expatriate communities, see A.G. ABRAHAMYAN, *HAMAROT URVAGITS HAY GAGHTAVAYRERI PATMUTYAN [A BRIEF OUTLINE OF THE HISTORY OF THE ARMENIAN EMIGRANT COMMUNITIES]* (1964) (Arm.).

23. Kouymjian, *supra* note 22, at 9-19.

24. *Id.* at 26.

25. DERYA BAYIR, *MINORITIES AND NATIONALISM IN TURKISH LAW* 26-28 (2012); see also Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, 30 *SYDNEY L. REV.* 379, 381 (2008).

26. Benjamin Braude, *Introduction to CHRISTIANS AND JEWS IN THE OTTOMAN EMPIRE: THE ABRIDGED EDITION* 1, 15-16 (Benjamin Braude ed., 1982) (2013).

27. Raymond Detrez, *Pre-National Identities in the Balkans*, in 1 *ENTANGLED HISTORIES OF THE BALKANS: NATIONAL IDEOLOGIES AND LANGUAGE POLICIES* 13, 44 (Roumen Daskalov & Tchavdar Marinov eds., 2013).

28. Braude, *supra* note 26, at 3-4; Nesim Seker, *Identity Formation and the Political Power in the Late Ottoman Empire and Early Turkish Republic*, 8 *HISTORIA ACTUAL ONLINE* 59, 60 (2005).

29. CHRISTOPHER J. WALKER, *ARMENIA: THE SURVIVAL OF A NATION* 87 (1980).

30. Braude, *supra* note 26; WALKER *supra* note 29, at 88; see also LINDA T. DARLING, *REVENUE-RAISING AND LEGITIMACY: TAX COLLECTION AND FINANCE ADMINISTRATION IN THE OTTOMAN EMPIRE, 1560-1660* (1996).

sons that heads of household often concealed the true number of family members. There were numerous other disadvantages, such as special extraordinary taxes, uncompensated labor, and sometimes the requirement to wear a special garb, all in exchange for permission to practice what was perceived to be a pre-Islamic imperfect, albeit monotheistic, religion.<sup>31</sup>

Despite these burdens, most Armenians lived in relative peace while the Ottoman Empire was strong and expanding. But as the empire's administrative, fiscal, and military structure crumbled under the weight of internal corruption and external challenges in the eighteenth and nineteenth centuries, oppression and intolerance increased.<sup>32</sup> The breakdown of order was accelerated by the Ottoman inability to modernize and compete with the West.<sup>33</sup>

By the beginning of the nineteenth century, the Ottoman Empire was in rapid decline, losing much of its territory in Europe.<sup>34</sup> The concepts of liberation, emanating from the Enlightenment and the French Revolution, permeated into the empire and began an influential course on subject nationalities: the Greek, Serbian, Montenegrin, Romanian, Bulgarian and, very belatedly, Armenian people. Perhaps this, too, was one of the contributors to the Armenian tragedy; that the Armenians may have stirred too late. Those other groups who sought emancipation relatively early were able to find European support and ultimately achieve autonomy, then independence,<sup>35</sup> whereas the Armenians throughout the nineteenth century aspired, not to independence, but rather to civil rights, equality under the law, security of life and property, and local self-government.<sup>36</sup>

As Turkish control waned and the European powers, for their own selfish reasons, interfered increasingly in the affairs of the Ottoman Empire,<sup>37</sup> tensions intensified between the various ethno-religious communities, majority and minority groups, and among the minorities themselves—Greeks and Armenians, Armenians and Jews,

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31. Kevork B. Bardakjian, *The Rise of the Armenian Patriarchate of Constantinople*, in 1 CHRISTIANS AND JEWS IN THE OTTOMAN EMPIRE: THE CENTRAL LANDS 89, 93-100 (Benjamin Braude & Bernard Lewis eds., 1982); WALKER, *supra* note 29, at 85-89.

32. HAPEREN, *supra* note 14, at 47-48.

33. *Id.* at 47.

34. *Id.* at 46-47.

35. FACING HISTORY AND OURSELVES NATIONAL FOUNDATION, CRIMES AGAINST HUMANITY AND CIVILIZATION: THE GENOCIDE OF THE ARMENIANS 23, 42-43 (2004).

36. PETER BALAKIAN, THE BURNING TIGRIS: THE ARMENIAN GENOCIDE AND AMERICA'S RESPONSE 57-58 (2003).

37. FACING HISTORY & OURSELVES NATIONAL FOUNDATION, *supra* note 35, at 23-24.

and so forth.<sup>38</sup> More than one sultan gave in to external pressures and domestic reformers in the nineteenth century to proclaim, against custom and tradition, that all his subjects were equal in his eyes and henceforth would be treated as such.<sup>39</sup> This was done in an effort to hold the empire together. Unfortunately, most sultans were not fully committed when they issued such decrees under duress. Moreover, one of the effects of the reform edicts was to anger and arouse traditional society.<sup>40</sup> For example, if previously a *gâvur* came into contact with a true believer, a first-class citizen, even if poor, humble, and less educated, a certain demeanor was expected and required.<sup>41</sup> Now, to try to change that mentality and suddenly announce that all were to be equal, during a time with no strong, sincere governmental support of the declaration, provocations as such could only lead to trouble.

Armenians came to be portrayed and perceived as an arrogant, avaricious element, a people who were conspiring to achieve dominance through the ploy of equality.<sup>42</sup> And it was not difficult for traditionalist leaders to bring the masses to regard the specter of equality as being tantamount to social and economic exploitation by the *gâvur*.<sup>43</sup> It was unfair; it was wrong; it was an attempt ultimately to usurp the rights and privileges of the true believers. That the European powers involved themselves in these matters only made things worse. European pressure for reform was repeatedly exerted on the Ottoman government, but this action was not sustained by effective measures of enforcement.<sup>44</sup> The result was an even greater suspicion of the subject people.<sup>45</sup>

The Armenians' attempt to achieve equality through reforms in the Ottoman Empire in the nineteenth century was ultimately an utter and dismal failure. Equality through edicts about all inhabitants being children of a common homeland and of a paternalistic ruler proved to

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38. *Id.* at 51.

39. RONALD GRIGOR SUNY, *THEY CAN LIVE IN THE DESERT BUT NOWHERE ELSE: A HISTORY OF THE ARMENIAN GENOCIDE* 26 (2015); Letters from Mr. Terrell to Mr. Olney, Legation of the United States, (Oct. 24, 1895) in 2 U.S. DEP'T OF STATE, *PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES* 1328 (1895).

40. Letters from Mr. Terrell to Mr. Olney, *supra* note 39, at 1325-30.

41. See Roderic H. Davison, *Turkish Attitudes Concerning Christian-Muslim Equality in the Nineteenth Century*, 59 AM. HIST. REV. 844, 855 (1954).

42. RAYMOND KÉVORKIAN, *THE ARMENIAN GENOCIDE: A COMPLETE HISTORY* 172 (2013).

43. STEFAN IHRIG, *JUSTIFYING GENOCIDE: GERMANY AND THE ARMENIANS FROM BISMARCK TO HITLER* 114 (2016).

44. LOUISE NALBANDIAN, *THE ARMENIAN REVOLUTIONARY MOVEMENT* 128 (1963).

45. See *Unfinished "Nuremberg": On the Occasion of the 90th Anniversary of the Trial of Young Turks*, ARM. GENOCIDE MUSEUM-INST., [http://www.genocide-museum.am/eng/online\\_exhibition\\_9.php](http://www.genocide-museum.am/eng/online_exhibition_9.php) (last visited Nov. 5, 2016).

be stillborn. Some Armenian youth gave up hope that reforms could be achieved peaceably. They began to organize underground political parties and encouraged the population to learn to defend itself, but their strength and means were very limited.<sup>46</sup>

When in 1895 the last important sultan of the Ottoman Empire, Abdul Hamid II (1876-1909), was coerced by the European powers into signing another reform edict, his real answer to the Westerners—and to the Armenians who were seeking assistance and relief from the anarchic conditions caused by the breakdown of law and order in the interior provinces—was to unleash a rampage of death and destruction.<sup>47</sup> In October 1895, starting in the port city of Trebizond on the Black Sea and spreading in the winter months throughout the Armenian highland and into Cilicia along the Mediterranean Sea, the mayhem everywhere lasted for up to a week,<sup>48</sup> during which hapless Armenians were cut down wherever they were found. Armenian shops were looted, homes burned, and villages plundered.<sup>49</sup> Thousands of terrified people fled to the mountains or abroad, and other thousands were forcibly converted to Islam.<sup>50</sup> The total number of deaths was placed conservatively at about 100,000, although many sources give figures double that number.<sup>51</sup>

The question often posed is whether the Armenian Genocide should be regarded as starting in 1915, or rather, as part of a continuous process extending from the 1890s to the period of World War I and through its aftermath, 1914-1923? In whatever way one may wish to view this issue, the fact remains that there were very important qualitative and quantitative differences between 1895 and 1915. Sultan Abdul Hamid, however oppressive, sinister, or paranoid, probably did not conceive realistically of an empire without Armenians. The Armenians had a place and a function in his realm. Members of the Armenian elite in Constantinople/Istanbul, the Ottoman capital, served in his household administration and served useful functions in

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46. NALBANDIAN, *supra* note 44, at 103.

