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CAN MIGHT MAKE RIGHTS? DIALOGICAL ETHICS AND CULTURAL VALUE
FORMATION IN ARMED HUMANITARIAN INTERVENTION

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JOHN MARC ISON SIANGHIO, JR.

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For Alyssa.

My rock in war and in peace.

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Abstract

Political and legal scholars rarely deal with the ethics of armed humanitarian intervention (AHI) into human rights crises where rights violations are rooted in popular will. When they do, they justify AHI by invoking universal moral principles that supposedly supersede local moralities. Especially after the subjective turn, critics of AHI like Michael Hardt and Antonio Negri, as well as Talal Asad, emphasize the particularity of morality and the role that culture and circumstance play in moral formation. However, such critics of AHI often fail to provide an alternative account for how the rescue of vulnerable populations from atrocity may be morally justifiable without universal moral norms. I argue this moral conundrum is due to the fact that moral frameworks for evaluating AHI presented by both proponents and opponents of AHI view societies systems whose cultural identity and value formation is monistic and *causa sui*. I turn to the theocentric ethics of James Gustafson to sketch an ethical framework for the consideration of AHI that relieves some of this tension by offering an alternative view of cultural value, identity formation, and the ethical enterprise itself, as a dialogical process.

For Gustafson, moral value formation is a dialogical process colored by a culture's unique circumstances and encounter with a sovereign god. Rather than view god as a supreme being, however, Gustafson understands god as a symbol for the natural, historical, and cultural forces that condition human experience, a collective Otherness upon which human life is dependent. Within such a system, one measures the appropriateness of moral acts and attitudes by their proper orientation to Otherness, as well as the contributions of those acts and attitudes to the common good of relevant interdependent wholes. My thesis is that, rather than underwriting a dismissal of AHI, a dialogical view of ethics is useful for constructing an alternative model of the relationship of individual societies to each other and to international norms in which AHI can

be justified. It does this while still adopting a humble epistemological posture that acknowledges the limitedness of one's moral perspective. A dialogical framework for AHI under these terms understands external influence as a natural part of cultural identity and value formation and not an interference in that process. My work will demonstrate that such a perspective accounts for particularism in a way that leaves open moral avenues for the rescue and safeguard of vulnerable populations. It also provides more nuanced guidance on the responsibility of intervening actors to respond to the needs and desires of the societies they intervene upon, since dialogue implies obligations that flow both ways in a relationship rather than a one way imposition of norms.

Chapter 1: Culturally Rooted Atrocities and Armed Humanitarian Intervention After the Subjective Turn

All they ask, we could readily grant, if we thought slavery right; all we ask, they could as readily grant, if they thought it wrong. Their thinking it right, and our thinking it wrong, is the precise fact upon which depends the whole controversy.¹

-Abraham Lincoln

Introduction

What do you think you're going to do with that peashooter?" I heard Mike say behind me. Though phrased colloquially as a question, his words were unmistakably a demand that I leave the pistol I gripped in its holster. Mike had been a Lt. Col. in the Air Force before taking charge of my Human Terrain Team. He had the voice to match: calm, clear, commanding, audible even over the screams of the two young Afghan girls and the angry shouts of the man beating them.

The girls couldn't have been more than 10. Like I had done in dozens of villages dozens of times before, I had smiled and waved at them. In my experience, such exchanges of friendliness, especially with children, puts people at ease. The majority of people I met in Afghanistan met such displays, not with welcome exactly, but at least a wary warmth. It is difficult to be effusively hospitable to a troop of foreign men with guns, but sincere kindness to children seems almost universally to relieve tension. The girls had been following us shyly, responding to my friendly gestures only with giggles. Eventually, however, they smiled and

¹ Abraham Lincoln. "Cooper Union Address," (speech, New York, New York, February 27, 1860). <https://www.abrahamlincolnonline.org/lincoln/speeches/cooper.htm>.

waved back. Almost immediately after this simple gesture, a middle aged man took them behind a gate and began to batter them.

I was overcome with guilt and rage. I had goaded the girls into their greeting. It was an innocent gesture on my part, borne a little out of carelessness, but mostly from a lack of understanding as to the cultural ramifications of my act. I could not have known the reaction it would cause in this village, in this moment when it had been innocuous so many moments before. I had nevertheless played a hand in their suffering. My cries of objection went unheeded, perhaps unheard over the cacophony of strikes and shrieks. No one from the village seemed willing to step in. They may not have liked it, but everyone seemed to accept the power and right for this man to do as he was doing. Some perhaps even approved.

I am not a soldier. I deployed to Afghanistan as a Human Terrain Analyst, a researcher embedded with a forward combat unit. At that point, I had never before drawn the pistol that had been thrust upon me at the insistence of my unit. I didn't really want to draw it then. I had come to Afghanistan idealistically hoping to help heal the wounds of the nation, not inflict them on its citizens. It was certainly a rash act, but in my guilt and my anger I was not thinking clearly. I walked towards the man ready to make him stop, even if that meant at the point of a gun. Mike stopped me. Had he not, who knows what the consequences would be.

Perhaps I would have succeeded in stopping the beating of those two little girls and spared them at least some pain. Perhaps my overly rash action would have caused the situation to spiral into chaos, endangering not only my unit and our mission, but the village and the two little girls I meant to help even more. Beyond the questions of consequences, there stands the fundamental moral question of whether it was my place to judge, let alone interfere? Even if

interference was warranted, there perhaps had to have been better courses of action than drawing my weapon, though my mind was blinded to them in the heat of the moment.

That day still haunts my sleep. Sometimes the dream simply stops when the heat of the moment is doused by the cold sweat of my waking. Sometimes the nightmare starts when I draw the gun.

The Age Old Problem of Intervention

What I experienced in this small village in Afghanistan encapsulates on an intimate and individual level an age old question of the ethics of war, namely: what right does one society have to interfere in the internal affairs of another society, especially when understandings of moral understandings may not be shared? Though the beating of a child is, on my view, always a tragedy, many families foster a culture of corporal punishment, even severe punishment, that they deem integral to the good development of children and the maintenance of community order and values. My own judgment on the moral wrongness of such forms of punishment is unquestionably influenced by my personal experiences and my social location. The man who beat those girls in the Afghan village perhaps did so out of his own moral sensibilities rather than out of viciousness or malice. His moral sensibilities were likely informed, as my position was, by his cultural context and personal experiences. The stakes of this issue on the international stage are much greater. They often address the most heinous forms of violence, violations of human rights, and mass atrocities that, as the familiar language of the preamble to the Rome Statute puts it, “shock the conscience of humanity.” Moreover, the response that is often called for when

facing heinous acts is the use of force by one society against another, the most extreme act in international politics.

Contemporary concerns over this issue are driven by the largely U.S. led armed humanitarian military campaigns of the late 20th and early 21st centuries. However, scholars and soldiers across cultures and eras have wrestled with the ethical tension to which intervention gives rise. This tension is between, respecting, or at the very least recognizing, the fact of cultural diversity, pluralism, and the benefit of reciprocal non-interference on the one hand, and the moral drive to rescue populations facing the threat or the perpetration of mass atrocity on the other.

The move to intervene in the affairs of another society by force in order to protect or rescue innocent peoples from ongoing or imminent human rights violations, that is mass atrocities, is formally known in contemporary scholarship as “armed humanitarian intervention” (AHI). This concept goes by other names in the panoply of scholarship: “humanitarian military intervention,” “intervention for human-protection purposes,” and/or “military campaigns of rescue,”-these constructions and more all refer to the same phenomenon. As Don E. Scheid points out, the truncated term “humanitarian intervention,” while technically referring to any type interference in the internal affairs of a foreign state grounded in humanitarian motives assistance, tends colloquially to imply intervention by military means. AHI can take many forms, from the supply of arms or training to partisan groups to full scale mobilization of an expeditionary invasion force.²

Contemporary AHI and the wars of rescue that are its historical precursors have always been dubious enterprises. Michael Walzer points out that the presumption against AHI is strong,

² Don E. Scheid. “Introduction to Armed Humanitarian Intervention,” *The Ethics of Armed Humanitarian Intervention*, ed. Don E. Scheid (Cambridge: Cambridge, 2014), 3-4.

and that those steeped in commitments to pluralism and self-determination have special grounds for skepticism about the moral bona fides of instances of AHI.³ Martha Finnemore notes AHI presents an internal contradiction to committed liberals, because it is always a curtailment of someone's self-determination.⁴ Political Scientist Rajan Menon argues that AHI can never be a truly "ethically driven enterprise," that is solely conducted with altruistic motives in mind and the achievement of solely humanitarian as its set goals. In support of this argument he notes the selective deployment of AHI in situations of mass atrocity by the United States, the inconsistency, for instance, of its stance and military acts toward the singular case of Saddam Hussein's Iraq from the 1980s to the Second Gulf War in 2003.⁵

Though the presumption against AHI is strong and moral skepticism toward it warranted, Walzer notes that it is "not an absolute moral rule." When mass atrocity occurs, despite the normative importance of self-determination, Walzer argues that "sometimes, what is going on locally cannot be tolerated." There has historically been a tendency to understand that some norms, some form of basic human rights, are worth protecting and that these norms are universally valid and thus hold ethical weight over and above the moral value system of any one culture.⁶

From the earliest European encounters with the peoples of the New World and the urge to curb what Francisco de Vitoria termed "nefarious practices" such as cannibalism and human sacrifice,⁷ AHI was understood to be valid in principle, part and parcel of a universal moral order and respect for common humanity. Moral arguments for AHI are not limited to the West and its

³ Michael Walzer, *Arguing About War* (New Haven: Yale, 2004), 68.

⁴ Martha Finnemore, "Paradoxes in Humanitarian Intervention," in Richard M. Price, ed., *Moral Limit and Possibility in World Politics* (New York: Cambridge, 2008), 197-224.

⁵ Rajan Menon, *The Conceit of Armed Humanitarian Intervention* (Oxford: Oxford, 2016), 11-12.

⁶ Walzer, *Arguing About War*, 69.

⁷ Francisco de Vitoria, "On the American Indians," in *Vitoria: Political Writings* ed. Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge, 1991), 288.

encounter of cultures beyond the borders of Christendom. During the period of Chinese history between the collapse of the Zhou Dynasty in 770 BCE and the unification of China by the Qin Dynasty in 221 BCE, the territory covered by these unified kingdoms was populated by culturally distinct and politically independent states. During this period, the ancient Chinese philosopher Mencius put forward the principle that neighboring rulers could rightfully wage war against another ruler both to punish tyranny and to bring comfort to the tyrant's oppressed subjects. This was a mandate that sprung not from the legal or political norms of any one nation, but that was understood as a "mandate from heaven" that should be obvious to all and which thus rightfully superseded any earthly law or custom.⁸

In the contemporary period, Finnemore notes that, despite the difficulty of disentangling humanitarian motives from self-interested acts (as scholars like Menon point out), AHI cannot be understood outside of a truly normative context. She argues, counter to Menon, that "it is difficult to identify the [geostrategic, political, or economic] advantage for the intervener in most post-1989 cases."⁹ Thus, despite the debates about the merits of specific cases, doubts as to the consistency of applying humanitarian principles, and even questions of its legality under modern international law, AHI has been and remains a moral cornerstone of international politics and the ethics of war, accepted on the basis of moral principle if not as a legal practice.¹⁰

Despite the historical pedigree and staying power of AHI as a feature of the ethics of war, contemporary considerations of AHI face a new challenge to moral justifications for

⁸ Luke Glanville, "Retaining the Mandate of Heaven: Sovereign Accountability in Ancient China," *Millennium: Journal of International Studies* 39, no. 2 (November 2010): 324.

⁹ Martha Finnemore, "Constructing Norms of Humanitarian Intervention," in Peter J. Katzenstein, *The Culture of National Security: Norms and Identity in World Politics* (New York: Columbia, 1996).

¹⁰ The *Declaration of the South Summit* put forward by the Group of 77 in Havana, for instance, affirms the need for the "promotion and protection of all universally recognized human rights and fundamental freedoms" in article 21, but rejects "the so-called 'right' of humanitarian intervention," on the grounds that it "has no legal basis in the United Nations Charter or in the general principles of international law. See: Group of 77. *Declaration of the South Summit*. (Havana: Group of 77, 2000). https://www.g77.org/summit/Declaration_G77Summit.htm.

intervention-specifically new understandings of the ethical significance of cultural particularity and the contextuality of moral value formation. The “massive subjective turn of modern culture,”¹¹ as Charles Taylor famously labeled the move toward emphasizing the moral significance of particularity, has given rise to a particularist challenge to AHI, championed by outspoken critics of intervention like Michael Hardt and Antonio Negri, as well as Talal Asad, whose articulations of the particularist challenge feature prominently here in this first chapter. Both sets of scholars are prominent voices critiquing the moral viability of AHI. Both argue against the erasure of moral particularity in societies by a global human rights regime (GHRR). Both Asad and Hardt & Negri present a particularistic (as opposed to universalistic) account of morality that is deeply contextual and cultural. Both perspectives are thus skeptical of moral frameworks justifying the imposition of human rights norms grounded in assumptions of universal morality, especially the use of AHI. The particularist challenge to AHI is thus not simply an argument about the legality of AHI under international law, or the consistent applicability of humanitarian principles, or even the possibility of pure humanitarian motives in a world where state-interest remains a strong consideration. The particularist challenges offered by both Hardt and Negri and Asad are more fundamental, questioning the ethical viability of holding any norms to be universally valid and doubting that any moral consideration, even the drive to rescue the innocent from mass atrocity, may authorize acts like AHI that contravene cultural identity, local custom, and indigenous conceptions of moral value.

To address this particularist challenge, this dissertation focuses on the ethics of AHI in situations of culturally rooted mass atrocity. Moral frameworks under which AHI is often discussed within ethical literature, that is primarily from political and legal scholars, seem to deal

¹¹ Charles Taylor, “The Politics of Recognition,” in *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann (Princeton: Princeton, 1994), 29.

primarily with instances of AHI where the perpetrators of atrocity are, as Michael Walzer describes them, “conceived of as somehow external and singular in character: a tyrant, a conqueror, a usurper, or an alien power set over a large mass of victims.”¹² Yet, limiting the moral consideration of AHI to cases of tyranny or external oppression functionally sidesteps the particularist challenge. It allows political and legal scholars to frame mass atrocities as extrinsic to a culture, a hindrance to true exercises of societal self-determination, and a suppression of expressions of particularity.