47. Geoffrey Robertson, *Was There an Armenian Genocide?*, 4 UNIV. ST. THOMAS J.L. & PUB. POL'Y 83, 97 (2009-2010).

48. *Id.* at 100; *see also* *Hundreds Killed at Trebizond*, N.Y. TIMES, Oct. 18, 1895, <http://query.nytimes.com/mem/archive-free/pdf?res=9B06E2D8113DE433A2575BC1A9669D94649ED7CF>.

49. Robertson, *supra* note 47, at 99.

50. *Id.* at 97.

51. Robert Melson, *A Theoretical Inquiry into the Armenian Massacres of 1894-1896*, 24 COMP. STUD. IN SOC'Y & HIST. 489 (1982).

positions such as architects, physicians, and translators.<sup>52</sup> But their people, especially in the interior provinces, simply had to be taught a lesson. They needed to be intimidated back into complete submission. The Armenians should be impoverished somewhat, and their concentrations in their historic provinces should be diluted.<sup>53</sup> Certain demographic changes were in order. What better response to Western meddling?

While Abdul Hamid's actions in 1895 may today be classified as genocide according to the U.N. Genocide Convention,<sup>54</sup> when construed in the narrower sense in which many Holocaust and Armenian Genocide scholars interpret the term as implying the attempted massive or total annihilation of a people, it may be more proper to define the massacres of 1895-1896 as prolonged, extensive pogroms. Even though there was much bloodshed and certainly the intent was to kill an ethnic or religious group, at least "in part,"<sup>55</sup> there was a beginning and an end to the violence. Several days after the mobs had done their work, regular army units appeared to establish a degree of order.<sup>56</sup> The sultan could not allow the entire country to get out of hand. The intended message had been given, and it was time for the government to bring a halt to the pillage and plunder. For the Armenians, it seemed that they had sustained, but survived yet another in a long series of calamities. Thus, once more the challenge was to reconstruct and go forward. One may conclude that Abdul Hamid was not trying to bring about drastic changes in society. Rather, he was desperately attempting to preserve a system that was unsalvageable, a foundering ship of state that was being sunk by external volleys and internal disintegration. Massacres were his regime's vain and ineffective response to the critical problems besetting the empire. If this interpretation is accepted, then it is obvious that there was a fundamental difference between 1895 and 1915.

In 1908, Abdul Hamid, the crusty old sultan, was overthrown and sent into exile the next year by the Committee of Union and Pro-

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52. For an in-depth account of Armenian professional and administrative services in the Ottoman Empire, see MESROB KRİKORIAN, *ARMENIANS IN THE SERVICE OF THE OTTOMAN EMPIRE* (1978).

53. Margaret J. Wyszomirski, *Communal Violence: The Armenians and the Copts as Case Studies*, 27 *WORLD POL.* 452 (1975).

54. Genocide Convention, *supra* note 6.

55. *See id.* at art. II ("In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or *in part*, a national, ethnical, racial or religious group. . .") (emphasis added); Robertson, *supra* note 47, at 90, 92; Wyszomirski, *supra* note 53.

56. Melson, *supra* note 51, at 491.

gress,<sup>57</sup> or, as they were commonly referred to, the Young Turks, a political movement that held forth the vision of a new Ottoman Empire based on constitutional government and the principles of equality, fraternity, and justice.<sup>58</sup> It is beyond the scope of this survey to explain in detail how that experiment went wrong. In his comparative study of the Armenian Genocide and the Holocaust, Robert Melson maintains that the Turkish internal war against the Armenians stemmed from a revolution that went sour, one that failed to achieve its anticipated high-principled objectives.<sup>59</sup>

In the Ottoman Empire, the hopes placed on constitutional government in 1908 soon dimmed, partly because of European exploitation and self-interest, which led to the loss of additional territories; and partly because of internal discord within the ruling Young Turk party.<sup>60</sup> By 1913, that which had started as a democratic revolution culminated in a dictatorship of the ultra-right wing faction of the party.<sup>61</sup> It was that extremist element that took Turkey—the Ottoman Empire—into World War I as an ally of the German Empire.<sup>62</sup> A fundamental calculation was that the anticipated triumph of the German-led Central Powers—against the Entente Powers of Great Britain, France, and the old nemesis, Russia—would allow for Turkish recovery of territories that had been lost to the Russian tsars in one war after another for more than a century.<sup>63</sup> Moreover, there was the vision of creating a new Turkish realm, no longer drawing its strength from its now-lost European possessions, but rather extending eastward over the Armenian highlands and Caucasus region toward the original Turkic homelands in central Asia.<sup>64</sup> Various pan-Islamic and pan-Turkic concepts were at work, but an overriding theme of Young Turk ideologues was the unification of the Turkic-speaking peoples within a common framework.<sup>65</sup> Ideology in the case of the Armenian Genocide was a very important, albeit not sole, explanation and justi-

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57. Ruth Kark and Seth J. Frantzman, *Bedouin, Abdul Hamid II, British Land Settlement and Zionism: The Baysan Valley and Sub-district 1831-1948*, 15 *ISR. STUD.* 49, 54 (2010).

58. M. SUKRU HANIOGLU, *A BRIEF HISTORY OF THE LATE OTTOMAN EMPIRE 150-51* (1995).

59. See generally Melson, *supra* note 51, at 506-07; Wyszomirski, *supra* note 53.

60. HAPEREN, *supra* note 14, at 46-47, 54.

61. Vahakn N. Dadrian, *The Armenian Genocide: Review of Its Historical, Political, and Legal Aspects*, 5 *UNIV. ST. THOMAS J.L. & PUB. POL'Y* 135, 152 (2010-2011).

62. HAPEREN, *supra* note 14, at 46-47, 54.

63. Dadrian, *supra* note 61, at 161.

64. *Id.* at 162-63.

65. *Id.* at 166.

fication of radical measures that were to be taken against the targeted group.<sup>66</sup>

Foreshadowing the genocidal plans of Adolf Hitler, whose ideology entailed the establishment of a new world order based on a racial formula in which there was no room for Jews, the Young Turk objective to create a new regional order without Armenians became an unmitigated obsession.<sup>67</sup> Armenians were regarded as being an alien element unwilling to assimilate.<sup>68</sup> The tenacious Armenians had existed as a subject people for centuries and had clung to their ethno-religious identity. The Armenian Question<sup>69</sup> relating to the demand for measures to safeguard the lives and properties of the Armenians in the provinces had become an international issue since 1878 and had allowed for intermittent European intervention.<sup>70</sup> It was feared that sooner or later the Armenians would try to follow the example of the former subject European Christian nationalities to establish a separate state, thereby becoming a major barrier to any and all Young Turk objectives in the East.<sup>71</sup> Thus, the time had come, by embracing the German military model, to supplant the old, tired concept of Ottomanism—that is a society with Turks, Kurds, Yezidis, Greeks, Armenians, Assyrians, Arabs, Jews, and others all living side-by-side—with that of a modern state or empire anchored in a single ethnicity and a single religion.<sup>72</sup>

Scholars have begun to categorize the characteristics of genocide and the circumstances under which it is more likely to occur.<sup>73</sup> Applied to the Armenian experience, these include the existence of a plural society with clearly defined racial, religious, and cultural differences;<sup>74</sup> a sense of deprivation or danger felt by the dominant, perpetrator group, as the Ottoman Empire had steadily been losing extensive territories to the European powers and former subject Christian populations of the Balkan peninsula; the relative social and economic upward mobility of the victim group and related envy of the

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66. *Id.*; TANER AKÇAM, FROM EMPIRE TO REPUBLIC: TURKISH NATIONALISM AND THE ARMENIAN GENOCIDE 106 (1998).

67. Dadrian, *supra* note 61, at 166.

68. *Id.*

69. *Id.* at 155.

70. *Id.* at 140.

71. *Id.* at 163, 165.

72. *See generally id.*

73. *See* Maureen S. Hiebert, *Theorizing Destruction: Reflections on the State of Comparative Genocide Theory*, 3 GENOCIDE STUD. & PREVENTION 309, 319-21 (2008).