Cases of culturally rooted atrocities are sometimes shoe-horned into this framework. Accounts of atrocities take larger than life leaders and focus what may have been culturally held biases and widespread support for human rights abuses on to a figurehead painted as a tyrant.¹³

But humanitarian crises are not often clear-cut cases of singular and culturally external evils. Examining the data of the Minorities at Risk Project, Tedd Robert Gurr argues that while “officially sanctioned policies of discrimination have become gradually less common in most

¹² Walzer, *Arguing About War*, 70.

¹³ Gary Bass’s history of armed intervention *Freedom’s Battle: The Origins of Humanitarian Intervention* (New York: Knopf, 2008) is a prominent example of this tendency. *Freedom’s Battle* traces the origins of modern armed humanitarian intervention to the actions of great power in 19th and early 20th Centuries. Specifically, Bass expounds upon how certain European great powers mobilized to intervene in the Greek struggle of 1821-27, atrocities in Syria in 1860 and Bulgaria in 1876, and the lone 20th century conflict, the response of the United States to the Armenian genocide of 1915. While Bass admits that the circumstances, policies, and ideas he examines “are not perfect echoes of the more recent U.S. and European democratic debates about humanitarian intervention on behalf of Somalis, Bosnians, Rwandans, Kosovars, Congolese, Liberians, and Darfuris;” he argues that “they are crucial precursors that “offer a more complete picture of how activists and governments have confronted the challenge of humanitarian intervention.” Bass is direct that his account aims to illuminate three themes that connect the conflicts of the 19th and early 20th century of which he writes to the humanitarian efforts of the late 20th and early 21st century. Bass seems to imply that these early European forays into humanitarian intervention set the precedent for the procedure and defining values of modern and contemporary interventions. With the exception of French intervention in Syria, each case Bass selects typifies the theoretical tendency to lift up as paradigmatic cases in which an external tyrant or oppressor stifles the self-determination of a people group. Though the Syrian case is ultimately one of sectarian violence within a territory, a foreign power plays a significant role in the conflict. Indeed, the Ottoman Empire, the nominal sovereign power over Syria during the period of French intervention, authorized European military intervention in the territory to help Ottoman authorities pacify the conflicts erupting between the Druze and the Maronite Christian communities making AHI not imposed, but rather technically invited by the territorial sovereign.

world regions since the 1960s . . . discrimination as a matter of social practice nonetheless is a widespread and often persists despite public policies that guarantee freedom from discrimination.”¹⁴ Nevertheless, relatively little work has been written on the ethics of AHI where atrocities are rooted in ingrained facets of culture. The Rwandan Genocide in which members of the Hutu ethnic group slaughtered hundreds of thousands of people, primarily ethnic Tutsis, provides a particularly powerful example.

One cannot point to a particularly charismatic or influential leader whose ideology organized the masses to murder. The figure of Hitler in the Holocaust has no direct analogue in the Rwandan case. Nor was the genocide formally orchestrated by the Rwandan government in the same way that the Third Reich used the organs of state to perpetrate mass killing. But the Rwandan Genocide was not simply a matter of bloodlust. The reporter Philip Gourevitch writes in his work *We wish to inform you that tomorrow we will be killed with our families: Stories from Rwanda* that, given the speed of the genocide and its widespread perpetration despite lack of formal organization, “it is tempting to play with theories of collective madness, mob mania, a fever of hatred erupted into a mass crime of passion, and to imagine the blind orgy of the mob, with each member killing one or two people.” But, Gourevitch notes, “mass violence . . . must be organized; it does not occur aimlessly Even mobs and riots have a design, and great and sustained destruction requires great ambition . . . The ideology of genocide is all of those things, and in Rwanda it went by the bald name of Hutu Power.”¹⁵

¹⁴ Tedd Robert Gurr, *Peoples vs States: Minorities at Risk in the New Century* (Washington D.C.: United States Institute of Peace, 2000), 107. The Minorities at Risk Survey focuses on groups that have “political significance” based on two criteria: 1) The group collectively suffers, or benefits from, systematic discriminatory treatment vis-a-vis other groups in a society; and, 2) the group is the basis for political mobilization and collective action in defense or promotion of its self-defined interests. For more information, see the Minorities at Risk (MAR) Project website: <http://www.mar.umd.edu/>

¹⁵ Philip Gourevitch, *We wish to inform you that tomorrow we will be killed with our families: Stories from Rwanda* (New York: Picador, 1998), 17.

When the cultural dimensions of humanitarian crises are unavoidable, political and legal scholars retreat to the age-old moral high ground of invoking and philosophically defending the notion of universal norms, or, at the very least the emergence of a world order in which human rights, through overlapping consensus, have become functionally universal. These two approaches legal and political proponents of AHI take to answer the particularist challenge are deeply unsatisfying. The competing international norms of respect for cultural particularity and the drive to rescue the oppressed remain in tension.

I argue this moral conundrum is due to the fact that legal and political perspectives presented by both proponents and opponents of AHI tend to frame cultural identity and value formation as monistic and *causa sui*. This is demonstrated by the prominence of the concept of “self-determination” in both international relations and international law. While often framed as a basic right of a culture, nation, or state, depending on the level of analysis at issue, the existence of the right and its understanding as something fundamental implies both the existence of the capacity for a group to determine for itself its political destiny and values and the moral propriety of its doing so. The monistic view implies that the natural and proper state of society is to determine for itself, by itself, its own identity and values.

The religiously rooted perspectives I explore may relieve some of this tension by offering an alternative view of cultural value and identity formation as dialogical. This turn to a dialogical view of cultural value formation both changes significantly the way the particularist challenge can be articulated, and opens up new avenues for answering it that can hold the norms of cultural respect and the rescue of the oppressed together. Specifically, my project explores the moral question of AHI through the perspectives of decolonial social anthropologist Talal Asad and religious ethicist James Gustafson. Asad and Gustafson draw on the Islamic and Reformed

traditions respectively. Like many of AHI's critics, both view morality from the lens of particular experience rather than universal norms.

My thesis is that, rather than underwriting a dismissal of AHI, a dialogical view of ethics that draws on Gustafson and Asad can be useful for constructing an alternative model of the relationship of individual societies to each other and to international norms. I engage with Asad's work in this chapter in order to demonstrate that a variety of "particularist" views can exist that challenge the moral viability of AHI. Asad's challenge to AHI still admits a dialogical view of cultural formation that Hardt and Negri's does not. I will discuss in a later section how this positively affects the ability to theoretically reconcile the competing drives to rescue oppressed populations and the drive to respect culture operant in the ethical debate surrounding AHI. My engagement with Gustafson in chapters 4 and 5 will discuss Gustafson's theocentric ethics, its construal of reality, and the manner in which it highlights the importance of dialogue as a fundamental aspect of ethical thinking.

Viewing AHI within a dialogical framework allows one to understand external influence as a natural part of cultural identity and value formation and not an interference in that process. My work will demonstrate that such a perspective accounts for particularism in a way that leaves open moral avenues for the rescue and safeguard of vulnerable populations. It may also provide more nuanced guidance on the responsibility of intervening actors to respond to the needs and desires of the societies they intervene upon, since dialogue implies obligations that flow both ways in a relationship rather than a one-way imposition dubiously termed "universal norms." It does this while still adopting a humble epistemological posture that acknowledges the limitedness of one's moral perspective.

For Asad and Gustafson, moral value formation is a dialogical process colored by a culture's unique circumstances and encounter with Otherness. Asad grounds his view in al Ghazzali's account of how self/soul identity forms in response to one's environment and other persons.¹⁶ Similarly, Gustafson's ethics argues that morality is conditioned by encounter with the otherness of a sovereign god. Rather than view god as a supreme being, however, Gustafson understands god as a symbol for the natural, historical, and cultural forces that condition human experience, a collective Otherness upon which human life is dependent.¹⁷ For both Asad and Gustafson, ethics should not judge moral systems based on their adherence to metaphysical or rational rules. Rather a moral system is measured by its proper orientation to Otherness and the health of a society's relationship to the interconnected world.

I argue that such a framework hews closer to the nuances of societal formation often oversimplified by political, legal, and social theorists overvaluing parsimonious explanations of societal behavior. Moreover, I will demonstrate that such a framework provides a moral argument (as opposed to strategic or policy) for an intervening power's extended involvement in the internal affairs of a society. Extended involvement is often practically necessary to ensure the long-term well-being and security of a vulnerable population that is or is at risk of becoming a victim of atrocity. However, such involvement is morally dubious because it conflicts with a society's right to self-determination. My dialogical ethical framework will demonstrate that extended involvement has stronger moral grounding if justified by an appeal to the common good rather than appeal to the propriety of protection of particular human rights. Understanding extended involvement under these terms makes for a moral framework more responsive to the

¹⁶ Talal Asad, *Secular Translations: Nation-State, Modern Self, and Calculative Reason* (New York: Columbia, 2018), 69.

¹⁷ James M. Gustafson, *Ethics from a Theocentric Perspective Volume 1: Theology and Ethics* (Chicago: University of Chicago, 1981), 4, 229.

exigencies of executing an intervention that secures long-term well-being of populations at risk than those arising from political scholars who often understand long term interference to be a political necessity, but a moral tragedy. Such a framework would also form organically out of indigenous values without having to connect them to a universal rationality or global regime of rights. It would also provide a point of reference for adjudicating conflicts of interest that allow parties to make binding claims on each other, and authorizes enforcement of those claims by coercive means including AHI.

This project is distinctive in three ways. First, it focuses on culturally rooted atrocities and human rights violations that legal, political, and moral perspectives on AHI have often glossed over or failed to theoretically reckon with. Second, its approach from the perspective of religion through the work of Asad and Gustafson offers an alternative view of community identity and value formation that is dialogical rather than the standard political account of community identity as monological and *causa sui*. The dialogical framework I aim to construct would allow for both for morally valid efforts to shift cultural values and, crucially, a realistic hope in the possibility that cultural values that harm other groups may be challenged and changed in ways that look to the benefit of the interdependent whole of human existence rather than the interests of a single group. Third, it aims to offer a reference point by which human rights enforcement can be justified, without relying on the assumption of a universal or even common set of moral norms. It is an ethics that responds to the analysis of specific situations and relationships. By offering a dialogical and relational ethics rather than the imposition of a rights regime, I not only aim to address the particularist challenge posed by figures like Asad and Hardt and Negri, I work to accommodate them. The framework I propose views the establishment of human rights not as a burden imposed by an external power on another society, but part of a two-

sided give and take that allows for continued cooperation between societies that leads to the health of international society as a whole. Throughout the dissertation, I offer a number of historical examples of conflict and culturally rooted violations of human rights to illustrate my claims and their ramifications.

Aims of the Chapter

This first chapter traces the intellectual shifts in the significance of cultural particularity for ethics, especially in terms of the right it gives one society to interfere in the affairs of another. I argue that the “massive subjective turn of modern culture”¹⁸ described by Charles Taylor, in his seminal essay “The Politics of Recognition,” marks a watershed moment for the ethical consideration of AHI. The subjective turn destabilizes ancient assumptions regarding the universality of morality which in turn problematizes judging the activities and mores of foreign cultures, let alone age-old justifications for interfering in them. The destabilization of moral assumptions regarding universal norms paves the way for the particularist challenge to AHI. In the second section, I will turn to the particularist challenge and the specific articulations of Michael Hardt and Antonio Negri, as well as that of Talal Asad.

Hardt and Negri take a monistic view that shapes their articulation of the particularist challenge and their account of cultural value formation. I argue that the monistic view makes it impossible to reconcile the tension between respect for particularity and the moral urge to rescue oppressed populations in a context where universal moral principles are not assumed. The irreconcilability of these two moral concerns in Hardt and Negri’s articulation of the particularist

¹⁸ Taylor, “Politics of Recognition,” 29.

challenge invite (and perhaps demand) the exploration and articulation of alternative moral frameworks in which respect for particularity and the drive to rescue those under threat of culturally rooted atrocities is not mutually exclusive.

In contrast, Asad admits that external influence is part and parcel of cultural identity and value formation. External influence is theoretically permissible. However, Asad remains skeptical of AHI because he notes that it is too often predicated on the assumptions that human rights norms are universally valid and therefore trump local perspectives, concerns, and conceptions of morality. Through an investigation of the genealogy of the GHRR and the use of AHI to enforce it, Asad looks to demonstrate that they are human rights not universal concepts, but rather concepts rooted in a Eurocentric and Christian perspective. In turn the authorization of AHI to protect those rights takes its bearings from the historical connection of Christian concepts of benevolence to the use of violence.

I argue that the way each set of scholars frame the particularist challenge and their different accounts of cultural value formation, and Asad's use of religious sources to these ends in particular, affect the potential for theoretically reconciling the tension between respect for particularity and the moral urge to rescue oppressed populations in a context where universal moral principles are not assumed. I argue that Asad's articulation of the particularist challenge should be preferred to Hardt and Negri's because it at least opens the door to the protection of human rights and the well-being of the vulnerable, though he remains skeptical of AHI because of its pretensions to universality. Despite this preference, Asad's articulation of the particularist challenge leaves the question of how one may justify the protection of the vulnerable unanswered and is therefore inadequate on its own for addressing the tension between the drive to protect and the drive to respect other cultures.

AHI Before and After the Subjective Turn

Charles Taylor argues that: “before the late eighteenth century, no one thought that [cultural or perspectival] differences between human beings had [ramifications] of moral significance.” Differences in cultural context, era, or subjective “feelings” did not “take[] on independent and crucial moral significance.” Rather, moral views emphasized “being in touch with some source—for example, God, or the Idea of the Good.” These moral sources were thought of as universally valid, immutable, and thus not subject to the vagaries of particularity, notably, I argue, cultural context, identity, and values.¹⁹ The late 18th Century, according to Taylor, ushered in a greater emphasis on “*individualized* identity, one that is particular to me, and that I discover in myself.” Ethics therefore began to explore difference as morally salient, moving the source of moral norms from an objective moral order to subjective experience, and deemphasizing the notion of the universality of morality in favor of ideas centered on the particularity of morality.

The philosophical status of particularity as a source of moral norms as well as when particularity became a prominent feature of ethical consideration is a matter of continued debate, despite Taylor’s description of their rise in prominence in the 18th Century. I argue, however, that in a globalizing world, that particularity has become a significant consideration of politics in the contemporary pluralistic international sphere. Particularity, especially in the form of cultural identity and cultural values, has been the source of significant political violence and thus has become an urgent problem for the ethics of war, particularly AHI. It is at the heart of the issue

¹⁹ Taylor, “Politics of Recognition,” 30.

when discussing adequate moral norms for justifying or prohibiting interference with other cultures.