74. *Id.* at 318-19; KUPER, *supra* note 8, at 57.

dominant group;<sup>75</sup> the espousal and propagation by the perpetrators of an ideology or belief system emphasizing the nobility and righteousness of its own group as opposed to the alien, exploitative nature of the group marked for elimination;<sup>76</sup> the determination to establish a new regional order (or in the Nazi case, a new world order) and in that process eliminate elements posing real, potential, or perceived threats to attaining this goal;<sup>77</sup> the mobilization of the state machinery and the military establishment for measures against the victim group;<sup>78</sup> and the seizure and retention of the material wealth and resources of the dispossessed population.<sup>79</sup> The time had come for Turkism to supplant Ottomanism and to give justifiable purpose to the unlimited violence necessary to create a homogeneous state and society.<sup>80</sup> In *Accounting for Genocide*, Helen Fein reaches the following conclusion:

The victims of twentieth-century premeditated genocide—the Jews, the Gypsies, the Armenians—were murdered in order to fulfill the state’s design for a new order. . . . War was used in both cases . . . to transform the nation to correspond to the ruling elite’s formula by eliminating the groups conceived of as alien, enemies by definition.<sup>81</sup>

## II. THE GENOCIDAL PROCESS

In the Ottoman Empire, the government and the Union and Progress party merged as the Young Turk dictatorship and moved toward the enactment of genocidal operations.<sup>82</sup> Starting before dawn on the 24th of April 1915, Armenian political, religious, educational, and intellectual leaders in Constantinople were arrested, exiled to Anatolia,

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75. Hiebert, *supra* note 73, at 311-12.

76. *Id.* at 318-19, 328-30.

77. *Id.* at 325-28, 330.

78. *Id.* at 321.

79. See 1 TOTTEN & BARTROP, *supra* note 4, at 125-26 (evidencing the seizure and retention of material wealth, resources, and property from the dispossessed population).

80. See Garber, *supra* note 3, at vii-xiii. See Robert Melson, *Revolutionary Genocide: On the Causes of the Armenian Genocide of 1915 and the Holocaust*, 4 HOLOCAUST & GENOCIDE STUD. 161 (1989); Vahakn N. Dadrian, *Some Determinants of Genocidal Violence in Intergroup Conflicts-With Particular Reference to the Armenian and Jewish Cases*, 12 SOCIOLOGUS 129, 129-49 (1976); see also Donald Bloxham, *Introduction: Genocide and the Armenian Case*, in THE GREAT GAME OF GENOCIDE: IMPERIALISM, NATIONALISM, AND THE DESTRUCTION OF THE OTTOMAN ARMENIANS (2005).

81. HELEN FEIN, ACCOUNTING FOR GENOCIDE: NATIONAL RESPONSE AND JEWISH VICTIMIZATION DURING THE HOLOCAUST 29-30 (1979).

82. Ruben Paul Adalian, *Young Turks and the Armenian Genocide*, in 2 ENCYCLOPEDIA OF GENOCIDE 630 (Israel W. Charny ed., 1999).

and nearly all put to death.<sup>83</sup> Then in late May, after mass deportations had already begun in several eastern and southern provinces of the empire, Minister of Interior Talaat sought the official sanction of the Council of Ministers,<sup>84</sup> explaining that because some Armenians living near the war zones were aiding and abetting the enemy, obstructing the movement of troops and provisions, attacking, killing, and plundering the innocent Muslim population, among other reasons, the rebellious elements should be removed from the areas of military activity and places where the rebels could find shelter.<sup>85</sup> As a matter of national security, therefore, the Armenians living in the eastern provinces of Van, Bitlis, and Erzerum, and in the rural parts of Cilicia extending from Marash, Sis, and Adana to Alexandretta (Iskenderun) and Antioch were to be removed to the administrative districts of Deir ez-Zor, southern Urfa, southern Mosul, and southeastern Aleppo (the deserts of present-day Syria and Iraq).<sup>86</sup> The Council of Ministers confirmed Talaat's plan on May 27, even though the official decree is intentionally ambiguous and does not mention the Armenians by name:

1. If in time of war, the commanders of the armies, army corps, and divisions, or their replacements, as well as the commanders of independent military posts, who are subjected to an attack or to armed resistance from the populace, or who discover, under any form whatsoever, opposition to the orders of the Government or acts and measures for the defense of the state and the safeguarding of public order, are authorized and ordered to suppress them immediately and vigorously by armed force and to squelch ruthlessly the attack and resistance.

A. The commanders of the army, army corps, and divisions, can if military needs demand, remove and settle in other localities, individually or together, the populations of cities and villages who are suspected of being guilty of treason and espionage.

B. The law is in force from the moment of its publication.<sup>87</sup>

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83. Press Reports, *The Cream of the Armenian Leadership Is Murdered*, in 1 ENCYCLOPEDIA OF GENOCIDE, *supra* note 82, at 66.

84. VAHAKN N. DADRIAN, *THE HISTORY OF THE ARMENIAN GENOCIDE* 219-20 (6th ed. 2003).

85. *Id.*

86. *Id.* at 219; RICHARD G. HOVANNISIAN, *ARMENIA ON THE ROAD TO INDEPENDENCE* 50 (1967).

87. 3 YUSUF HIKMET BAYUR, *TÜRK İNKILABI TARİHİ*, pt. 3 (1983), *translated in* HOVANNISIAN, *supra* note 86, at 51.

Thus conveniently and ominously, *suspicion* alone was sufficient cause to deport “individually or together” the inhabitants of entire “cities and villages.”<sup>88</sup>

The fact that massacres and other gross violations against the Armenian population were already well under way at the time when Talaat sought a legal cover for the evolving anti-Armenian operations is attested by a joint declaration issued by the Entente (Allied) Powers of Great Britain, France, and Russia (the wartime adversaries of the Central Powers) on May 24, 1915:

Such massacres have taken place from mid-April at Erzerum, Terdjian, Eginge, Bitlis, Moush, Sasun, Zeitun, and in all of Cilicia. The inhabitants of approximately a hundred villages in the vicinity of Van all have been killed and the Armenian quarter of Van besieged by Kurds. At the same time, the Ottoman Government has acted ruthlessly against the defenseless Armenian population of Constantinople. In view of this new crime of Turkey against humanity and civilization, the Allied Governments make known publicly to the Sublime Porte [Ottoman government] that they will hold all the members of the Turkish Government as well as those officials who have participated in these massacres, personally responsible.<sup>89</sup>

The proclamation became an early precedent for the current usage of “crimes against humanity.”

Although Talaat’s request to the Council of Ministers for confirmation of his plan had specified certain areas from which the Armenians should be removed, the actual decree adopted on May 27 did not define the exact geographic limits, and, as it happened, the Armenian population was driven out, not only from areas near war zones, but from the entire length and width of the empire. There were, of course, a few strategic exceptions to deportation in an effort to ensure concealment from the outside world, such as in Constantinople and Smyrna (Izmir), where numerous foreign diplomats, businessmen, and establishments were located.<sup>90</sup> Sometimes, Armenian Catholics and Protestants were exempted from the deportation decrees, only to have to follow once the majority belonging to the national Armenian Apostolic Church had been dispatched. Secrecy, surprise, deception and concealment were all a part of the process. As in the case of the *Ein-satzgruppen* mobile killing units of World War II, the chief strategists

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88. DADRAN, *supra* note 84, at 221.

89. American Embassy, Constantinople, *Joint Declaration by France, Great Britain, and Russia, May 24, 1915*, in 1 *ENCYCLOPEDIA OF GENOCIDE*, *supra* note 82, at 82.

90. THOMAS DE WAAL, *GREAT CATASTROPHE: ARMENIANS AND TURKS IN THE SHADOW OF GENOCIDE* 35 (2015).

of the Young Turk party-government created the *Teshkilati Mahsusa* (“Special Organization”) to supervise the extirpation of the Armenians.<sup>91</sup> Killer battalions were formed to ambush and slaughter the helpless caravans of Armenian deportees headed toward the Syrian Desert, and in every significant city, town and village, party functionaries were at work to ensure the timely execution of directives and to remove and punish weak-hearted and recalcitrant officials.<sup>92</sup> Young Turk army officers were assigned to critical command posts to assist in implementing the grand design. Moreover, even in a land as undeveloped as Ottoman Empire in 1915, the use of technological advances such as the telegraph and the single railway in Asia Minor allowed for unprecedented coordination in the genocidal process.<sup>93</sup> The intended victims didn’t stand a chance and were doomed from the outset.<sup>94</sup>

By the summer of 1915, all of the empire’s Asiatic provinces were in turmoil. Armenians serving in the Ottoman army had already been segregated into unarmed labor battalions and were either worked to death or taken out in batches and murdered.<sup>95</sup> Of the remaining population, the adult and teenage males were, in most instances, quickly separated from the rest of the population and killed outright under the direction of Young Turk agents, the gendarmerie, and bandit and tribal groups prepared for the operation.<sup>96</sup> The greatest torment, however, was reserved for the women and children, who were driven for weeks and months over mountains and valleys in the deportation caravans, often dehumanized by being stripped naked and repeatedly preyed upon and abused along the way.<sup>97</sup> Intentionally deprived of food and water, they fell by the thousands and the hundreds of thousands along the routes to the desert.<sup>98</sup> In this, an entire nation

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91. Adalian, *supra* note 82, at 632.