Although the conclusion of the Second World War ushered in an unprecedented period of peace between nations, intrastate and intra-societal conflict has seen a sharp increase since 1945 (with the exception of a brief lull from the mid 2000s to the mid 2010s).²⁰ As many societies struggled to shake loose from colonialism, clientelism, and other externally imposed forms of political bondage, their efforts were often focused by the tightening of religious, ideological, and ethnic bonds. Too often the tightening of these bonds was internalized as a renewed recognition of the importance of a particular group identity and externalized as discrimination and oppression directed towards groups considered “other.” Tedd Robert Gurr records that, “of the 275 communal groups covered in the Minorities at Risk survey conducted in the 1990s, all but 33 were affected by discrimination based on their culture, ethnicity, or beliefs.”²¹ This includes the deployment of arbitrary violence, including acts of massacres, ethnic cleansing, and genocide.

Taylor dismisses the significance of particularity to morality before the late 18th Century too hastily. I argue that moral particularity has historically been a feature of human experience with which some thinkers deal, especially those whose interests lie in international relations and even more so for those who deal with the ethics of war. What has changed with the advent of modernity is the relative weight given to particularity in ethical debates.

Particularity and subjectivity have historically been wrestled with in the ethics of war precisely because their moral significance was recognized, if not fully fleshed out or understood.

²⁰ Kendra Dupuy and Scott Gates, et al. “Trends in Armed Conflict, 1946-2016.” *Conflict Trends* no. 2 (2017): 2.

²¹ Gurr, *People vs States*, 105.

The question of whether or not one society can impose its values on another by force plagued scholars of war for centuries, long before the subjective turn, or even the establishment of a global human rights regime. This is a significantly different question than the question of punishing and even replacing a tyrant.²²

In early modern Europe prior to the subjective turn, cultural particularity was respected only if a nation or society's practices remained within the borders of acceptable practice. Respect of particularity, however understandingly it was framed, was held in tension with beliefs in universal and objective moral principles. Many of the conflicts that plagued Europe during this period were motivated by disagreements as to where these limits were to be drawn.

Despite a prevailing belief in an objective moral order, questions regarding if, when, and how an objective moral order can supersede local customs and whether external societies may enforce the dicta of this moral order are complex. Even scholars seemingly sympathetic to the protection of local customs and values argue for limits, especially in cases where such customs constitute heinous atrocities against others.

Francisco de Vitoria, whose work is considered a forerunner of international law, took up the question in the 16th century in both his best known works *On the American Indians*²³ and its corollary work *On the Law of War*.²⁴ Both works were occasioned by the Spanish conquest of the New World and the Crown of Castile's interest in legitimating their colonial rule on moral

²² Political theorists tend to separate tyrannical regimes from the people they govern. Local tyrannies never represent their people or their culture and therefore their removal may be viewed as a form of liberation, an aid to exercise of true cultural identity and values that are hindered by something foreign and external. This separation will be explored further in Chapter 3 through the work of Michael Walzer and his reconciliation of AHI and the right to self-determination.

²³ Francisco de Vitoria, "On the American Indians," in *Vitoria: Political Writings* ed. Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge, 1991).

²⁴ Francisco de Vitoria, "On the Law of War," *ibid.* *On the Law of War* is a work distinct from *On the American Indians*. Vitoria makes clear in the introduction to *On the Law of War* that the treatise is written as an addendum to his analysis in *On the American Indians* and its reflections on the waging of war motivated by the Spanish conquest of the Americas.

and theological grounds. Vitoria is less than enthusiastic regarding the morality of Spanish pretexts for war and claims of colonial right to rule. Vitoria is motivated in both these treatises to refute justifications for imperialistic war.

Vitoria's refutation of the conquest rights of the Spanish Crown are noteworthy. Though a Spanish subject, he refused to affirm *carte blanche* Castilian claims of conquest over the New World. He defends the "infidel's" ability to rule themselves and their territories according to their own customs, system of governance, and even religion." Vitoria is clear that the native peoples have "dominion," that is, the capacity to rule themselves and therefore Spanish claims to rule do not easily replace indigenous systems of government. The proof of native dominion, says Vitoria, is that:

they are not in point of fact madmen, but have judgment like other men. This is self-evident, because they have some order in their affairs: they have properly organized cities, proper marriages, magistrates and overlords, laws, industries, and commerce, all of which require the use of reason. They likewise have a form of religion, and they correctly apprehend things which are evident to other men, which in the things necessary for the majority of the species which indicates the use of reason.²⁵

Vitoria defends the principle of non-interference in the culture and customs of the American Indians, even when those customs were thought to violate natural law. He notes that the universal validity of natural law does not imply the right of one society to enforce its dictates on another society. Vitoria affirms on the one hand that "barbarians can be forced to keep the law of nature because it can be proved." On the other hand, while the truth of natural law means that it may be proved, Vitoria provides a caveat that the means to prove them in a satisfactory way may not be readily available. He says, "not all sins against natural law can be demonstrated to be so by evidence, at least to the satisfaction of all men."²⁶ The ignorance of certain societies of the

²⁵ Vitoria, "On the American Indians," 250.

²⁶ *Ibid.*, 274.

norms of natural law and their non-acceptance of these norms prohibits them from being enforced by an external power.

Nevertheless, Vitoria notes that “oppressive laws against the innocent, such as human sacrifice practiced on innocent men or the killing of condemned criminals for cannibalism” are grounds for war under certain terms. Vitoria terms these acts and their ilk “nefarious customs or rites” and explicitly says that “war may be declared upon them [i.e. societies that practice these rites and customs], and the laws of war enforced upon them.” Though Vitoria is generally skeptical of the ability of Spain to enforce adherence to divine commands, nefarious acts seem to be of a special species of sin. Princes, the analogue for the sovereign nation in this period, had both the privilege and the responsibility to punish such acts.²⁷

It is crucial to note that Vitoria does not frame war upon societies that practice nefarious customs as simply an enforcement of natural law. As I noted above, Vitoria treats the right of a society to enforce the dictates of natural law upon another with skepticism. Vitoria instead frames these types of wars not primarily as a punitive act, but a protective one where the lives and well-being of innocents are shielded from harm. For Vitoria wars wage to protect the innocent from nefarious customs fulfills a divine and natural command to care for the neighbor. This is a crucial ethical distinction in Vitoria’s thought. It shifts what is ethically salient in the calculus of just cause for war from punishing those engaged in “nefarious customs” to the moral imperative incumbent on other nations to protect those who are harmed by those customs. Even amidst Vitoria’s respect for the dominion of other cultures, he understands the protection of the innocent to be an appropriate superseding norm.

²⁷ Ibid., 288.

Though Vitoria gave the lectures his students would transcribe and publish as *On the American Indians* and *On the Law of War* in the 16th Century, his thoughts on relations between societies continue to be cornerstones of international relations. Vitoria's concern for particularity and the "dominion" that necessitated respect of the particularity of American Indian identity and customs is a harbinger of what Don E. Scheid terms the rejection of "the universalist claims of the Catholic Church and the Holy Roman Empire" that "arose and developed along with the rise of the nation-states of Europe."²⁸

Nevertheless, William Bain argues that "Vitoria's argument concerning the defence of the innocent cannot be abstracted from his theology and remain intelligible." Bain notes that Vitoria's argument concerning the defense of the innocent "presupposes a rationally ordered Christian universe...it is a universe premised on a hierarchy of goods, intelligible in relations of subordination and superordination, which culminates in God and is governed by God."²⁹ Medieval and Early Christendom shared a belief in this divine order and arguments invoking Christian metaphysics and scriptural commands held enormous sway. The fact of pluralism and the reality of globalization make it impossible to invoke religious mandates as binding for international politics. However, Vitoria's understanding of cultural particularity and the supersession of certain universal principles that limit acceptable expressions of cultural identity and values continues to hold sway. International relations scholar Beate Jahn notes that, while Vitoria's work is an expression of a principle of proto-sovereignty and non-intervention, his understanding that local custom may yet be superseded by universal norms-especially the

²⁸ Scheid, "Introduction to armed humanitarian intervention," 10.

²⁹ William Bain, "Saving the Innocent then and now: Vitoria, Dominion, and World Order." *History of Political Thought* Vol. 34, No. 4 (Winter 2013), 591.

protection of the innocent-are in line with modern arguments for humanitarian intervention within the anarchic international system.³⁰

An argument may be made that truly universal principles may manifest in specific expressions of culture. Any norms that are truly universal or discerned in common human experience likely would manifest organically in a society attached to a society's gods or other expression of ultimate value.³¹ Vitoria's reliance on Christian categories does not mean that his thoughts regarding international relations, especially the right to intervene in defense of the innocent, should be dismissed as irrelevant to the secular or at the very least pluralist international system extant today. Nor does Vitoria's status as one of the progenitors of modern international norms of human rights and humanitarian intervention necessarily negate the force of the moral claims and duties that these norms lay upon states and societies.

While belief in specifically Christian metaphysics is no longer a persuasive nor operant justification for intervention in the contemporary period, the notion that the protection of the innocent is a universal principle that puts a limit on expression of cultural particularity remains a live idea in modern international relations, albeit one highly debated. Rather than a divine order setting the bounds of acceptable practice, modern international relations rely on a notion of world order defined by state practice to set these bounds.

³⁰ Beate Jahn, "Humanitarian Intervention: What's in a Name?," *International Politics* volume 49, (2012), 37, 45.

³¹ Luke Glanville, for instance, describes a similar proto-sovereignty recognized by the independent states of Ancient China from the collapse of the Zhou Dynasty in 770 BCE and the unification of China by the Qin Dynasty in 221 BCE. Glanville also notes that during this period the principle that neighboring rulers could rightfully wage war against another ruler both to punish their tyranny and comfort the tyrant's oppressed subjects also existed. This was a mandate that sprung not from the legal or political norms of any one nation, but that was understood as a "mandate from heaven" that should be obvious to all and which thus rightfully superseded any earthly law or custom. Glanville's discussion of principles of proto-AHI in Ancient Chinese culture demonstrates that interventionist principles to rescue innocents is a widespread moral phenomenon not limited to notions of right in the Christian West. See: Glanville, "Retaining the Mandate of Heaven," 324.

Political scientist R.J. Menon argues that it is impossible to observe current international relations without acknowledging that some form of “global civil society” exists, one that binds people from different states and cultures in common. Menon points out that this is not a new phenomenon. He points to the global reach of ancient faiths like Buddhism, Islam, and Christianity which bound peoples from diverse regions and cultures together into a community that transcended borders. Menon notes though that even the mundane features of the modern world are connected to a global network. The globalization of academia and sports and modern communications technologies like twitter, Facebook, and the internet itself allow people to “access information...and forge transnational coalitions of solidarity.” Global civil society is not simply an exchange of information, but rather the formation of this community “presumes unifying values.”³²

Chief among these unifying values is the notion of basic human rights codified in a global human rights regime (GHRR). Menon notes that states themselves “have signed numerous treaties embodying universal principles.”³³ He notes in particular: the Universal Declaration of Human Rights, the Genocide Convention, the Convention on Refugees, the International Convention on Civil and Political Rights, the International Convention on Social and Cultural Rights, and the Convention Against Torture. Beyond states as international legal personalities themselves, citizens within states, “have invoked the values embedded in such treaties to assert rights against their own states,” and that these “treaties are used in assessing governments’ respect for human rights” implying that these values may be used to check domestic laws and local customs.³⁴ I will discuss in deeper detail the GHRR and its ramifications

³² Rajan Menon, “Why Humanitarian Intervention Still Isn’t a Global Norm,” *Current History* Vol. 116, No. 786, (January 2017), 35.

³³ Ibid.

³⁴ Ibid.

on AHI in Chapter 2. Chapter 2 will assess alternative foundations of the GHRR's claims toward universal applicability beyond the overlapping consensus evinced by the ratification and acceptance of treaties. For now, however, I only wish to highlight the point that world order has replaced divine order as the source of universal principles and the big stick by which acceptable forms of cultural particularity are measured.

As I have demonstrated, ideas on the appropriate exercise and limits of particularity were crucially important to thinkers like Vitoria and they continue to influence how the bounds of appropriate particularity are conceived in the contemporary era. It is perhaps better then to amend Taylor's claim to say that before the late 18th Century differences between human beings, i.e. their particularity, was never conceived of as morally definitive. The exploration of particularity as *morally definitive*, what Taylor terms "the massive subjective turn of modern culture," is a watershed moment for ethics, particularly the ethics of war.

The "subjective turn" as Taylor understands is a primarily moral phenomenon. He notes that prior to the subjective turn, the rule and measure of activity³⁵ was externally given, connected to an objective moral order divinely revealed or discernible through reason. The subjective turn of modern culture, due largely to the differences apparent in cultural encounter, has moved from this moral framework to an emphasis on moral discernment drawn from the subjective experience of the individual. Following the work of Herder, Taylor says that modern morality turns on the idea that "each of us has an original way of being human: each person has his or her own "measure."” In terms of ethics, the measure of moral action becomes authenticity. Authenticity as an ethical ideal means that the moral principles one lives by are not externally

³⁵ This is central to Aquinas's definition of law: "Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting." Thomas Aquinas, *Summa Theologica* I-II q.90, a.1. <https://www.newadvent.org/summa/2090.htm>.

derived from a metaphysical order, a natural law, or social convention. Rather, under this ethical perspective the moral dicta by which one lives are inwardly generated, that is monological and *causa sui*.³⁶

Taylor notes that the use of authenticity as an ethical ideal extends beyond the notion of individual subjectivity. Once again discussing the ideas of Herder, Taylor notes that a “conception of originality” is operant “at two levels, not only to the individual person among other persons, but also to the culture-bearing people among other peoples.” Cultural authenticity is thus a similarly monological ideal. This is not to say that cultures are monoliths internally. The ideal of authenticity is a monological ideal in the sense that, when cultural mores of societies are compared with one another, the norms of a people should not be derivative from any extra-cultural source. A people group “should be true to itself.”³⁷

Taylor clarifies Herder’s position regarding the cultural ramifications of the subjective turn with examples. Taylor notes that the principle of originality and the ideal of modern authenticity means that “Germans shouldn’t try to be derivative and (inevitably) second-rate Frenchmen,” that Slavic peoples should “find their own path” and that “European colonialism ought to be rolled back to give the peoples of what we now call the Third World their chance to be themselves unimpeded.” This last note on European colonialism especially demonstrates that under the ethical priorities of the subjective turn, particularity gains not only moral significance for a specific people group, but ethical significance regarding how one judges and treats local moral codes.³⁸

³⁶ Taylor, “Politics of Recognition,” 30.