92. DE WAAL, *supra* note 90, at 35-36; DADRIAN, *supra* note 84, at 195-98.

93. 2 SAMUEL TOTTEN & PAUL R. BARTROP, *DICTIONARY OF GENOCIDE* 417 (2008).

94. RAYMOND KÉVORKIAN, *THE ARMENIAN GENOCIDE* 290 (2011); VISCOUNT BRYCE, *THE TREATMENT OF ARMENIANS IN THE OTTOMAN EMPIRE: DOCUMENTS PRESENTED TO VISCOUNT GREY OF FALLODON, SECRETARY OF STATE FOR FOREIGN AFFAIRS* 9-12 (1916); Leo Kuper, *The Turkish Genocide of Armenians, 1915-1917*, in *THE ARMENIAN GENOCIDE IN PERSPECTIVE*, at 43-59 (Richard G. Hovannisian ed., 1987); Suzanne Elizabeth Moranian, *Bearing Witness: The Missionary Archives as Evidence of the Armenian Genocide*, in *THE ARMENIAN GENOCIDE: HISTORY, POLITICS, ETHICS*, at 114-18 (Richard G. Hovannisian ed., 1992).

95. MARTIN GILBERT, *1 A HISTORY OF THE TWENTIETH CENTURY* 356 (1997).

96. Sir Martin Gilbert, *Twentieth Century Genocides*, in *AMERICA AND THE ARMENIAN GENOCIDE OF 1915*, at 13 (Jay Winter ed., 2003); BRYCE, *supra* note 94, at 9-12.

97. Donald E. Miller & Lorna Touryan Miller, *Women and Children of the Armenian Genocide*, in *THE ARMENIAN GENOCIDE: HISTORY, POLITICS, ETHICS*, at 153; Suzanne Elizabeth Moranian, *supra* note 94, at 114-18; *see generally* DONALD E. MILLER & LORNA TOURYAN MILLER, *SURVIVORS: AN ORAL HISTORY OF THE ARMENIAN GENOCIDE* 94 (1993).

98. Moranian, *supra* note 94, at 114-18.

was swept away, and the Armenian people were effectively eliminated from their native homeland of several millennia. Of the refugee survivors scattered throughout the Arab provinces and the Caucasus region in the southern reaches of the Russian Empire, thousands more were to die of starvation, epidemics, and exposure.<sup>99</sup> Even memory of the nation was marked for obliteration—churches and cultural monuments were desecrated and dismantled; small children, snatched from their parents, were stripped of their Armenian Christian identities by parceling them out to Muslim families, given new names, and subjected to measures to bring about the elimination or suppression of memory.<sup>100</sup>

Estimates of the Armenian dead vary from 600,000 to 2,000,000.<sup>101</sup> The figure of 1,500,000 has become standard in most Armenian sources.<sup>102</sup> A United Nations Human Rights Sub-Commission report in 1985 gives the figure of “at least one million.”<sup>103</sup> The important point in understanding a tragedy of such magnitude is not the exact and precise count of the number who died—that will never be known—but the fact that more than half of the Armenian inhabitants of the Ottoman Empire perished and the rest were forcibly driven from their ancestral homeland or coercively assimilated.<sup>104</sup> What befell the Armenians was by the will and ordination of the dominant party-government. While a significant segment of the general population participated in the abductions and massacres and benefited from the resulting personal aggrandizement, many pious Muslims, shocked by what was happening, tried to help and even shelter some of the forlorn Armenian women and children.<sup>105</sup>

The decimation of the Armenian people and the destruction of millions of persons in Central and Eastern Europe during the Nazi

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99. *Id.* at 116-18.

100. Kuper, *supra* note 94, at 53; *see also* Moranian, *supra* note 94, at 106 (stating that a contrived world of fantasy was necessary for the creation of a Turanic empire).

101. DE WAAL, *supra* note 90, at 34; Marjorie Housepian, *The Unremembered Genocide in 1* ENCYCLOPEDIA OF GENOCIDE, *supra* note 82, at 63.

102. DE WAAL, *supra* note 90, at 35; *Armenian Genocide*, ARM. GENOCIDE MUSEUM-INST., <http://www.genocide-museum.am/eng/genocide.php> (last visited Oct. 17, 2016); Robertson, *supra* note 47, at 109.

103. U.N. Comm'n on Human Rights, Report of the Sub-Comm'n on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1985/6 (July 2, 1985).

104. Kuper, *supra* note 94, at 45.

105. *See* KEVORKIAN, *supra* note 94, at 681-85 (detailing the efforts of a Turkish military commander of sparing Armenians in his jurisdiction); *see generally* Richard G. Hovannisian, *The Question of Altruism During the Armenian Genocide*, in *EMBRACING THE OTHER: PHILOSOPHICAL, PSYCHOLOGICAL, AND HISTORICAL PERSPECTIVES ON ALTRUISM* (Pearl M. Oliner & Samuel P. Oliner eds., 1992).

regime a quarter of a century later had particular and unique features. Accepting that fact, historians and sociologists who have pioneered the field of victimology have gone on to draw some striking parallels. The similarities include the perpetration of genocide under the cover of a major international conflict, thus minimizing the possibility of external intervention;<sup>106</sup> conception of the plan by a monolithic and xenophobic clique;<sup>107</sup> espousal of an ideology giving purpose and justification to racism, exclusivism, and elimination of elements resisting assimilation as in the case of the Armenians or deemed unworthy of integration as in the case of the Jews and the Gypsies;<sup>108</sup> imposition of strict party discipline and secrecy during the period of preparation;<sup>109</sup> formation of extralegal special armed forces to ensure the rigorous execution of the operation;<sup>110</sup> provocation of public hostility toward the victim group and ascribing to it the very excesses to which it would be subjected;<sup>111</sup> certainty of the vulnerability of the targeted group (demonstrated in the Armenian case by previous massacres of 1894-96 and in Cilicia in 1909, and in the Jewish case by the acts of disenfranchisement and violence during the 1930s);<sup>112</sup> exploitation of advances in mechanization and communication to achieve unprecedented means for control, coordination, and thoroughness;<sup>113</sup> and the use of sanctions such as promotions and the incentive to loot or, conversely, the dismissal and punishment, including assassinations, of reluctant officials and the intimidation of persons who might consider harboring members of the victim group.<sup>114</sup>

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106. Robert Melson, *The Armenian Genocide and the Holocaust Compared*, 1 ENCYCLOPEDIA OF GENOCIDE, *supra* note 82, at 69-70.

107. Adalian, *supra* note 82, at 631-32.

108. *Id.*; Melson, *supra* note 106, at 70.

109. Adalian, *supra* note 82, at 631-32; *Source Document: Telegrams by Turkish Leaders Ordering the Armenian Genocide*, in 1 ENCYCLOPEDIA OF GENOCIDE, *supra* note 82, at 96.

110. Adalian, *supra* note 82, at 631-32.

111. KÉVORKIAN, *supra* note 94, at 169-70; Moranian, *supra* note 94, at 106.

112. KÉVORKIAN, *supra* note 94, at 107-08; *see also* Rouben Paul Adalian, *Adana Massacre*, in 1 ENCYCLOPEDIA OF GENOCIDE, *supra* note 82, at 47; Alan L. Berger, *Antisemitism*, in 1 ENCYCLOPEDIA OF GENOCIDE, *supra* note 82, at 55-56.

113. *See, e.g.*, Rouben Paul Adalian, *Documentation of Armenian Genocide in US Archives*, in 1 ENCYCLOPEDIA OF GENOCIDE, *supra* note 82, at 96 [hereinafter Adalian, *Documentation of Armenian Genocide*]; *Turkish Documents*, ARMENIAN GENOCIDE MUSEUM-INST., <http://www.genocide-museum.am/eng/turkish.php> (last visited Nov. 5, 2016); Rouben Paul Adalian, *Talaat Mehmet*, in 2 ENCYCLOPEDIA OF GENOCIDE, *supra* note 82, at 531 [hereinafter Adalian, *Talaat Mehmet*].

114. *See, e.g.*, *Turkish Documents*, *supra* note 113.

### III. THE DISPOSSESSION

An integral part of genocide is dispossession of all forms of material and cultural wealth of the victim group.<sup>115</sup> This has occurred throughout history and has been pronounced in the twentieth-century genocides.<sup>116</sup> In the Armenian case, the dispossession was given a deceptive framework, as if the seized goods and properties were to be held in trust for the deportees, a legal smokescreen for absolute fraudulence.<sup>117</sup> In a decree of the Ottoman Council of Ministers on May 30, 1915 and the regulations issued the next day by the Interior Ministry's Directorate of Tribal and Immigrant Settlement, the reasons for the relocation were explained, and the already underway dispossession was characterized as a protective measure for the relocated people's abandoned goods and properties (*Emval-i Metruke*).<sup>118</sup> The so-called "Administrative Instructions Regarding Movable and Immovable Property Abandoned by Armenians Moved as a Result of the War and the Extraordinary Political Circumstances" listed the following, as summarized below:

1. to safeguard the person and possessions of the deportees until they had reached their destination and to forbid any form of reprisals or persecution en route;
2. to compensate the relocated persons with new property, land, homes, and goods commensurate with their station in life in their places of origin and to distribute seed-grain, supplies, implements, and other necessities at the relocation sites;
3. to authorize immigration commissions to permit Muslim refugees (*muhajirs*, mainly from the Balkans) to settle in the abandoned villages and town quarters, but only after the value of the

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115. See *Cassirer v. Kingdom of Spain*, 616 F.3d 1019, 1023, 1037 (9th Cir. 2010) (demonstrating an example of dispossession during genocide where German Nazi confiscated Plaintiff's "[grandmother's] oil painting based on grandmother's status as a Jew and as part of its genocide against Jews . . . in violation of international law."); see also *Simon v. Republic of Hungary*, 812 F.3d 127, 142, 143 (D.C. Cir. 2016) (demonstrating that dispossession of wealth can not only be considered a part of genocide, but genocide itself, if taking into account the definition of genocide under the International Criminal Court); *Elements of Crime*, INT'L CRIM. CT., <https://www.icc-cpi.int/NR/ronlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (last visited Nov. 5, 2016).

116. *Introduction* to HRAYR S. KARAGUEUZIAN & YAIR AURON, *A PERFECT INJUSTICE: GENOCIDE AND THEFT OF ARMENIAN WEALTH*, at vii, xi (2009); see *Simon v. Republic of Hungary*, 812 F.3d 127, 143 (D.C. Cir. 2016) (demonstrating that dispossession of wealth as part of genocide was also very prominent some thirty or so years after the Armenian Genocide quite into the twentieth-century).

117. See TANER AKÇAM & UMIT KURT, *THE SPIRIT OF THE LAWS: THE PLUNDER OF WEALTH IN THE ARMENIAN GENOCIDE 2* (2015).

118. BAYUR, *supra* note 87, at 40-42.

homes and land had been appraised and inventoried, it being made clear that the property still belonged to the absent legal owners;

4. to sell or rent income-producing fields and orchards, properties, and goods not needed by the Muslim refugees and to keep in the treasury, in the owner's name, an account of the derived income, after deducting administrative expenses;

5. to authorize the finance minister to create special three-member committees, including one representative each of the interior and finance ministries, to supervise these transactions and to publish circulars pertaining to the compensation for the properties and their protection;

6. to keep safe in their original places the goods, pictures, and holy books found in churches after they were registered and listed and later to send these objects to the places where the relocated population had been settled;

7. to oblige all officials to comply with the law and report to the government while the regulations were in effect.<sup>119</sup>

Thus the arrangements regarding "abandoned" property in May 1915 made it seem as though the deportees still held title over their property and that they would receive an equivalent value at their place of relocation, or alternatively, that income accrued from their immovable possessions would be held in special accounts in their names for them to claim upon their return. The decree disguised the fact that most of the movable property was quickly plundered, both by officials and by unrestrained mobs, and whatever immovable property that was made available for sale was transferred for a pittance to family and friends of the special committee members with the proceeds netted for personal use or, in some cases, transferred to branches of the Ottoman Treasury.<sup>120</sup>

A supplemental regulation of June 10, 1915 detailed the means by which properties would be impounded by the state.<sup>121</sup> Commissions to deal with "Abandoned Properties" were to administer the "immovable properties, possessions, and lands" of those transported to other places.<sup>122</sup> The commissions were to affix their seal to goods and buildings of the removed population, and after the kind, quantity, and

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119. Levon Marashlian, *Finishing the Armenian Genocide*, in *REMEMBRANCE AND DENIAL: THE CASE OF THE ARMENIAN GENOCIDE* 113, 114 (Richard G. Hovannisian ed., 1998).

120. AKÇAM & KURT, *supra* note 117, at 22.

121. *Id.*

122. *Id.*

value of the goods had been determined and registered in the names of their owners, they were to be stored in secure places such as schools, churches, and warehouses.<sup>123</sup> Animals and perishable goods were to be sold at public auction with the equivalent value placed in a special account in the name of the original owner, or, absent that, of the village from which the goods originated.<sup>124</sup> All of these transactions were to be recorded in special account books.<sup>125</sup> The regulation prohibited all other sales of these goods and properties and annulled any such transactions that might have taken place during the fifteen-day period prior to the beginning of the deportation.<sup>126</sup> Thus, the Armenians were even deprived of the right to sell their possessions prior to their departure.<sup>127</sup> Perhaps, it did not matter much because, the legal trail aside, the Armenians were robbed outright in every way, and no comprehensive record or account for the massive expropriated goods was ever compiled.<sup>128</sup>

Additional ordinances and regulations in September and November 1915 created liquidation commissions, which were to collect all accounts receivable and pay all debts related to an abandoned property and then to hold the remainder of the proceeds from sale for the original owner.<sup>129</sup> It was not specified how these proceeds or any equivalent monetary value was to reach the owner after the property was liquidated.<sup>130</sup> Thus under the camouflage of a series of edicts, ordinances, and regulations, the Armenian people was stripped of its personal and collective wealth, which included some 2,500 churches, 450 monasteries, 2,000 schools, and numerous cultural establishments.<sup>131</sup> It is well known that in those areas where the local Muslim elites enriched themselves on the Armenian properties, these takings

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123. *Id.*

124. *Id.* at 22-23.

125. *Id.* at 23.

126. *Id.* at 23, 25.

127. *Id.* at 23.

128. See KARAGUEUZIAN & AURON, *supra* note 116, at xiii-xv; KÉVORK K. BAGHDJIAN, THE CONFISCATION OF ARMENIAN PROPERTIES BY THE TURKISH GOVERNMENT SAID TO BE ABANDONED 102 (A.B. Gureghian trans., 2010); Ümit Kurt, *The Plunder of Wealth through Abandoned Properties*, ACADEMIA, 37, 48 [https://www.academia.edu/23157025/The\\_Plunder\\_of\\_Wealth\\_through\\_Abandoned\\_Properties\\_Laws\\_in\\_the\\_Armenian\\_Genocide](https://www.academia.edu/23157025/The_Plunder_of_Wealth_through_Abandoned_Properties_Laws_in_the_Armenian_Genocide) (last visited Nov. 5, 2016).

129. AKÇAM & KURT, *supra* note 117, at 24-25.

130. *Id.* at 24-29.

131. RAYMOND H. KEVORKIAN & PAUL B PABOUDJIAN, LES ARMÉNIENS DANS L'EMPIRE OTTOMAN: À LA VEILLE DU GÉNOCIDE 57-60 (1992).

later provided the economic foundation for the emergence of a class of Turkish financial magnates.<sup>132</sup>

The fact that all these regulations were a cover for the complete dispossession of the Armenian people was soon apparent to nearly all observers. Already in July 1915, the U.S. consul in Trebizond, Oscar S. Heizer, reported:

The 1,000 Armenian houses are being emptied of furniture by the police one after the other. The furniture, bedding and everything of value is being stored in large buildings about the city. There is no attempt at classification and the idea of keeping the property in “bales under the protection of the government to be returned to the owners on their return” is simply ridiculous. The goods are piled in without any attempt at labeling or systematic storage. A crowd of Turkish women and children follow the police about like a lot of vultures and seize anything they can lay their hands on and when the more valuable things are carried out of the house by the police they rush in and take the balance. I see this performance every day with my own eyes. I suppose it will take several weeks to empty all the houses and then the Armenian shops and stores will be cleared out. The commission which has the matter in hand is now talking of selling the great collection of household goods and property in order to pay the debts of the Armenians. The German Consul told me that he did not to believe the Armenians would be permitted to return to Trebizond after the war.<sup>133</sup>

There were only a few Turkish officials who were courageous enough to expose the charade. In December 1915, Senator Ahmed Riza Bey decried what was occurring:

It is unlawful to designate the Armenian assets and properties as “abandoned goods,” for the Armenians, the proprietors, did not abandon their properties voluntarily; they were forcibly, compulsively removed from their domiciles and exiled. Now the government through its officials is selling their goods. . . . This is atrocious. Grab my arm, eject me from my village, then sell my goods and properties, such a thing can never be permissible.<sup>134</sup>

Six months later, in June 1916, German Ambassador Count Paul Wolff Metternich reported that the deportations were still continuing, even though “the hungry wolves” of the ruling Young Turk party “can

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132. UĞUR ÜMIT ÜNGÖR & MEHMET POLATEL, CONFISCATION AND DESTRUCTION: THE YOUNG TURK SEIZURE OF ARMENIAN PROPERTY 79-80 (2011); Bedross Der Matossian, *The Taboo within the Taboo: The Fate of ‘Armenian Capital’ at the End of the Ottoman Empire*, EUR. J. OF TURKISH STUD. (Oct. 6, 2011), <https://ejts.revues.org/4411>.