³⁷ *Ibid.*, 31

³⁸ *Ibid.*

The particularities of culture become, for that culture, an ethical standard by which the moral principles of that culture and actions taken by individuals and groups within the cultural context are judged. Thus, while states, societies, and cultures are not monoliths, they are morally monological because the “way of being” that determines the appropriateness of cultural values “cannot be socially derived, but must be inwardly generated.”³⁹

The subjective turn’s emphasis on authenticity presents a problem for AHI conceived of under the terms of universal moral principles. Under the monological schema introduced by the subjective turn, while judgment of the particularities of another culture/society’s moral code is possible, that judgment is only valid relative to the moral system of the observer, not universally valid. Even the drive to protect the innocent which undergirds AHI may be illegitimate if subjective authenticity is a paramount ethical consideration. Indeed, it may even improperly subjugate certain subjectivities to what Michael Hardt and Antonio Negri describe as a new form of “Empire.”

Empire, Singularity, and AHI

In this section I will primarily discuss two significant concepts drawn from Hardt and Negri, specifically their concepts of “Empire” and “Singularity.” I will define each of these terms in the course of my discussion. The discussion “Empire,” as Hardt and Negri understand it, is “a new form of sovereignty,” that is “composed of a series of national and supranational organisms united under a single logic of rule.” They trace the emergence of this new form of sovereignty, this Empire, to the decades “after the soviet barriers to the capitalist world market finally

³⁹ Taylor, “Politics of Recognition,” 32.

collapsed,” when one could witness “an irresistible and irreversible globalization of economic and cultural exchanges.”⁴⁰ In contrast to the old forms of imperialism practiced by the Roman or British Empires, this new notion of Empire “establishes no territorial center of power and does not rely on fixed boundaries or barriers.” This lack of boundaries is a fundamental characteristic of Empire. Hardt and Negri intend the concept to signal not a regime of territorial conquest or even one bound by a temporal frame (e.g., the Qin dynasty lasted from 221 BCE to 206 BCE). It is rather a regime of power exercised through norms thought to transcend both culture and history.⁴¹ No longer is the world beset by competing imperial powers vying to conquer or control more and more territory, resources, and populations. Empire is a “single power that overdetermines [all other powers], structures them in a unitary way, and treats them under one common notion of right . . . a new notion of right, or rather, a new inscription of authority and a new design of the production of norms and legal instruments of coercion that guarantee contacts and resolve conflicts.”⁴²

According to Hardt and Negri, the formation of Empire is not only a political project; it is an ethical one insofar as the project of Empire is not conquest or control of territory by a particular nation or regime, but rather the creation of norms that transcend nation and territory. Indeed, Hardt and Negri refuse to identify the locus of Empire in a single nation, region, or even supranational institution like NATO or the United Nations. They claim that “as ancient notions of Empire” were formed “not on the basis of force itself, but on...the capacity to present force as being in the service of right and peace,” so too is Empire based on the notion to resolve conflict and “*appeal to essential values of justice.*” Empire presents therefore as a “project of universal

⁴⁰ Michael Hardt and Antonio Negri, *Empire* (Cambridge, MA: Harvard University Press, 2000), xi.

⁴¹ *Ibid.*, xiv-xv.

⁴² *Ibid.*, 15.

citizenship” not in anything as specific or spatially and conceptionally limited as a state, but rather in “a global order, a justice, and a right.” This global order is most concretely vested in norms, as Hardt and Negri’s appositive use of “a justice, and a right” to modify “global order” demonstrates.⁴³

The “global order” of Empire is directly opposed to the ethical priorities of the subjective turn. Rather than an emphasis on the value therefore of “authenticity,” the global order of modern Empire “lives by producing a context of equilibria and/or reducing complexities” whereby it extinguishes “identity and history.”⁴⁴ The moral sense of a society, developed through their own unique experiences and interpretation of those experiences is a crucial cultural artifact dissolved by Empire. Hardt and Negri argue that “private and individual apprehension of values are dissolved” until “the external morality of every human being and citizen is...commensurable in the framework of Empire.”⁴⁵ Through this, they argue, Empire not only “regulates human interactions,” it “seeks directly to rule over human nature.”⁴⁶

Hardt and Negri admit that the notion that human beings may benefit from universal values rather than a diversity of moral codes cannot be rejected out of hand. They point out that, under the auspices of Empire, one is justified in establishing a global order and positing a universal moral code because of its potential to reduce conflict and aid in the limitation of legitimate uses of force. Hardt and Negri declare in dramatic fashion, “the concept of Empire is always dedicated to peace--a perpetual and universal peace outside of history.” Within history, however, “Empire is continually bathed in blood.”⁴⁷ While the foundation of modern Empire is

⁴³ Ibid. 15-18.

⁴⁴ Ibid., 34.

⁴⁵ Ibid., 19-20.

⁴⁶ Ibid., xv.

⁴⁷ Ibid.

not military conquest, but rather a normative enterprise, nevertheless force remains a critical part of its legitimation and perpetuation.

Beyond a direct clash with the ethical viewpoint of the subjective turn and its core tenet of “authenticity,” Empire, according to Hardt and Negri, is itself inconsistent, especially in its deployment of violence. Empire does not reduce war, it enshrines it as a “*permanent social relation*.”⁴⁸ Where once the legitimate use of force among nations was understood to be a limited act for the repulsion of aggression, Hardt and Negri argue that the force deployed by Empire is more akin to policing, that is force deployed to preserve and protect order, in this case world order.⁴⁹ The wars of modern Empire are no longer conflicts between sovereign political entities (i.e. nation-states), nor are they limited to territorially defined theaters. Hardt and Negri have in mind the “global war on terror,” a conflict certainly that involves nation-states like the U.S., its coalition partners, and the nations of Iraq and Afghanistan prominently, but is primarily waged against ideology, “against a concept or set of practices.” Such a war has no spatial bounds, nor can it be temporally bound as there can be no treaty or truce between ideologies. War under these terms is, for Hardt and Negri, a “continuous, uninterrupted, exercise of power and violence” that must be “won again every day.”⁵⁰

Hardt and Negri point out that these international police actions executed by Empire take the form of AHI. They are adamant that the “enemies that Empire opposes today present more of an ideological threat than a military challenge.”⁵¹ This is certainly true of the primary targets of AHI. AHI is a military campaign waged on the principle that innocent persons and, more

⁴⁸ Michael Hardt and Antonio Negri, *Multitude: War and Democracy in the Age of Empire* (New York: Penguin, 2004), 12.

⁴⁹ Hardt and Negri, *Empire*, 13-18.

⁵⁰ Hardt and Negri, *Multitude*, 14.

⁵¹ Hardt and Negri, *Empire*, 35.

fundamentally, certain basic human rights are worth protecting. It is not coincidental, then, that AHI is prosecuted in order to put a stop to or prevent, “crimes against humanity”-a conception of justice and right that, characteristically for Empire, legitimates the world order.

Whereas war was once prosecuted to preserve and protect national sovereignty and the recognition of the rights of particular peoples, AHI is, for Hardt and Negri the primary military tool of Empire, fought for reasons in keeping with Empire’s goal of “dissolving identity and history” mentioned above. Hardt and Negri note that the “conception of crimes against humanity,” which drives and legitimates AHI, is directly opposed to the exercise of a particular identity and “is aimed at the destruction of the rights and sovereignty of peoples and nations through supranational jurisdictional practices.” They warn that “[o]ne has to recognize how selective this application of justice is, how often the crimes of the least powerful are prosecuted and how seldom those of the most powerful are.”⁵² Hardt and Negri argue that Empire through its use of AHI enshrines a form of “global apartheid” for those whose ways of life do not conform, or refuse to conform with the foundational moral tenets that stabilize Empire. Their ultimate concern over the rise of Empire and especially the “seemingly permanent state of conflict across the world” is not simply its violence, but the threat it presents to “the desire for a world of equality and freedom...an open and inclusive democratic global society.” In other words, identity, diversity, and democracy are directly under threat from Empire and the global state of war.⁵³

Hardt and Negri’s counter to the totalizing, universalizing, undemocratic and often violent incursion of Empire into the affairs of individual cultures and societies is in lockstep with the ethics of the subjective turn and its emphasis on authenticity. Hardt and Negri propose that

⁵² Hardt and Negri, *Multitude*, 29.

⁵³ *Ibid.*, xi.

cultures possess the quality of “singularity” and that cultures must be viewed as and treated in the international realm as “singularities.” They define the concept of singularity as: “a social subject whose difference cannot be reduced to sameness, a difference that remains different.”⁵⁴ In general, “singularities” are commensurate with cultures. A culture possess the quality of “singularity” in that a culture cannot be defined in relation to something, but is rather defined only unto itself. It is therefore *a* singularity among singularities. The language of singularity as a quality and the corollary concept of cultures defined by this quality of singularity as well as their thus being a singularity among a network of cultures that are also singularities is conceptually and grammatically difficult. However, Hardt and Negri provide an excursus regarding two European companions traveling through India to illustrate the concept of singularity as the quality of being undefinable vis-à-vis another entity, as well as the notion of particular cultures as singularities that specifically cannot be defined in comparison to other cultures.

In Hardt and Negri’s example the two Italian writers traveling through India try to capture and articulate the essence of India in their books. They do this in opposite ways. The first author discusses the radical difference of Indian culture from European culture through an exploration of Indian conceptions of religion versus European conceptions of religion. He observes that Indian religiosity is not simply of a different tradition than European religion. The author notes that in India religion, “envelops all of life. The religious idea completely permeates experience,” in a way that it does not in Europe. For the first author, this results in a form of life incomprehensible to Europeans. Indians, he says, “go about their daily lives living their religions in countless strange and [to Europeans] incomprehensible rituals.” For the first author, Indian culture is defined as that which is radically different from European culture.⁵⁵

⁵⁴ Ibid., 99.

⁵⁵ Ibid., 127.

In contrast, the second author finds India to be extremely similar to Europe. Walking the streets of Bombay, he finds “odors that remind him of home,” peasant customs similar to those practiced in his home town in Italy, and poor boys congregating on street corners that “are just like the boys in every poor neighborhood of Rome or Naples.” The second author concludes that Indians are just like Europeans. “In his eyes,” write Hardt and Negri, “all the differences of India melt away and all that remains is another Italy.”⁵⁶

Hardt and Negri do not provide the illustration to argue that one author’s attempt to capture the essence of India is superior to the other. Hardt and Negri argue that both authors fail to capture “India” because both accounts are Eurocentric. The first author fails because he can only note the differences from a European standard. The second author fails because sees the similarities of India according to a European standard. Hardt and Negri prefer the account of the first author. However, they argue that “India...is not merely different from Europe. India (and every local reality within India) is *singular*⁵⁷-not different from any universal standard, but different in itself. They argue that “if the first Italian writer could free himself of Europe as a standard he could grasp this singularity,” that is, the quality of being singular that defines cultures as well as the fact that Indian culture is a singularity, a unit possessing the quality of singularity, that exists among and within a network of other singularities.⁵⁸

While Hardt and Negri acknowledge the possibility that cultures may be formed by external influence, they argue that “nation building” in which such external influence takes a powerful form, is “only a pale shadow” of the “processes that arose from within...national societies, fruit of a long history of social development,” that defines modern nations and cultural

⁵⁶ Ibid. 127-128.

⁵⁷ My emphasis.

⁵⁸ Ibid.

identities.⁵⁹ “Cultural difference,” they argue “must be conceived in itself, as singularity, without any such foundation in the other.” Moreover, Hardt and Negri argue that these singularities cannot be viewed simply as “anachronistic survivals of the past,” but rather must be viewed “as equal participants in our common present.”⁶⁰ Their view that cultures must for the purposes of politics and ethics must be viewed as singularities is at the heart of their articulation of the particularist challenge.

Nowhere is the notion of singularity more crucial for Hardt and Negri than in the consideration of moralities of violence. Empire, they argue, cannot and will not stand for a multiplicity of values because, “morality can only provide a solid basis for legitimate violence, authority, and domination when it refuses to admit different perspectives and judgments.” The treatment of morality as part and parcel of a particular singularity is crucial for the dismantling of Empire and the legitimation of its exercise of violence through AHI. They argue that, “once one accepts the validity of different values, then such a structure [the world order of Empire] immediately collapses.”⁶¹

Hardt and Negri’s conception of Empire paints a bleak picture of global society, making the drive for human rights and AHI, even in the hypothetical situation that the motives that animate such adventures are pure, something sinister and despotic.⁶² On the other hand, their

⁵⁹ Ibid., 23.

⁶⁰ Hardt and Negri’s language here hearkens back to Mill’s famous discussion of the limitations of liberty in *On Liberty*. Mill argues that the efforts to bolster the exercise of liberty “may leave out of consideration those backward states of society,” for whom Mill argues, “despotism is a legitimate mode of government...provided the end be their improvement, and the means justified by actually effecting that end.” John Stuart Mill. *On Liberty* (Kitchener, ON: Batoche Books, 2001), 14.

⁶¹ Hardt and Negri, *Multitude*, 28.

⁶² Nowhere is this more apparent than in their critique of NGOs and non-violent forms of humanitarian intervention/aid. Hardt and Negri argue that “precisely because [NGOs] are not run directly by governments, are assumed to act on the basis of ethical or moral imperatives.” NGOs that are “dedicated to relief work and the protection of human rights...are in effect (even if this runs counter to the intentions of the participants) some of the most powerful pacific weapons of the new world order--the charitable campaigns and the mendicant orders of Empire. These NGOs conduct “just wars” without arms, without violence, without borders...these groups strive to

view of the operation and cooperation of the cultural singularities they valorize is viewed through rose colored glasses. In contrast to the world order of Empire which subsumes singularities under an umbrella of universal values, Hardt and Negri propose a new model of world order: multitude.

“Multitude,” as Hardt and Negri conceive it, is a political arrangement that respects cultures as singularities and understands a culture’s participation within the multitude to be voluntary and democratic. The multitude that stands opposed to Empire “might thus be conceived as a network: an open and expansive network in which all differences can be expressed freely and equally, a network that provides the means of encounter so that we can work and live in common.”⁶³ Hardt and Negri’s appeal to the recognition of common interests and its ability to reduce conflict by connecting cultural singularities in networks of cooperation is based on the shaky assumption that cultures have common interests.⁶⁴ I argue, however, that the assumption of the commensurability of the interests of singularities is a universalist claim as much as the assertion of basic human rights. What Hardt and Negri’s assumption of common interest lacks, however, is any means of enforcement. This is in contrast to Empire’s enforcement of norms through AHI and other forms of viooence. Hardt and Negri’s position fails then to adequately address the issue of universal claims. More importantly, it fails to account for the power of isolationist and triumphalist religious, ideological, and ethnic narratives to crowd out other interests and justify the use of violence or oppression against others as a valid expression of the “authentic” values of their cultural singularity.

identify universal needs and defend human rights.” Even non-violent aid, from these non-governmental organizations, are “the first act that prepares the stage for military intervention.” *Empire*, 36-37.