133. Marashlian, *supra* note 119, at 115.

134. BAYUR, *supra* note 87, at 49; Marashlian, *supra* note 119, at 116.

no longer expect anything from these unhappy people except the satisfaction of their fanatic rage for persecution,” because the goods of the Armenians “have long since been confiscated, and their capital has been liquidated by a so-called commission, which means that if an Armenian owned a house valued at, say, £T100 [100 Turkish lira], a Turk—a friend or member—could have it for around £T2.”<sup>135</sup>

The avarice of the perpetrators was so great that, according to United States Ambassador Henry Morgenthau, Interior Minister Talaat asked him to assist in persuading the New York Life Insurance Company and other firms that had issued policies to now “vanished” Armenians to escheat their benefits to the Ottoman state, since the disappeared persons were Ottoman subjects and no living heirs were to be found. Morgenthau recounts the following exchange in the late summer of 1915:

One day Talaat made what was perhaps the most astonishing request I had ever heard. The New York Life Insurance Company and the Equitable Life of New York had for years done considerable business among the Armenians. The extent to which this people insured their lives was merely another indicator of their thrifty habits.

“I wish,” Talaat now said, “that you would get the American life insurance companies to send us a complete list of their Armenian policy holders. They are practically all dead now and have left no heirs to collect the money. It of course all escheats to the State. The Government is the beneficiary now. Will you do so?”

This was almost too much and I lost my temper

“You will get no such list from me,” I said, and I got up and left him.<sup>136</sup>

Few Armenian policyholders or their heirs ever received any life insurance benefits, and the issue lay dormant until the end of the twentieth century, when, as discussed briefly below, a class action lawsuit (following precedents set in Holocaust restitution litigation) was filed against New York Life for failure to make payment on more than 2,000 insurance policies taken out by Ottoman Armenians prior to 1915.<sup>137</sup>

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135. Franz von Wolff-Metternich to Foreign Ministry, June 30, 1916, in *DEUTCHLAND UND ARMENIEN, 1914-1918*, at 277 (Johannes Lepsius ed., 1998).

136. HENRY MORGENTHAU, *AMBASSADOR MORGENTHAU'S STORY* 339 (1919).

137. *Marootian v. N.Y. Life Ins. Co.*, No. CV-99-12073 CAS (MCx), U.S. Dist. LEXIS 22274 (C.D. Cal. 2001).

## IV. THE POSTWAR PERIOD

As the Ottoman Empire prepared to surrender to the Allied Powers in October 1918, the Young Turk dictators escaped to Germany and Soviet Russia,<sup>138</sup> and a new government began to undo some of the wartime regulations.<sup>139</sup> That same month, it was announced that forcibly relocated “compatriots” were to be allowed to return to their previous homes and have their goods and properties (or compensation of equivalent values) restored to them.<sup>140</sup> In December, several weeks after the Ottoman capitulation, a circular was distributed on the manner and means for transferring the possessions back to their rightful owners.<sup>141</sup> Measures were to be taken for the immediate evacuation of people who had settled in Armenian homes and villages and, if this was not possible, arrangements for alternate shelter would be made for the returnees until they were able to reclaim their property.<sup>142</sup> In practice, however, the reclamation process was stringently resisted by the existing occupants and local officials, and heavily encumbered by the excuse-making and passivity of the central government.<sup>143</sup> As it happened, no Armenians were ever allowed to return to the traditional homelands in the eastern provinces of the empire, and only in areas near Constantinople and in Allied-occupied Cilicia was repatriation partially successful.<sup>144</sup> The complaints, threats, and cajolery of the Allied commissioners in Constantinople bore few results. It soon became evident that a Turkish nationalist front was forming against Allied plans to partition the Ottoman Empire, reinstate Armenian deportees, and set aside a part of the eastern provinces as an autonomous or independent Armenian state.<sup>145</sup> In the end, fewer than 10 percent of the dispossessed ever saw their homes again, and even those few who did would eventually be driven out a second time, this time permanently, by the victorious Turkish Nationalists headed by General Mustafa Kemal Pasha (later called Atatürk).<sup>146</sup>

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138. See *Unfinished “Nuremberg”: On the Occasion of the 90th Anniversary of the Trial of Young Turks*, *supra* note 45; see also Adalian, *Talaat Mehmet*, *supra* note 113, at 532.

139. AKÇAM & KURT, *supra* note 117, at 34.

140. *Id.* at 36.

141. *Id.* at 37.

142. *Id.*

143. *Id.* at 51.

144. *Id.* at 42-43, 47.

145. See *Chronology*, ARM. GENOCIDE MUSEUM-INST., <http://www.genocide-museum.am/eng/chronology.php> (last visited Nov. 5, 2016); see also *id.* at 51.

146. *Id.* at 46-51; 1 RICHARD G. HOVANNISIAN, *THE REPUBLIC OF ARMENIA* 295-97 (1971); 2 RICHARD G. HOVANNISIAN, *THE REPUBLIC OF ARMENIA* 41, 57-61, 407-08, 427-28 (1982).

In the immediate aftermath of World War I, it seemed that the defeat of the Ottoman and German empires presented the opportunity to enact the numerous wartime pledges by the victorious powers to punish the perpetrators and to rehabilitate the victims. In fact, after the Young Turk dictators fled the country, the new Turkish grand vizier (prime minister) admitted that these criminals had committed such misdeeds “as to make the conscience of mankind shudder forever.”<sup>147</sup> United States General James G. Harbord, following an inspection tour in 1919 of the former Armenian population centers, confirmed the organized nature of the massacres and concluded: “Mutilation, violation, torture and death have left their haunting memories in a hundred beautiful Armenian valleys, and the traveler in that region is seldom free from the evidence of this most colossal crime of all the ages.”<sup>148</sup> The Paris Peace Conference declared that the lands of Armenia would never be returned to Turkish rule, and in 1920 the Allied Powers ultimately drafted the Treaty of Sèvres, which provided for the return of exiled Armenians to their homes, the abrogation of the “Abandoned Property” law of 1915 and restoration of all movable and immovable possessions, the rescue of Armenian women and children from Muslim households, the annulment of religious conversions since 1914, and the gathering of evidence and prosecution of the authors of the crimes against humanity.<sup>149</sup>

Already, in June 1919, a Turkish military court-martial had tried and sentenced to death *in absentia* several organizers of the genocide: Young Turk Minister of Interior, Talaat Pasha; Minister of War, Enver Pasha; Minister of the Navy and Sixth Army commander in Syria, Jemal Pasha; and Central Committee member, Nazim Bey.<sup>150</sup> No attempt was made, however, to extradite these and other criminals from Germany, Italy, and other places of hiding, or to carry out the death sentences, and thousands of other culprits were neither tried nor even removed from office.<sup>151</sup> Within a few months, judicial proceedings were suspended and eventually terminated entirely, as scores of ac-

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147. U.S. DEP'T OF STATE, 4 PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES: THE PARIS PEACE CONFERENCE 1919, at 509 (1943).

148. MAJOR GENERAL JAMES G. HARBORD, CONDITIONS IN THE NEAR EAST: REPORT OF THE AM. MILITARY MISSION TO ARM., S. DOC. NO. 66-266, at 7 (1920).

149. Treaty of Peace Between the British Empire and Allied Powers and Turkey—Sèvres, Aug. 10, 1920, 113 BRIT. & FOREIGN STATE PAPERS 652, 672-85, 706, 707.

150. *Unfinished “Nuremberg”*: On the Occasion of the 90th Anniversary of the Trial of Young Turks, *supra* note 45.

151. Vahakn N. Dadrian, *Genocide as a Problem of National and International Law: The World War I Armenian Case and Its Contemporary Legal Ramifications*, 14 YALE J. OF INT'L L. 221, 281, 309-10 (1989); Vahkan N. Dadrian, *The Documentation of the World War I Armenian*

cused and imprisoned persons deeply implicated in the Armenian massacres were freed and sent home to responsible positions in the Kemalist government established at Ankara.<sup>152</sup>

The release of the perpetrators of genocide signaled a major shift in the political winds. The former Allied Powers, having become bitter rivals over the spoils of war, failed to act in unison towards the imposition of peace and did not pursue confronting the stiff resistance of the Turkish Nationalist movement. They concurred that the Armenians should be freed and guaranteed a secure life, yet failed to commit the necessary resources to enforce that decision.<sup>153</sup> They hoped that the United States would extend a protectorate over the devastated Armenian regions, however, America was already recoiling from its involvement in the war and turning its back on the new international organization known as League of Nations, as it moved toward “Splendid Isolation.”<sup>154</sup> Unable to quell the Turkish Nationalist movement, which rejected the awarding of any territory for an Armenian state or even the large-scale return of Armenian refugees, the Allied Powers buckled and, during negotiations extending from 1921 to 1923, agreed to a drastic revision of the Treaty of Sèvres.<sup>155</sup>

The resulting Treaty of Lausanne, which came into force in 1923,<sup>156</sup> made no provision for the rehabilitation, restitution, or compensation of the Armenian survivors. In fact, Western abandonment of the Armenians was so complete that the new peace treaty made no mention whatsoever of “Armenians” or “Armenia.”<sup>157</sup> It was as if the Armenians had never existed in the Ottoman Empire. In September

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*Massacres in the Proceedings of the Turkish Military Tribunal*, 23 INT'L J. OF MIDDLE E. STUD. 549, 550-55; Adalian, *Talaat Mehmet*, *supra* note 113, at 532.

152. Marashlian, *supra* note 119, at 15.

153. Artin H. Arslanian, *British Wartime Pledges, 1917-18: The Armenian Case*, 13 J. OF CONTEMP. HIST. 517, 517-18 (1978).

154. See JAMES B. GIDNEY, *A MANDATE FOR ARMENIA* 232-33, 254 (1967); 2 RICHARD G. HOVANNISIAN, *THE REPUBLIC OF ARMENIA* 322-23, 402-03 (1982); 3 RICHARD G. HOVANNISIAN, *THE REPUBLIC OF ARMENIA* 50-53, 87-90 (1996); 4 RICHARD G. HOVANNISIAN, *THE REPUBLIC OF ARMENIA* 1, 12, 15, 23-24, 28 (1996); SIMON PAYASLIAN, *UNITED STATES POLICY TOWARD THE ARMENIAN QUESTION AND THE ARMENIAN GENOCIDE* 153-54, 158-60, 169, 172-75 (2005).

155. See GIDNEY, *supra* note 154, at 245-46, 249-50.

156. Treaty of Lausanne, Fr. -Gr. Brit. -Greece -It. -Japan -Kingdom of Serb., Croat., and Slovn -Rom. -Turk., July 24, 1923, 28 L.N.T.S. 11.

157. See 117 *British And Foreign State Papers* 308-09, 543-91 (His Majesty's Stationery Office 1926); LAUSANNE CONFERENCE ON NEAR EASTERN AFFAIRS: RECORDS OF PROCEEDINGS AND DRAFT TERMS OF PEACE, TURKEY No. 1, CMD. 1814 (His Majesty's Stationery Office 1923) (showing no mention of Armenians or Armenia throughout the entire work, which is a collection of the records, letters, documents, and proceedings associated with the Lausanne Conference and resulting Treaty); MINISTÈRE DES AFFAIRES ÉTRANGÈRES, RECUEIL DES ACTES DE LA

and October 1922, even before conclusion of the Lausanne Treaty, the Kemalist government annulled any directives requiring the return of properties to the Armenians, and essentially put the “Abandoned Property” regulations of 1915 back into effect and even extended their applicable dates to include the postwar period.<sup>158</sup>

Despite these monumental successes, the ghost of its past could not be cast out by the Turkish Republic. It became obsessed with achieving the designs of the Young Turk regime by continuing the process of ethnic cleansing by coercing surviving Christians to leave, often after signing papers relinquishing all present and future claims, and stamping their travel documents with the words to the effect of “return forbidden.”<sup>159</sup> Throughout the 1920s and 1930s, additional regulations were adopted concerning the “abandoned properties,” such as: seizure of all possessions of Armenians no longer living in Turkey (regardless of the reasons or circumstances of their departure); prohibitions on return to Turkey of persons who had emigrated without obtaining official permission or who had changed their citizenship; non-recognition of lawsuits by expatriates for the reclamation of properties on grounds that these people were still Ottoman citizens and, as such, were prohibited from filing suits while living abroad; and refusal to accept citizenship granted to Armenian refugees by other governments as a means of preventing foreign diplomats or law firms from making representations on their behalf.<sup>160</sup> An ordinance in 1924 prohibited all non-Muslims from traveling in the interior provinces of the country on grounds that these were now military security zones, and in 1927, the government expelled from Turkish citizenship anyone who had not participated in the Turkish “War of Independence” leading to the establishment of the Turkish Republic in 1923 or those who had not returned since that time.<sup>161</sup> Such denationalized persons were to be denied entry into Turkey.<sup>162</sup>

Ironically, although the original owners were prohibited from returning and occupying so-called “abandoned properties,” technically

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CONFÉRENCE DE LAUSANNE (Fr., Imprimerie Nationale, 1923); LAURENCE EVANS, UNITED STATES POLICY AND THE PARTITION OF TURKEY, 1914-1924, at 411 (1965).

158. See AKÇAM & KURT, *supra* note 117, at 64.

159. See, e.g., Vahram L. Shemmassian, *The Exodus of Armenian Remnants from the Interior Provinces of Turkey*, in ARMENIAN TSOPK/KHARPET 389-413 (Richard G. Hovannisian ed., 2002); Zaven Messerlian, *The Forced Exodus of the Armenians of the Internal Provinces of Turkey (1929-1930)*, in BEFORE AND AFTER THE ARMENIAN GENOCIDE 173-90 (Maral O. Sarkisian-Kaloustian trans., 2015).

160. See AKÇAM & KURT, *supra* note 117, at 69-75.

161. See *id.* at 149-55, 176.

162. See *id.*

the proceeds of the liquidation transactions were still held in their names.<sup>163</sup> The pretense continued until 1964 when it was decreed that “lost people,” and those who had left the country with passports stamped “return is illicit,” were considered to have forfeited their Turkish citizenship, which means that any legal claim to erstwhile goods and possessions were forfeited as well.<sup>164</sup> By that time, of course, it made very little difference, as only a very few tenacious survivors continued to guard their original property deeds and believed that these may someday be useful in making claims for recovery or compensation.

## V. THE SEQUEL

In the decades after their expulsion, the dispersed Armenian survivors concentrated their collective energies on readjustment to new environments and the creation of a diasporan infrastructure of cultural, educational, and religious institutions.<sup>165</sup> Disillusioned by the world’s indifference to their plight, the Armenian Diaspora internalized its frustrations, trauma, and even creative manifestations.<sup>166</sup> It commemorated the genocide through requiem services and community programs, yet, on substantive issues, it could not make its voice heard in the international arena. Meanwhile, the strategy of the perpetrator side was to suppress public discussion of the genocide, believing that in due course the survivors would pass from the scene, their children would assimilate in their host countries, and the issue would gradually fade away.<sup>167</sup> And in fact, by the time World War II broke out a generation later, the Armenian calamity had virtually transformed into “the forgotten genocide.”<sup>168</sup> It became even more obscure as millions of new victims were claimed in the horrendous conflagration of warfare and the Nazi-perpetrated Holocaust. The Armenians continued to remember their terrible losses, but in this they were virtually alone.

It was not until the fiftieth anniversary of the Armenian Genocide in 1965, and collaterally, the growing attention paid by the media

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163. *See id.* at 171-72.

164. *See id.* at 132-34, 176-79.

165. *See* Susan P. Pattie, *Longing and Belonging: Issues of Homeland in Armenian Diaspora*, 22 *POLAR* 80, 80-82 (1999).

166. *See* Belinda Cooper & Taner Akcam, *Turks, Armenians, and the “G-Word,”* 22 *WORLD POL’Y J.* 81, 83 (2005).

167. *Id.* at 83-84, 89.