⁶³ *Multitude*, xiii-xiv.

⁶⁴ *Ibid*, 106

Hardt and Negri attempt to mitigate their failure with the concept of “democratic violence,” that is, violence in service of the “democratic, organized in the horizontal, common formation of the multitude.” Democratic violence is therefore always defensive in nature, never aggressive. Hardt and Negri connect defensive violence “to the long republican tradition of the right to resistance against tyranny.” For example, Hardt and Negri argue that the Black Panther demonstration of May 2, 1967 where party members walked into the California Capitol Building with rifles “to proclaim their constitutional right to defense of the black community” captures the spirit of democratic violence. Hardt and Negri argue that the Black Panthers were practicing the essence of the U.S. Constitution’s second amendment which grants the right to bear arms. For Hardt and Negri the spirit of the second amendment rests, “on the right of the multitude, of ‘the people in arms,’ to resist tyranny.”⁶⁵

Though one may argue that situations of human rights violations and atrocity are qualitatively different from the liberation movement of the Black Panthers, many of the most heinous acts of collective violence have been mounted on the ground that they were undertaken in defense of a particular culture. The Third Reich and its anti-Jewish laws, which I will explore in depth in the next chapter, come to mind. Few cultures have claimed the right to wanton violence, and mass atrocities are almost always premised as necessary actions taken to defend a culture or society from some ethnic, religious, or ideological other that is deemed a threat to the community. I argue, contra Hardt and Negri, that often the right of a culture, racial, ethnic, or other identity group, to deploy violence in defense of itself is at the heart of the issue of culturally based atrocity. If cultures and societies are singularities from a moral standpoint (beyond their sovereignty from a legal standpoint) it is impossible not only to *intervene* in their

⁶⁵ Hardt and Negri, *Multitude*, 343-344.

most heinous acts, it is impossible to ethically evaluate them. One may only look on in judgment, even in horror, from the unique societal perspective that one occupies. But that horror cannot be the basis of active interference in the affairs of another culture, let alone coercion through AHI.

Despite this theoretical and practical weakness, Hardt and Negri's analysis of Empire and the dangers of demands a universal conception of human rights and "crimes against humanity" is a form of the particularist challenge that cannot be ignored. Especially in light of the subjective turn, Hardt and Negri's understanding of cultures as singularities holds together well with the notion of authenticity as an ethical ideal that validates the unique moral values of each and every culture and society. Though Hardt and Negri fail to provide a robust answer to the question of judging ethnic and other identity-based violence, their articulation of a particularist challenge to AHI legitimated by universal norms, i.e., the GHRR, is commensurate with the ethical insights of the subjective turn. The problem of culturally based atrocity may be an aporia of ethics in the shadow of the subjective turn. The authenticity of cultural singularities may take ethical precedence over the protection of the innocent, clearly reversing the moral relationship between "nefarious acts" and intervention that has held sway since the writings of Vitoria.

There is perhaps a middle road that respects the particularity of culture but that rejects the idea that cultures are singularities whose morality and identity are formed by purely internal processes. Rather, there are views of cultural identity and value formation that understand cultural particularity to be formed through a dialogical process, constructs that are dependent for their origin and continued existence on their encounter and relationship with others. A dialogical understanding of culture strengthens the particularist challenge to AHI by opening avenues for cultural change, recognition of the needs of other societies, and a movement toward inclusion, even while maintaining a critique of the invocation of universal morality and its authorization of

AHI. This contrasts with the inability of monological perspectives to deal with cultural trends and interests that justify the use of violence or oppression against others as a valid expression of a culture's "authentic" values. It paints a picture of cultural particularity as dynamic and responsive, rather than closed and *causa sui*.

Asad's Dialogically Rooted Particularist Challenge

The particularist challenge to AHI offered by Talal Asad is one such critique grounded in a dialogical view of cultural identity and value formation. Unlike Hardt and Negri, Asad does this without characterizing cultures and societies as singularities. He resists making the claim that cultural identities are formed entirely by internal processes or that self-defined cultural identity and interests should be the sole considerations of cultural value formation. Asad thereby provides a path to thinking about ways in which the worst excesses of the ideal of authenticity may be curbed, while nevertheless highlighting the importance of particularity to ethical thinking.

My exploration of Asad has limited aims. I do not look to endorse his position on AHI. Nor will I dissect, and thereby deny or corroborate, every claim he makes in his genealogy of modern humanitarian drives and its inextricable ties to so called "Western" patterns of thought. I explore Asad's thought in order to trouble the binary between moral universality and moral monologicality that inquiries into the ethics of AHI (like Hardt and Negri's, for instance) seem too often to assume. Asad's analysis offers a critique to AHI that, like Hardt and Negri, resists easy assumptions of universal morality to justify AHI.

Rather than singularities, Asad argues that “cultures are not (and never were) unchanging, that they have always drawn from and been dependent on one another, that they have now (and have always had) internal lines of disagreement.”⁶⁶ I will explore Asad’s view on cultural identity and morality, its relationship to religious patterns of thinking. I argue that Asad’s articulation of the particularist challenge to AHI at least opens the door to morally acceptable external influences (including, I argue, AHI). His view of cultural identity formation differs from Hardt and Negri’s conception of cultures as singularities. For Asad, cultures form in dialogue with others. Asad’s articulation of the particularist challenge to AHI should be preferred to Hardt and Negri’s because it allows for critique, judgment, and at least the possibility of condemning culturally based atrocity in a way that Hardt and Negri’s articulation, if taken to its logical end, cannot.

Asad does not view cultures as incommunicable singularities on the international landscape, but rather as dialogical entities formed by constant conversation with surrounding societies and other elements of the global environment. This means his challenge to AHI proceeds along a much different train than that of Hardt and Negri. Nevertheless, like Hardt and Negri, the notion of moral particularity, as opposed to the assumption of moral universality, plays a significant role. Like Hardt and Negri, Asad is deeply aware of the power of the subjective turn, the privileging of the notion of “authenticity,” and its ramifications on ethics, human rights, and AHI.

Unlike Hardt and Negri, however, Asad does not reject out of hand the ability to pass judgment on other cultures. Indeed, Asad affirms the fact that one may even make this judgment

⁶⁶ Talal Asad, "What Do Human Rights Do? An Anthropological Enquiry." *Theory & Event* 4, no. 4 (2000). muse.jhu.edu/article/32601.

on the basis of what one believes are “universal moral criteria.” Discussing the morality of the subjective turn he argues:

The politics of authenticity does not *in principle* exclude the willingness to acquire new ideas and practices. Its concern is with the manner in which these things take place. It rests on the claim to intellectual independence in assessing proposed ideas and practices as opposed to a chosen elite’s promise of redemption. It says, in effect: Yes, you are entitled to disapprove of other people’s way of living, to judge them on the basis of universal moral criteria.”⁶⁷

However, while true cultural authenticity cannot curtail judgment since one culture may authentically believe its values are universal, cultural authenticity as an ethical priority limits the actions one may take based on one’s moral judgments. One may think that the actions of another culture are wrong, even “nefarious,” but absent any external and absolute ethical yardstick, one may not justify any actions to forcibly impose one’s judgments upon others. This principle barring coercion used against another culture based on one’s own moral disapproval is a central feature of Asad’s thinking and his critique of AHI.

He makes clear that disapproval of another culture’s values or practices “does not give [one] a right to intervene *forcibly* in their lives [i.e. those cultures with whom one disagrees], to suppress what they regard as authentic to them. Such a right issues from a judgment about the limits to your toleration, a moral judgment that depends on how well you understand particular social circumstances and how wisely you respond to your own changing experiences. The more serious the matter, the more difficult the judgment will be — in some cases you may have to conclude that you do not know whether it is right or wrong to intervene in a certain way.” Asad’s position on cultural authenticity, while it does not preclude judgment, demands a certain amount of humility and the recognition of the limitations of one’s moral perspective.⁶⁸

⁶⁷ Ibid.

⁶⁸ Ibid. Emphasis mine.

More importantly, it implies that one must be constantly self-critical about one's moral assumptions and how they arise from, as he terms it, "how well you understand particular social circumstances and... your own changing experiences." This self-criticism and ability to shift one's understanding based on improved understanding is a crucial piece of Asad's critique of AHI. AHI is a particularly pertinent instance in which, for Asad, something that rests on invocations of "universal moral criteria" is, in fact, indebted to a particular, time and culture bound legacy. Asad develops his challenge to AHI along these lines. It is a call not to abandon all judgment, but to approach judgments humbly and to curb one's desire to forcibly intervene to "correct" the values and practices of another culture because one recognizes the limitations of perspective.

In his seminal essay, "Reflections on Violence, Law, and Humanitarianism,"⁶⁹ Asad does not focus his critique of AHI on the universal morality of a global order and its erasure of cultural and thus moral particularity. Neither is Asad concerned, as Hardt and Negri are, with the rise of a new form of supranational global hegemony (i.e. an Empire) and its totalizing project. Quite the opposite. He is rather conscious of the ways in which the concepts like the "human," "humanity," and "humanitarianism" obscure their descent from a particular period and culture, masquerading as universal and a priori ideas. Asad is certainly not the originator of this observation. Indeed, Michel Foucault famously declared that "man [i.e. humanity] is only a recent invention, a figure not yet two centuries old."⁷⁰ Asad's critique in "Reflections on Violence, Law, and Humanitarianism," is more pointed, however, than simply noting that humanity is a constructed concept with a pedigree traceable to Western Europe. He argues that

⁶⁹ Talal Asad, "Reflections on Violence, Law, and Humanitarianism," *Critical Inquiry* 41 (Winter 2015).

⁷⁰ Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (New York: Routledge, 2005), xxv.

violence in the form of AHI is not simply justified by appeals to “humanity” and “humanitarianism,” but that a deeper and more organic relationship exists between the notion of humanity that, though secular in modern society, descended from Christianity and its views about the intertwinedness violence and benevolence.

Unlike Menon, Asad’s primary concern over AHI is not purity of motives, or even the inextricability of pure humanitarian motivations from their execution by states with particular interests. AHI is not a “perversion of genuine humanitarianism” in any way. Rather, Asad argues that “the exercise of violence is intrinsic to the modern concept of the human” and that AHI is an inheritance from disparate and sometimes contradictory currents of thought originating in early modern Western Europe and which was perpetuated across the ocean in the United States.⁷¹ Asad argues that the notion of human rights norms that legitimate violence descend from this particular context and from within it “ a complex genealogy...in which compassion and benevolence are intertwined with violence and cruelty, an intertwining that is not merely a coexistence of the two but a mutual dependence of each on the other.”⁷²

Asad’s exploration of the sources of modernity, its concept of the human and humanitarianism, and its relationship to AHI are wide ranging. Indeed, so wide ranging that Aamir R. Mufti, in his response to the essay, characterizes it as a “far ranging and hugely ambitious essay, pointing in numerous directions that have had to be left unpursued given its scope as an essay, and the implications of various aspects of its arguments have to be mostly surmised.”⁷³ Given the intellectual scope of Asad’s essay, I focus on two distinct, but interrelated themes of his exploration. First, I examine Asad’s thoughts on the legacy of Christian notions of

⁷¹ Asad, “Reflections on Violence, Law, and Humanitarianism,” 393.

⁷² *Ibid.*, 390-391.

⁷³ Aamir R. Mufti, “A Response to Talal Asad’s “Reflections on Violence, Law, and Humanitarianism,” *Critical Inquiry*, Vol. 41, No. 2 (Winter 2015), 429.

benevolent violence and its influence on the secular concepts of “humanity,” “humanitarianism,” and their authorization of AHI. Second, I briefly explore his account of European encounters with foreign cultures (including encounters with the New World which this chapter began) and the ways in which these encounters drove the formation of secular accounts of a morality of violence, including those that inform modern AHI. The first exploration demonstrates the inescapability of particularity even for justifications of AHI, while the second exploration offers an alternative vein of critiquing AHI that does not require the positing of cultures as closed systems, that is, singularities.

Asad is clear that he is “not claiming that today’s militarism should be seen as a direct descendent of medieval attitudes, still less as Christianity in disguise...Today, the war is conducted in the name of humanity, and it is secular law not theology that protects humanity.”⁷⁴ Asad acknowledges that appeals to divine command or divine order are no longer acceptable justifications for humanitarian violence. Rather, justifications are vested in the supposed consensus of secular international law. Nevertheless, Asad argues that the concept of the human and its authorization of violence in the name of humanitarianism, that is AHI, is indebted in particular to these specifically Christian strands of thought that arise out of a culturally and time bound moral location. What is crucial then to take from Asad’s genealogical account is that the central moral tension of AHI is not, as Hardt and Negri seem to understand it, opposition between universal norms and particular cultural moralities. Asad’s genealogical work points out the inescapability of particularity and perspective, even for norms that claim universality. Importantly even such perspectives are not purely internal or *causa sui*, but indelibly formed out dialogue with Otherness.

⁷⁴ Asad, “Reflections on Violence, Law, and Humanitarianism,” 425.

Asad asserts that “one of the meanings of humanity that goes back to antiquity is treating others kindly (humanely).” It is from Christian notions of benevolence, he argues, that modern moral culture “provides the motivation for varieties of humanitarian action in the modern world, including international rules for military engagement, the forcible ending of state-led atrocities, and the humane treatment of prisoners.”⁷⁵ Asad is clear that “being kind isn’t always understood as being nonviolent.”⁷⁶ Asad notes that in Christendom violence was seen as a viable means of expressing love both for God and, crucially for the concept of humanitarianism, the neighbor. Jonathan Riley Smith, whom Asad references on this point, notes in his analysis “Crusading as an Act of Love” several instances in which the taking up of arms was viewed as a living out of the principle to love one’s neighbor. One particularly pertinent example of this is found in Alexander III’s 1169 statement that “it would be difficult to find a field of action in which...charity could be expressed with more glory with regard to virtue, and with better results with regard to rewards, than in aid to relieve the needs of the Church in the East and the faithful of Christ, by defending them against the onslaught of the pagan.”⁷⁷ Asad notes that St. Augustine, the venerated doctor of the Church, also “taught that punishment meted out to sinners must always be infused with love.”⁷⁸ I add that Augustine’s thought not only requires that punishment be infused with love, Augustine argues that killing an enemy in war may be an act of love in itself. He compares a father’s act of disciplinary love to the waging of war in his letter to Marcellinus:

[T]here is assuredly no diminution of a father's love; yet, in the correction, that is done which is received with reluctance and pain by one whom it seems necessary to heal by pain. And on this principle, if the commonwealth observe the precepts of the Christian religion, even its wars themselves will not be carried on without

⁷⁵ Ibid., 389-390.