168. KEVORK B. BARDAKJIAN, *THE ZORYAN INSTITUTE SPECIAL REPORT NUMBER 3: HITLER AND THE ARMENIAN GENOCIDE* 6 (1985).

and in official circles to the Holocaust after the kidnapping and trial of Adolph Eichmann in 1973,<sup>169</sup> that the Armenians began to find opportunities to externalize their concerns and broaden remembrance of the genocide. Such efforts went beyond the confines of the Armenian community, and now had its reach into corridors of legislatures, classrooms, and channels of public discourse. Armenian activism reached unprecedented levels in the final decades of the twentieth century. Success came in the form of gaining the confirmation by a number of governments of their past recognition of the genocide and in making repeated serious attempts to gain U.S. Congressional reaffirmation in the face of enormous pressure exerted by the State Department, Pentagon, Office of the President, the international business community, and the Turkish government itself.<sup>170</sup> In an odd twist, the unresolved issue of the Armenian Genocide continues to generate more attention at the present than it ever did during the many years after international abandonment of the Armenian Question at Lausanne in 1923.<sup>171</sup>

In November 1999, nearly eighty-five years after Talaat Pasha requested the assistance of Ambassador Henry Morgenthau to have the proceeds of insurance policies issued to disappeared Armenians escheated to the Ottoman state, California resident Martin Marootian, with twelve other plaintiffs, filed a class-action lawsuit in Los Angeles Federal Court against the New York Life Insurance Company to recover benefits that had been wrongfully withheld.<sup>172</sup> The suit sought an order to require New York Life to identify insurance policies issued to Ottoman Armenians before 1915 and the rightful heirs of such policies, and to pay the benefits to the descendants in a proper fashion.<sup>173</sup> For years, the company had rejected all such claims and had demanded, among other things, concrete evidence, such as death certificates—which was certainly an impossibility because almost all poli-

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169. Yechiam Weitz, *The Holocaust on Trial: The Impact of the Kasztner and Eichmann Trials on Israeli Society*, 1 ISR. STUD., no. 2, 1 (1996).

170. See, e.g., MICHAEL BOBELIAN, *CHILDREN OF ARMENIA: A FORGOTTEN GENOCIDE AND THE CENTURY-LONG STRUGGLE FOR JUSTICE* 167, 169, 206 (2009); Vigen Guroian, *Post-Holocaust Political Morality: The Litmus of Bitburg and the Armenian Genocide Resolution*, 3 HOLOCAUST & GENOCIDE STUD. 305, 310-17 (1988).

171. See, Michael J. Bazzyler, *The Holocaust Restitution Movement in Comparative Perspective*, 20 BERKELEY J. INT'L L. 11, 33-34 (2002).

172. See *Marootian v. N.Y. Life Ins. Co.*, No. CV-99-12073 CAS (MCx), U.S. Dist. LEXIS 22274, at \*2-4 (C.D. Cal. 2001).

173. See Diane Zakian Rumbaugh, *Armenian Genocide Heirs Settle New York Life Class Action Lawsuit*, BUS. WIRE (Jan. 28, 2004), <http://www.businesswire.com/news/home/20040128005216/en/Armenian-Genocide-Heirs-Settle-York-Life-Class>.

cyholders had been massacred or died along the routes of deportation.<sup>174</sup>

During the course of the litigation, attorneys for New York Life tried to have the case dismissed based on the statute of limitations and the contention that it should be moved to France, because a number of policies contained forum selection clauses stating that any disputes should be resolved in French courts.<sup>175</sup> The issue of statutes of limitation was addressed by the California legislature in the year 2000 by adopting the “Armenian Genocide Victims Insurance Act,”<sup>176</sup> which extended the permissible time limit for California residents to sue insurance companies until the end of 2010, and New York Life’s attempt to change the venue was rejected by California U.S. District Judge Christina A. Snyder.<sup>177</sup> Faced with bad publicity and perhaps somewhat influenced by similar cases relating to Holocaust victims, New York Life in 2001 offered to settle the case for 10 million dollars, with an additional 3 million dollars to be distributed to Armenian charitable and educational organizations.<sup>178</sup> The company even hired a well-known Armenian attorney and former California state legislator to help achieve a favorable resolution of the dispute.<sup>179</sup> Marootian and his counsels rejected the offer as being sorely inadequate. During the course of the litigation, New York Life acknowledged that its records indicated an estimated 2,400 policies sold to Armenians prior to 1915 might remain unpaid.<sup>180</sup> The company ultimately doubled the offer to 20 million dollars, plus 3 million dollars for Armenian charitable and educational organizations. A settlement based on that offer, and facilitated by Judge Snyder and California Insurance Commissioner John Garamendi, was reached at the beginning of 2004.<sup>181</sup>

In 2005, the French insurance firm, AXA, was next to come to terms with a settlement equivalent to about 17.5 million dollars, with 3 million of that sum distributed to Armenian benevolent organizations

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174. Kristen Kidd, *The Lives They Kept: Insurers and a Debt of History*, ARM. INT’L MAG., Apr. 2002, at 24-25.

175. *Marootian*, 2001 U.S. Dist. LEXIS 22274, at \*8-10.

176. CAL. CIV. PRO. CODE § 354.5 (West 2006 & Supp. 2016), *invalidated by* *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067 (9th Cir. 2012).

177. Kidd, *supra* note 174, at 26; Joseph B. Treaster, *Insurer to Pay Armenian Massacre Claims*, N.Y. TIMES, Apr. 12, 2001, at A24.

178. Kidd, *supra* note 174, at 25.

179. *Id.* at 27.

180. *Id.* at 25.

181. Henry Weinstein, *Insurer Settles Armenian Genocide Suit*, L.A. TIMES, Jan. 29, 2004, at B1; *New York Life Settles Armenian Claims*, INS. J., Apr. 13, 2001, <http://www.insurancejournal.com/news/national/2001/04/13/13912.htm>.

in France.<sup>182</sup> These were landmark cases for Armenians in the obstacle-ridden bid to receive even token compensation for the inestimable losses sustained during the years of deportation, massacre, and exile.<sup>183</sup>

#### CONCLUSION

In conclusion, it is noteworthy that those who deal with the psychological aspects of genocide have pointed out that the resulting deep trauma shapes not only the outlook of immediate victims but also of subsequent generations.<sup>184</sup> Victim groups, rather than viewing the world as a good place with a sense of order, are filled with mistrust and fear of what may come from an evil world. It becomes essential, therefore, for victims to understand the terrible events that they have experienced are not normal, but rather are aberrations of a generally proper world order. Continued denial makes this impossible, and reinforces the feelings of insecurity, abandonment, and betrayal. To overcome these emotions, the victims need to share their pain and sorrow, to voice their outrage, to have the world recognize their suffering, and especially to receive expressions of regret and remorse from the perpetrator side. Only then can a sense of justice and correctness be restored.<sup>185</sup>

The belated successes in the United States legal system in the recourse against insurance companies may be largely symbolic, but that achievement is of vital importance as it offers the Armenian descendants of the victims a small degree of reassurance. The difficult and uncharted precipitous path to more than symbolic restitution may lie ahead.

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182. *Kyurkjian v. Axa*, No. 2:02-cv-01750-CAS(Mcx), 2014 U.S. Dist. LEXIS 55867, at \*3 (C.D. Cal. Apr. 21, 2014).

183. See, e.g., Michael J. Bazzyler, *From "Lamentation and Liturgy to Litigation": The Holocaust-Era Restitution Movement as a Model For Bringing Armenian Genocide-Era Restitution Suits in American Courts*, 95 MARQ. L.R. 245, 255-56 (2011); Carol J. Williams, *Armenian Genocide Victims' Descendants May Sue, Court Rules*, L.A. TIMES (Dec. 11, 2010), <http://articles.latimes.com/2010/dec/11/local/la-me-armenian-genocide-20101211>; Dennis Romero, *Armenian-American Lawyers, Including Mark Geragos, Seek Class-Action Status in Suit Against Turkey*, L.A. WEEKLY BLOG (July 30, 2010, 6:05 AM), <http://www.laweekly.com/news/armenian-american-lawyers-including-mark-geragos-seek-class-action-status-in-suit-against-turkey-2398700>; Elaine Woo, *Martin Marootian Dies at 95; Lead Plaintiff in Suit Over Armenian Genocide Victims' Insurance Policies*, L.A. TIMES (Mar. 12, 2011), <http://articles.latimes.com/2011/mar/12/local/la-me-martin-marootian-20110312>.

184. See Anie Kalayjian & Marian Weisberg, *Generational Impact of Mass Trauma: The Post-Ottoman Turkish Genocide of the Armenians*, in *JIHAD AND SACRED VENGEANCE* 268 (Jerry S. Piven et al. eds., 2002).

185. Ervin Staub, *Healing and Reconciliation*, in *LOOKING BACKWARD, MOVING FORWARD: CONFRONTING THE ARMENIAN GENOCIDE* 263, 263-73 (Richard G. Hovannisian, ed., 2003).