⁷⁶ Ibid., 397. The parenthetical (humanely) is Asad’s own clarification of the meaning of “kindly,”

⁷⁷ Jonathan Riley Smith, “Crusading as an Act of Love,” *History*, 1980, Vol. 65, No. 214 (1980), 184.

⁷⁸ Asad, “Reflections on Violence, Law, and Humanitarianism,” 397.

the benevolent design that, after the resisting nations have been conquered, provision may be more easily made for enjoying in peace the mutual bond of piety and justice. For the person from whom is taken away the freedom which he abuses in doing wrong is vanquished with benefit to himself; since nothing is more truly a misfortune than that good fortune of offenders...⁷⁹

For Asad, the connection between violence and benevolence, war and acts of charity is so venerated, influential, and lasting a figure as Augustine demonstrates that these connections have a high theological pedigree in Christian thought and those strands of thought which draw upon it.⁸⁰ In other words, the connection between benevolence and violence is not simply a self-serving reinterpretation of theology to fit the political exigencies of a uniquely violent period like the Crusades. Violence may be charitable because it, on the one hand, is an act of love for those under threat, as Pope Alexander III points out. As Augustine notes, violence may even be an act of love toward an enemy because it chastises them away from further sin. Augustine does not mean the use of force to be a punitive act or even an act that moves toward a corrective justice, that is to right the wrongs committed by an unjustly warring society. Augustine emphasizes that a just war undertaken by a just society against an unjust one is a benevolent act that aims, in love, to improve the character of an unjustly warring society in the same way as a father chastises a child.⁸¹

⁷⁹ Augustine, "Letter to Marcellinus," Chapter 2, section 14. <https://www.newadvent.org/fathers/1102138.htm>.

⁸⁰ Asad focuses here entirely on the Christian Just War Tradition to illustrate the connection of violence and benevolence in the lineage of Western thought. He fails to address what I argue is an equally strong current of pacifism running through Christian thought. Prominent Christian thinkers from early church fathers like Justin Martyr, to Reformation figures like Menno Simons, to modern figures like Martin Luther King, Jr. have rejected the use of war and violence as a means of seeking justice or even the curbing of sin. See Justin Martyr, *First Apology*, Chapter 39, <https://www.newadvent.org/fathers/0126.htm>; Menno Simons, "Reply to False Accusations," in *Christianity and Modern Politics* ed. Louisa S. Hulett (Boston: DeGruyter, 2021), 342-343; Martin Luther King, Jr. "Beyond Vietnam" in *The Martin Luther King, Jr. Papers Project at Stanford University* (Stanford, CA: Martin Luther King, Jr. Papers Project, 2002). <https://kinginstitute.stanford.edu/encyclopedia/beyond-vietnam>.

⁸¹ Though Asad makes no mention of his work, the modern theologian Nigel Biggar's analysis of Augustine lends credence to Asad's understanding of Augustine's view of a just war as an act of benevolence toward the unjust, one aimed at the improvement of the unjust society. Commenting on Augustine's letter to Marcellinus cited above, Biggar argues that, for Augustine: "the just warrior loves the unjust aggressor insofar as he withholds himself from vengeance, commits himself to benevolence, and so uses violence to punish him 'with a sort of kind harshness',

Though the specifically Christian valence is no longer at play in modern conceptions of “humanity,” one residual effect of the Christian legacy according to Asad is the tendency to view human beings not as static creatures (or by extension, static cultures), but as improvable-- “sinners capable of being saved.” The secular translation of this Christian viewpoint on the human being is that “mankind is seen as twofold: on the one hand there is what we can call, anachronistically, humanity, and on the other there is potential humanity, and the way from the one to the other is made possible by reaching out with charity and chastisement to those who need it.” This is, for Asad, a critical carryover from the discourse of war in the Christian period of Western Europe to “post-Christian military humanism,” though the latter posits “humanity’s moral independence from God.”⁸²

The influence of Christian concepts of humanitarianism should not be underestimated in Asad’s analysis. However, the emancipation of the concept of “humanity” from the moral dictates of Christianity, the drive to secularization, is also seminal in the development of modern humanitarianism and AHI. Asad traces this drive to secularization to the Renaissance thought and the roughly contemporaneous “age of exploration” that kicked off European adventures in imperial colonization. Asad argues, “that Renaissance humanism ushered in the beginning of a secular vision of universal order in which man was the sole agent and humanity the central idea.”

This was in part driven by, “[t]he European voyages of discovery and the map-making

doing him the service of constraining him from further wrongdoing and encouraging him to repent and embrace peace.” Biggar diverges from Asad, in a significant way, however. Asad offers his genealogy of benevolent violence in several essays to combat what he sees as the problematic assumption that humanitarian violence is a matter of “rational democrats from the West [i.e. nations and institutions historically descended from the Christian tradition] react[ing] to destructive terrorists from the East [i.e. persons from Muslim-majority societies].” See Talal Asad, *On Suicide Bombing* (New York: Columbia University Press, 2007), 15. For Asad, the Christian legacy of humanitarian warfare and violent benevolence lacks self-awareness or the capacity for self-criticism. Biggar, however, argues that “the [Christian] doctrine of just war insists what just belligerents understand what they are doing as a policing action of *one set of sinful creatures to limit and repair the wrongdoing of another set*—and not as the crusading action of the righteous upon the unrighteous, or the godly upon the infidel.” See Nigel Biggar, *In Defence of War* (Oxford: Oxford University Press, 2013), 61, 72. Emphasis mine.

⁸² Asad, “Reflections on Violence, Law, and Humanitarianism,” 398.

techniques that flourished in the sixteenth and seventeenth centuries,” which Asad claims “gave Europeans a panoramic view of the globe as the “habitation of humanity.” In turn, this cultural context informed the “skepticism of Renaissance humanists like Jean Bodin, Justus Lipsius, and Michel de Montaigne,” that in turn led to a decisive step toward the full toleration of religious difference.”⁸³ Though it was not a full endorsement of religious toleration nor the equality of moral systems, my analysis of Vitoria above demonstrates that encounter with the new world was a driving force toward the recognition of other possible moral viewpoints, if not their full acceptance as equal to the Christian view.

Asad claims that encounters with the native inhabitants of the Americas spurred the eventual development of secularity in the West. According to Asad, the immediate action of the European interlopers in its most benign form was to work at “conversion” of the inhabitants to European ways of thinking. This drive to conversion continued to manifest in the colonial efforts of the 19th century, eventually losing their direct connection to Christianity and attaching themselves instead to the notion of “civilization.”⁸⁴ Asad argues in another essay, that “In the nineteenth century and the first half of the twentieth the expansion of European law in the Third World — its growing universalization — was openly recognized as an instrument of cultural transformation described first as “civilization” or “Europeanization” and then as “development” or “modernization”, always linked to some vision of a humanity redeemed by its chosen elite.”⁸⁵ What Asad’s genealogy of cultural encounter and its connection to the development of secularism demonstrates is the continued power of the notion of “potential humanity” and the remaining connection between secular humanitarianism and Christian notions of the redemption

⁸³ Asad, “Reflections on Violence, Law, and Humanitarianism,” 395.

⁸⁴ *Ibid.*, 399.

⁸⁵ Asad, “What do human rights do?”

of sinners. What is also apparent, given the mode and method of European conversion in the Americas, and the colonial domination of the 19th and 20th centuries is the view of violence to achieve the supposedly benevolent end of driving all human beings, and the species itself, toward the teleological end of “potential humanity.” Asad cites, for instance, the priest Bartolome de las Casas, even while he called for the humane treatment of the New World’s natives, nevertheless agreed with many of his compatriot conquistadores that the natives should rightly be subject to Spanish customs. Though Asad does not explore de las Casas in detail, his use of de las Casas to illustrate the connection of Christian conversion to the secular notion of potential humanity is plausible. For de las Casas the tractability of the natives and their receptivity to Catholic rites and morality was one of their principal virtues. De las Casas may perhaps rightfully be viewed then as a progenitor of the notion of “potential humanity.”⁸⁶

Despite its connections to European Christianity, the notion of potential humanity is disconnected in the contemporary context of human rights and humanitarianism from its Christian origins. However, modern secular conceptions continue to be informed by its roots in colonial encounters and colonialism's inextricable ties to the culturally Christian West. Nevertheless, while modern society draws the notion of an improvable human being from Christianity, the independence of this human being and its standard of improvement from a divine framework has significant ramifications on ethics. Asad does not leap to implying that the absence of God means that a culture’s own moral system is ethically privileged as an appropriate or adequate standard. The modern conception of the human being divorced from God can only make a more limited claim that “each person’s desires have the right to be treated as seriously as those of others.” Asad argues that the divorce from a reference [in this case the concept of

⁸⁶ Bartolome de las Casas. *A Brief Account of the Destruction of the Indies*. (Project Gutenberg E-Book, 2007), 3. http://www-personal.umich.edu/~twod/latam-s2010/read/las_casasb2032120321-8.pdf.

humanity from the Christian Tradition] highlights the problem of moral perspective, a problem that Asad does not purport to solve. He means only to point it out. “In modern society,” he says, “what criteria are appealed to in given cases to determine that the treatment is equal in given cases, that the right to equality is being respected, is complicated of course; the general rule that everyone has an equal right to respect does not by itself tell us how each man’s failings are to be dealt with in particular situations—whether kindly or punitively. The criteria for deciding this are culturally diverse; how they are used to bolster particular arguments varies.”⁸⁷ For Asad, the transposition of the notion of “potential humanity” from its Christian roots into modern society is a problematic feature of AHI. Though the philosophical underpinnings of Christian consensus are rightly removed, Asad argues that “the mutual embrace of compassion and violence...continues as a strand in post-Christian military humanitarianism,” one that is problematically asserted though its undergirding rationale has fallen by the wayside.

Asad is clear that his investigations of violence and humanitarianism in “Reflections on Violence, Law, and Humanitarianism,” and elsewhere in his corpus should not lead to the rejection of calls for the reform of societal norms, especially one’s that seem harmful according to a “standard of universal concern.”⁸⁸ Speaking specifically of Western countries’ interactions with “so-called Islamic civilization” he admits that “reform is certainly being demanded by [Muslim-majority nations’] populations” even while “Western countries speak of the overriding need for reform” in those same nations. These calls for reform are not improper, but he highlights that reform is “needed no less in Europe and the United States, *not the least in the many ways that their policies impinge on the Middle East.*” Such an admission is a drastic departure from the perspective of Hardt and Negri which centers of cultures and societies as

⁸⁷ Asad, “Reflections on Violence, Law, and Humanitarianism,” 398.

⁸⁸ Asad, “Reflections on Violence, Law, and Humanitarianism,” 391

singularities. Asad is instead wary of the “idea of autonomous civilizations,” despite his admission that the notion of autonomous civilizations as “difficult to shake.” He stresses instead the international sphere is a “densely interconnected world-more so than ever before.” Asad does not, like Hardt and Negri, posit a version of the particularist challenge that precludes any valid external call for a society to revise or reform problematic cultural norms. However, neither does he provides any answers for how to judge or execute these reforms. He stresses that his exploration of the genealogy of humanitarian violence, especially Western led humanitarian violence, simply demonstrates that violence that was historically deployed to promote “freedom (that is to implement the benefits of Western style democracy and human rights norms) “is today facilitating a creeping unfreedom.”⁸⁹

Slavica Jakelic, responding directly to “Reflection on Violence, Law, and Humanitarianism,” notes that Asad’s “preoccupation with a secularized Christian and Western story of human-humanism-humanitarianism,” seems to miss “ongoing, creative, and complex contemporary engagements with the ethics and practices, promises and ambivalences of all humanistic projects—engagements that can and do inform the ways in which humanitarianism is being envisioned, enacted, and critiqued.” These efforts according to Jakelic are “chastened humanistic dispositions, which not only attempt to avoid the dehumanization or exclusion of others...[and] affirm the responsibilities we have to one another as well as to the non-human world.”⁹⁰

Jakelic is correct that Asad’s genealogical work fails to take the constructive step of thinking though how “each man’s failings” may be addressed amidst the principle of “equal

⁸⁹ Asad, *On Suicide Bombing*, 15.

⁹⁰ Slavica Jakelic, “Many Humanisms, Many Modernities: Contesting Talal Asad’s Anti-Humanist Critique of Humanitarianism,” *Contending Modernities*, University of Notre Dame Keough School of Global Affairs 19 May 2016. <https://contendingmodernities.nd.edu/theorizing-modernities/contesting-talal-asads-anti-humanist-critique/>.

respect.” However, Asad’s focus is not on this constructive project. True to form, his genealogy of the idea of the “human” and its corollary concepts of “humanity” and “humanitarianism” is a critical project, one that demonstrates why and how disparate threads come together to justify and uphold the connection between benevolence and violence. For Asad, these intellectual and historical strands come together to normalize military humanitarianism [i.e. AHI] despite its many moral contradictions. This contextualization has always been Asad’s intent, not the putting forth of a constructive framework. Asad has been clear about the limited aim of his critique on human rights in general. He says: “human rights discourse, with its emphasis on the required autonomy of rights-exercising individuals, represents a universal ideal of justice. This historical origin does not invalidate human rights, of course. People outside Euro-America have welcomed them despite that origin — many even because of it. But that origin, as well as the continuing inequality in the world today, puts them in perspective and helps to explain some aspects of their unequal thrust.”⁹¹

Conclusion

Pointing out the paradoxes and the particular origins of modern AHI and the modern humanitarianism that drives it is theoretically useful. It demystifies the notion of universal human rights and AHI as something not simply pulled out of a metaphysical or intellectual ether, but rather as notions with a concrete history and a traceable genealogy. Though they come from significantly different positions on the nature and formation of cultural values and identity, both Asad and Hardt and Negri point out the inescapability of particularity and the limits of one’s

⁹¹ Asad, “What do human rights do?”

moral perspective. Both Asad and Hardt and Negri present a particularistic (as opposed to universalistic) account of morality that is deeply contextual, cultural, and fluid. Both perspectives are thus skeptical of moral frameworks justifying the imposition of human rights norms, especially by the use of force. Both seem to favor a “live and let live” approach regarding the establishment and enforcement of international norms that deal with facets of indigenous culture and values. However, in cases where cultural biases lead to oppression or even gross human rights abuses, such perspectives are problematic because they are not so much “live and let live” as they are “live and let die.” We continue to live in a world where mass atrocities are ongoing.

Even Asad acknowledges that there exists a familiar moral imperative to “reduce suffering” driven by the “horror” of the suffering we see. Asad’s work challenges the universality of this impulse of benevolence and, more importantly, the manner in which it manifests philosophically and politically, he nevertheless admits that a “standard of universal concern” is not therefore “meaningless.” Our reactions to that concern and how it is employed in the international sphere must simply be interrogated.⁹² Asad’s inability to move beyond highlighting the problem of assuming humanitarian violence/AHI is predicated on universal moral norms can impede the relief of the most devastating forms of suffering caused by the most heinous acts of collective violence—violence that even Asad seems to admit should somehow be addressed.

On the one hand, concerns over particularity and the perceived incompatibility with the exigencies of culturally rooted humanitarian crises may cause a potential intervening force to be unwilling to undertake the necessary actions required to achieve the long-term protection of

⁹² Asad, “Reflections on Violence, Law, and Humanitarianism,” 391.

vulnerable populations. On the other hand, concerns over particularity and the priority of place it occupies as a ground for ethics after the subjective turn may also lead to a disregard for moral constraints altogether. This may occur if philosophical frameworks used to evaluate humanitarian crises are viewed to be too abstracted from the exigencies of heinous violence and ill-equipped to respond to prima facie horror presented by mass atrocities. The former can lead to paralysis or, worse, callousness in the face of extreme human suffering, the latter to the use of AHI as an excuse for frivolous conflict or for remaking world society in the image of a powerful hegemon.⁹³

The urgency of humanitarian action, including the seeming necessity of AHI, has created a cottage industry of those working to dismiss or sidestep the particularist challenge to AHI. In the next chapter, for instance, I explore attempts to ground both human rights and the AHI sometimes required to secure them by demonstrating that there is a metaphysical order or set of human experiences that transcend the particular upon which certain rights and the instruments needed to secure them may be grounded. I will argue, however, that these efforts ultimately fail and that both a metaphysical order and any human experience cannot escape mediation by the particular, that is their interpretation informed by the particularity of one's context.

With the problem of suffering and the drive to relieve it in mind, however, my own work picks up where the problematization of AHI that particularity presents leaves off. I aim to create a moral framework not only for judging of another culture's acts from a limited perspective (which Asad admits is possible), but also for acting upon those judgments. I explore AHI specifically because it is the most extreme means of acting upon one's moral judgments of the practices and values of another culture. Following the concerns of the particularist challenge, I

⁹³ Terry Nardin aptly terms this "humanitarian imperialism." See Terry Nardin. "Humanitarian Imperialism," *Ethics and International Affairs* 19 no. 2 (September 2005), 26.

look to do this in a manner that nevertheless embraces particularity and humbly admits a limited perspective as an ethical starting point. Asad's more limited critique of AHI and his conception of societal identity as dialogical are crucial for this project. Besides hewing closer to the manner in which societal and cultural identity and values form than the singularities Hardt and Negri present, a dialogical view of cultural identity opens culture to outside influence. Without this openness, the paradox of culturally based atrocity would be impossible to navigate, leaving both theories of AHI and, more importantly, victims of violence without moral grounds for hope or relief.

Chapter 2: Questioning the Universal Character of Human Rights Norms

Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain those rights or keep them. Our strength is our unity of purpose. To that high concept there can be no end save victory.¹

– Franklin D. Roosevelt

The Good War

My grandmother Luz, was a 4-year-old girl when Japan invaded the Philippines. For all of my grandparents in the Philippines, like so many of their generation across the globe, the war was devastating. For Luz’s family, the greatest sorrow came from the death of her eldest brother, affectionately called “Ben.” Ben was a Philippine Scout in the United States Army. Ben perished early in the conflict when the Japanese forced him and thousands of his comrades to march 70 miles without food or water through the Philippines’ punishing terrain and stifling heat. The Bataan Death March as it is commonly known today was a particularly heinous war crime. Making something so simple as a step, something so basic to human function, into a form of torture is beyond the pale of even the normal violence of war.

Her brother’s courage made Luz’s family a particular target of the Japanese during the occupation. But it also galvanized their hope and faith in an American rescue. For my grandmother, there was no doubt that the United States would come and put an end to Japanese tyranny and abuse. In one particularly poignant moment, my great-grandmother, who was a century old when she related the story to me as a young boy, told me how terrified and proud she

¹ Franklin Roosevelt, “President Franklin Roosevelt’s Annual Message (Four Freedoms) to Congress (1941)” (speech, Washington D.C., January 6, 1941). <https://www.archives.gov/milestone-documents/president-franklin-roosevelts-annual-message-to-congress>.

was when Luz as a little girl stood on a rock by their home and began singing “God Bless America” to passing Japanese troops. Her fears were justified as Luz’s performance was ended by a Japanese soldier who began to beat her with the butt of his gun. The rifle may have stifled her song, but Luz’s faith in a rescuing force would be rewarded. In 1945 she would greet the joint Filipino-American Army and celebrate Allied victory.

To my grandmother, the Second World War was and remains the quintessentially “good war.”² For her it was a conflict fought for more than national interest, more even than the liberation of occupied territory. As a child who lived through the harsh reality of occupation, who mourned a brother tortured and murdered for no purpose but cruelty, the war came to represent a life and death struggle of decency against atrocity. For Luz, who would go on to involve herself in aid work across her country and the globe, victory in the war enshrined in her mind the principle that vulnerable populations facing cruelty should have powerful allies that stand ready and willing to fight for the basic and universal human rights, not just of the fellow citizens of their nation, but for their human siblings suffering abroad.

As international society reordered itself after the disruption of the Second World War, it seemed that the world shared my grandmother’s sentiments. The United States, her rescuing nation, took a leading role in channeling the post-war spirit of cosmopolitanism and cooperation into institutional support for international organizations and norms. Calls to protect human rights had particular purchase in the international sphere after the horrors encountered by the Allies as they liberated formerly Axis occupied territory. It was commonly understood that many of the

² I take this term from Studs Terkel’s seminal work, *The Good War: An Oral History of World War II* (New York: The New Press, 1984). Terkel’s book focuses on accounts of common persons who lived through the war, its impact on their lives, and their impressions of its import.

worst aspects of the war were fueled by racial and cultural prejudice, bigotry, and a concern for one's nation over all other considerations.

The European Holocaust and the brutality of Japanese occupation in Asia were manifestations of this racism and ethno-nationalism that were considered (and continue to be considered) to be beyond the pale of even most forms of violence. Thus, despite their cultural and ideological differences, many of the nations of the world banded together during the Second World War to resist the Axis forces. More importantly, they built international institutions to prevent and protect against the recurrence of the horrors they witnessed.

Historian Michael Bess argues that Axis atrocities “crossed a qualitative threshold, into a new level of evil.” Bess notes that even grossly immoral acts of war committed by the Allied powers against civilians like city bombing and, of course, the use of atomic weapons against the citizens of Hiroshima and Nagasaki at least “still formed part of a military campaign aimed at destroying the German and Japanese ability to wage war.” These actions are lamented as necessary and justified as taking lives in order to save more. In contrast, stories of Nazi death camps and Imperial Army death marches are whispered as warnings to future generations of how wanton the human drive to violence can become.³

The sight of German gas chambers, Japanese grenade pits, precious keepsakes and even gold teeth of the aged pillaged and piled unceremoniously, as well as babies bleeding on blades of bayonets remain the haunting images, not of war, but of genocide. Before World War II such a crime was so unimaginable, so unspeakable that it did not have a name until Raphael Lemkin, that tireless campaigner for post-war justice, so termed it in 1943. For Lemkin and for the institutions that would come to use the term he coined, genocide was not simply the murder of a

³ Michael Bess, *Choices Under Fire: Moral Dimensions of World War II* (New York: Vintage, 2008), 277.

mass of people. Physical extermination was not the defining criterion. “Genocide” encompassed more than this physical death dealing, but more importantly the systematic erasing of a group’s cultural identity. Genocide is not the murder of a person or even mass of persons. Genocide is the extermination of a people.⁴ Genocide is a loss of a culture, characterized by the destruction of a way of life, even if it one does not kill every member of the culture one exterminates.

The large body of international agreements and declarations pertaining to human rights adopted following the war was in large part motivated by the international community’s commitment that “never again” should genocide and other qualitatively similar acts of atrocity like forced sterilization, mass rape, and other forms of ethnic cleansing be allowed to occur. At the very least, they should not occur without being met with the collective opposition of the international community.⁵ World War II made it so that wars of rescue were no longer viewed simply as national causes celebre, mandates of faith as in a crusade or jihad, or even the white man’s burden. Rather the war drove the international community to codify human rights as an and the wars of rescue that enforced them into international law because they were integral to human society. For this global human rights regime, the Second World War served as both a moral motivation and paradigmatic case.⁶

Wars of rescue since World War II, however, have been less intuitively clear cut in their legality and the strength of their moral mandate. Unlike the rescue of the Philippines from Japanese occupation, for the most part wars of rescue waged since World War II were fought not for the purpose of helping one vulnerable society repulse a foreign aggressor or tyranny viewed

⁴ Samantha Power, *A Problem from Hell: America in the Age of Genocide* (New York: Perennial, 2003). 43.

⁵ Though the phrase, “never again” has been used as an oath from the earliest days of the post-War world. Baer and Sznajder record that the phrase was on large signs put up by those newly liberated at Buchenwald and that it is carved in 5 different languages at Dachau. See: Alejandro Baer and Natan Sznajder. *Memory and Forgetting in the Post Holocaust Era: The Ethics of Never Again Kindle Edition* (New York: Routledge, 2017). Loc. 322.

⁶ I will explore this idea in more detail below.

as somehow external to the culture. Instead, wars of rescue take the form of interventions into sovereign states when one segment of that state's society suffers atrocities perpetrated by another segment of the same society. Formally, these armed incursions have more in common with the aggressive invasions of the Second World War than they do the Allied campaigns for national liberation. They are inevitably violations of state sovereignty and constitute a contravention of the cultural conventions of a segment of that state's society, even while they seek to preserve the well-being and sovereignty of another societal segment of that state.

As I discussed in the previous chapter, the particularist challenges leveled to the post-war human rights regime pose a significant obstacle to humanitarian intervention and indeed, any wars of rescue. The growing body of scholarship surrounding more particular views of culture puts an appropriate check on the possible tendency of internationalism and universal value type thinking to descend into assimilation and subjugation to a hegemonic culture. It especially challenges the enforcement of hegemony by force of arms. Despite these difficulties, proponents of wars of rescue in the form of humanitarian intervention argue that it would be a moral mistake to simply set aside the human rights institutions developed in the post-war period.⁷

Proponents of the global human rights regime who support the use of force as a tragic but permissible measure for its enforcement argue that it is morally imperative that vulnerable populations subject to atrocity receive relief and protection. Humanitarian warfare is sometimes

⁷ Samantha Power, a former ambassador to the U.N. and current administrator of USAID, has strongly advocated for the moral necessity of intervention in genocides throughout her career as a government official and diplomat. Her work is quoted above. The prominent political theorist Michael Walzer, with whom later chapters in this book will deal in detail, is a strong proponent of humanitarian intervention, despite his admission that such actions are morally, philosophically, and practically hazardous. Beyond the West, Falah Mustafa Bakir, foreign minister of Iraqi Kurdistan has called for intervention on behalf of Yazidis in the ongoing conflict with the Islamic State. See: Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Perennial, 2003), Michael Walzer, *Arguing About War* (New Haven: Yale, 2004), Rebecca Collard, "The Yezidis—and the Kurds—Hope for U.S. Salvation in Iraq," *Time*, 13 August 2014. <https://time.com/3108554/yazidis-and-kurds-hoping-for-american-intervention/>.

necessary to alleviate the suffering of such populations even though it violates the sovereignty of a state. The universalistic assumptions of human rights are necessary and proper in order to provide a stand-alone standard to which vulnerable populations and their would-be rescuers can appeal when indigenous values fail to offer such protections, or perhaps even instantiate the violence against them. Especially in the face of atrocity motivated by some type of cultural bigotry, moral intuition and practical reason demand that some impartial reference point exist by which to judge (at the very least) the most extreme and wanton acts of violence of which human beings have not only shown themselves capable, but willing to perpetrate.

For proponents of the post-war human rights regime and of humanitarian interventions that enforce it, deconstructing the philosophical foundations and tracing the western precursors that inform the post-war global human rights regime may very well be an interesting intellectual exercise. However, for defenders of human rights in general and especially proponents of humanitarian warfare, the inescapable cries of the suffering demand that both the human rights protections widely agreed upon after the Second World War and the last resort use of war as a tool of rescue remain available tools of remedy. They are critical for the maintenance of international order and the fulfillment of the widely accepted moral imperative of caring for the most vulnerable around the globe. More importantly, whatever their genealogical roots may be within the scholarly discipline of intellectual history, proponents of the post-war global human rights regime and the institutions and structures built up to support it argue that the moral universality and bindingness of human rights protections are incontrovertible facts of human experience and moral psychology.

This chapter challenges the assumption, so crucial to the justification of humanitarian warfare or indeed any type of humanitarian coercion, that the human rights principles codified

after the Second World War are universal and incontrovertible facts of human moral experience. It focuses on the work of two figures, Johannes Morsink and David Little, whose work is prominent in the philosophical justification of the global human rights regime that arose in the aftermath of the Second World War. This global human rights regime (GHRR) continues to operate in the contemporary period. It is under the auspices of this regime that AHI is waged, judged, a justified. I turn first to Morsink.

The work of Johannes Morsink explores the historical and philosophical undercurrents surrounding the drafting of the Universal Declaration of Human Rights. He argues that human rights principles are grounded in metaphysics, inherent to the human being, and apparent to the common person through the workings of the common conscience of humankind. Morsink's work oscillates from historical to the philosophical, narrating the events and elucidating the moral patterns of thinking that informed the drafting of the Universal Declaration of Human Rights, one of the preeminent statements governing the understanding of human rights in the post-war world. For Morsink, the human rights principles contained in the UDHR and the measures to protect human rights that the document implies are matters of moral intuition.

My critique of Morsink's work focuses on the unreliability of moral intuition as a basis for moral judgment. While I do not dismiss moral intuition out of hand, I argue that a robust moral theory of moral judgment must provide an adequate theoretical framework for how moral intuitions, especially shared moral intuitions rise. The work of moral psychologist Joshua D. Greene provides such a framework, couching moral intuition as a facet of moral learning. Greene's theoretical framework for moral intuition notes that moral intuition as a facet of learning is unreliable both in situations where the circumstances that provide value feedback regarding the consequential benefits of actions shift significantly and quickly, as well as in value

conflicts arising in cross cultural contexts. I argue that contemporary human rights crises face both of these aforementioned issues, making moral intuition an unsure foundation upon which to build justifications for human rights, let alone their enforcement through armed intervention. The challenge of grounding human rights and the possibility of their enforcement is taken up by David Little, the second figure to which I turn.

The work of David Little agrees in many ways with Morsink's conclusion that human rights principles are universal and binding. Yet Little turns away from moral intuition and instead grounds this universality in what he argues is the common operation of human rationality when faced with atrocity. The repellent nature of atrocity is a rational reaction that is informed by human beings' common physiological and psychological response to pain, that is to avoid and relieve it. Little extrapolates from this common reaction into a moral imperative to avoid and relieve pain, especially in cases where it is arbitrarily inflicted on a terrible scale.

My argument against Little's grounding of human rights in human rationality stems from a deeper exploration of the moral psychology of pain. I juxtapose the work of Elaine Scarry regarding torture and Stanley Cohen regarding atrocity avoidance and denial with Little's work. Through this juxtaposition, I aim to demonstrate that the moral mechanics of human rationality do not necessarily respond to pain in the manner from which he extrapolates his moral imperative to avoid and relieve it. In general, I argue that only after an overview of the compelling features of the GHRR and its underlying logic is complete, can one understand why its oversights cannot be forgiven. The oversights of the GHRR should impel one to begin to strategize for its replacement as a force for alleviation of the suffering of populations placed at risk, which is the overall aim of this dissertation.

The Post War Global Human Rights Regime

The idiom of human rights rings familiar across much of international society and has become the primary focus of international law. International law once focused on coordinating the relations of states and adjudicating grievances in the areas of trade, treaty, or territorial claims. Occasionally claims originating from combat were raised in international courts, but such work was often settled in what amounts to international trials by combat rather than trials of law. Samuel Moyn points out, however, that “[t]oday it seems self-evident that among the major purposes-and perhaps the essential point-of international law is to protect individual human rights.”⁸ International law is no longer simply the province of providing predictability and the reduction of transactional costs for sovereign states associated with preparing for the unforeseen in international affairs.

The protection of individual rights and freedoms is so pervasive and powerful an idea that it permeates even the most closed and repressive regimes. Social movements push human rights under the threat of violence from their governments and other institutions of power. Ironically, even totalitarian regimes often at least pay lip service to the notion of establishing a society based on the well-being and rights of individual persons. The Democratic People’s Republic of Korea (North Korea) styles itself, “a genuine workers' state in which all the people are completely liberated from exploitation and oppression.” It claims that “The workers, peasants, soldiers and intellectuals,” who reside in North Korea, “are the true masters of their destiny and are in a unique position to defend their interests.”⁹

⁸ Samuel Moyn, *The Last Utopia: Human Rights in History* (Boston: Harvard, 2010), 176.

⁹ Democratic People’s Republic of Korea. “Official website of the Democratic People’s Republic of Korea. English language page,” December 04, 2020, <https://www.korea-dpr.com/>.

The impact of the idiom of international human rights came to full prominence only in the 1990s. Posner notes that this is when an international human rights “regime” became widely recognized as a legitimate aspect of international law. Posner argues that this international or, alternatively, what I have termed the global human rights regime, could fairly be conceptualized as an idea having some influence because “most nations had ratified most of the treaties” that codified into international law human rights principles. Posner writes that beginning in this period there was wide consensus that human rights should be respected, though he qualifies this claim by noting there was disagreement as to their enumeration, meaning, and applicability.¹⁰ What specific rights needed to be respected and the duties they entailed remained ill-defined.

Posner notes that “[s]ome legal theorists began talking about a global constitution or international bill of rights-higher law that superseded domestic law, and that states could not withdraw from.” Still other legal theorists made the case that “human rights had entered customary international law.”¹¹ Though this form of law is something short of a global constitution nor formally embodied in a singular treaty, respect for human rights was a binding legal principle because states explicitly declared or implicitly demonstrated through their practice consent and agreement to human rights norms. Humanitarian interventions as they exist in our contemporary period are justified, defined, and waged according to the paradigm codified during this period.¹²

The idiom of human rights, along with the propriety of interventions to protect them, gained prominence in the 1990s. However, the process of codifying human rights into international law began during the Second World War and is rooted in the experience of the

¹⁰ Eric Posner, *The Twilight of Human Rights Law* (Oxford: Oxford, 2014), 22.

¹¹ *Ibid.*, 22-23.

¹² *Ibid.*

atrocities of that war.¹³ I turn to the post-war lineage of the GHRR now because an exploration of its origin highlights the GHRR's emphasis on attaching rights to the humanity of individual persons irrespective of any other quality, its emphasis that human rights norms as universally valid, and its emphasis on respecting diverse cultural practices, forms of life, and moral values. This lineage and the ideological baggage that comes with it are proving practically and theoretically problematic in the contemporary period in light of the particularist challenge.

The ideological commitments and universalistic language used by the United Nations Charter, The Universal Declaration of Human Rights, and many of the other guiding documents that arose to guide the reconstruction of world order after the war stand in stark contrast to the Axis emphases on the centrality of race, nationality, and cultural superiority. Nazis Erwin Schulz and Rudolf Frercks (a juridical theorist and medical doctor respectively) summarized the Nazi position on the primacy of race and nation for the formation of social values in their defense of the infamous *Arierparagraph*. The *Arierparagraph* was a single section comprising a mere 3 sentences within the Civil Service Law passed by the Reichstag in April of 1933 during the early portion of Hitler's Chancellorship. The *Arierparagraph* removed and barred non-Aryan persons from civil service and other positions of power and responsibility in the Reich. The law was targeted specifically at Jews in governmental positions within the Reich itself.¹⁴

¹³ Political scientist Charles Beitz characterizes the Universal Declaration of Human Rights as a "moral touchstone," one that functions as a both "a standard of assessment and criticism for domestic institutions [of a particular society], a standard of evaluation for their reform, and increasingly a standard of evaluation of the policies and practices of international economic and political organizations. Charles R. Beitz. "Human Rights as a Common Concern." *American Political Science Review*. Vol 95(2). June, 2001. 269.

¹⁴ The full law in its English translation can be found at <https://pages.uoregon.edu/dluebke/Holocaust444-544/Arierparagraph.html>

In their *Warum Arierparagraph? Ein Beitrag zur Judenfrage*,¹⁵ Schulz and Frercks justify the necessity of the *Arierparagraph*. However, they go beyond taking up the question of justifying a single domestic law. They write:

[H]umanity finds its deepest meaning when the outward elements are determined by the character and spiritual characteristics that find their visible expression in race and nationality. No thought or feeling, if it is genuine and deep, can escape its racial boundaries. One of the fundamental principles of the National Socialist worldview is that there are not universal human principles, such as the Pan-European idea in politics or the idea of a human soup in racial terms. Judgments are only possible from life, which is racially determined.¹⁶

Schulz and Frercks make clear that the *Arierparagraph* is representative of the Nazi policy of Aryan, and particularly Nazi, ethnonational domination in the international sphere. Though the *Arierparagraph* itself affected only the internal governance of the Reich, the underlying ideology of which it was a specific manifestation rejected of policies of international inclusion and attempts at universal respect of cultures and peoples

Though the conflagration of conflict that consumed the globe to combat the Nazis and the other Axis powers stands as powerful counterevidence, Schulz, Frercks, and their Nazi compatriots truly believed that ethnonationalism was the proper basis for world order. They argued that: “in the long run, no idea is better suited to guarantee peace between nations than National Socialist racial thinking, which calls for the furtherance and maintenance of one’s own race and one’s own people.” Schulz and Frercks did add the caveat that specific ethnocentric policies were domestic in scope only. The international peace that would be achieved would come because the Reich would support “similar efforts on the part of other nations” and promote

¹⁵ German: “Why the Aryan Law? A Contribution to the Jewish Question”

¹⁶ E.H. Schulz and R. Frercks, “Why the Aryan Law? A Contribution to the Jewish Question” in Calvin College *German Propaganda Archives*, Grand Rapids, MI. <https://research.calvin.edu/german-propaganda-archive/arier.htm>. Accessed 16 May 2021.

a policy of “mutual respect which requires respect both for one’s own nation and that of others rejects the forcible conquest of other nations.” The Nazi affirmation of the principle of national as well as implied racial and ethnic sovereignty would prove hollow. This ideology led directly to the murder of millions in death camps and millions more on and off the battlefields of Europe and the Pacific.

Though the international order that would come about after World War II would also affirm the idea of national sovereignty, it is clear that sovereignty was predicated on an understanding that all cultures and peoples developed their values and practices according to the same basic lines of human conduct. It was assumed by all the framers of the post-war order that there exist certain moral principles that are widely held by persons and groups. These principles were understood to be the products of biological and psychological makeup universal to all humanity. The language of documents like the United Nations Charter and the Universal Declaration of Human Rights (UDHR), among other international legal instruments that were drafted in the wake of the war speak to this assumption as a safeguard against the particularist ethics offered by the Nazis.

Inherent Human Rights and the Universal Declaration of Human Rights

Among the post-war human rights instruments, the UDHR stands out as the moral and political guide star. It is the modern source of the understanding of foundational concepts of human rights discourse, concepts like “the human family,” “the conscience of mankind,” and perhaps most important of all, the understanding of human rights as inherent to the human person and universally binding. The UDHR’s statements that, “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,” and that, “disregard and contempt for human rights

have resulted in barbarous acts which have outraged the conscience of mankind” stand in stark contrast to the ethnonationalist claims of Schulz, Frercks, and their Nazi ideology. For the UDHR, the guarantor of freedom, justice, and peace—all things the Nazis claimed to be working towards both domestically and internationally—is not the promotion of the race and nation. From the blood and soil that is the central concern of Nazi political ethics and order, the UDHR argues that one’s status as a human person grants one certain rights and protections, without reference or consideration to nation, ethnicity, or tradition.

Johannes Morsink argues that the UDHR articulates a “doctrine of inherent human rights.” This doctrine comprises two major universal claims: first, is the metaphysical claim that human beings possess certain rights by virtue of their humanity without need for any reference to any state, nation, race, or ethnicity. Second, Morsink notes, is an implied epistemological claim “that ordinary people in any of the world’s villages or cities can come to know in a natural manner-unaided by experts-that people everywhere have the moral birthrights” referenced, though not specifically delineated, in the first claim. These two claims united in a doctrine of human rights, according to Morsink, “present[] us with a very important philosophical challenge.”¹⁷

The framers of the UDHR and the subsequent proponents of the global human rights regime they inspired knew that a truly universal doctrine of inherent rights required more than simply uprooting the possession of basic rights from membership in a particular race or nation.

The drafters of the UDHR, according to Morsink, de-coupled the possession of rights from a “transcendent system of natural law that was linked to God’s eternal law from which it got its authority.” The UDHR’s metaphysical commitment to the inherent nature of human rights

¹⁷ Johannes Morsink, *Inherent Human Rights: Philosophical Roots of the Universal Declaration* (Philadelphia: University of Pennsylvania Press.: 2009), 17.

instead maintains that human persons have “natural rights by virtue of his or her own nature,” and that the duties that human rights enjoin are bilateral rather than trilateral in nature. This is to say that the duties that human rights enjoin are, “not directly owed to God [or to a natural order], but to [human beings] themselves as possessors of these rights and as the subjects of their ruler.”¹⁸

Delinking the possession and binding nature of human rights from specifically religious sources ensured that human rights would not be associated with a single religious or cultural tradition. The move allowed religiously minded persons from diverse traditions to approach the tenets of the UDHR and “full-fledged justificatory doctrines of binding human rights” from what Lindholm calls “their own normative heartlands.”¹⁹ Importantly, however, providing a humanistic and specifically secular basis²⁰ for human rights made it, “easier to be an atheist or agnostic and still honor human dignity as expressed by adherence to...inherent natural rights.”²¹

Morsink notes that the UDHR refuses to locate the apparent dignity of the human person and the inherent rights it confers in any particular faculty. This differs from early philosophers like Aristotle who identified certain human powers like speech or rationality as faculties that set human beings apart from animals and thus constituted the core of human uniqueness—a uniqueness that granted special status within a preconceived natural order. Instead Morsink argues that the UDHR makes the possession of human rights a matter simply of birth.

The UDHR’s specific acknowledgment that inherent rights are conferred by virtue of birth and not capacity can also be read as subtle recognition that Nazi ideology centered not

¹⁸ Morsink, *Inherent Human Rights*, 25.

¹⁹ *Ibid.*, 30.

²⁰ The framers rejected proposals from the Brazilian delegation who wished to include language rooting human rights in religious propositions. *Ibid.*, 31.

²¹ *Ibid.*, 25.

simply on the ethnic aspects of race, but on a particular image of a “master race,” a twisted vision of an ideal human being. This ideology was not only ethnocentric in nature, but also radically ableist. Schulz and Frercks’s infamous pamphlet focuses on Jewish persons within the Reich and it is the abuse of this group of people under the Nazis that history has rightfully lifted up as the hallmark of human cruelty. However, history is clear that Nazi hatred extended not only to Jews, but also notably to the Sinti/Roma, Slavs, others they considered non-Aryan, and those physically and mentally disabled who the Nazi’s termed *lebensunwert*-life unworthy of life.²²

By locating inherent rights in birth rather than faculty, the drafters ensured that the rights regime they looked to establish could not be countermanded by arguments that particular persons were excluded from the protections of human rights due to their physical or mental states. It established a duty of care and fair treatment to members of the human family whose ability to advocate for themselves or express their political will is diminished.

The drafters and adopters of the UDHR framed their understanding of human rights according to the experience of their radical breach by the Nazis. For Morsink, this is more than simply a matter of historical significance, it is a matter of moral and philosophical significance. Morsink argues that the viscerally negative reaction much of the world had to Nazi human rights violations is a shared moral intuition. This shared intuition grounds the principles of human rights and those actions designed to promote and protect them. According to Morsink, the widespread reactions of moral outrage to the experience or stories of atrocity as well as the condemnation and punishment exhibited by the myriad international statutes are codifications of

²² Henry Friedlander, *The Origins of Nazi Genocide: From Euthanasia to the Final Solution* (Chapel Hill: University of North Carolina Press, 2000). 15.

a common “conscience of humanity” that points to the existence of an objective and, importantly, intrinsically shared sense of human morality.²³

The UDHR declares that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind[.]”²⁴ This statement demonstrates that the drafters of the UDHR were in agreement that an objective moral code existed for all humanity and, more importantly, that it was accessible, valid, and binding on human conduct. Morsink terms this “epistemic universality.” He argues that the fact that delegates from all over the world were equally repelled by the horrors the Nazis had perpetrated,” and that they were working to, “forestall a repeat of that kind of abuse of state power,” shows that “every normally healthy human individual has the epistemic equipment to discover that we all have human rights.”²⁵ Morsink contends that the recognition of rights by human beings comes from “the moral wrongs we [human beings] encounter” and that “to know that genocidal crimes and other gross human rights violations are always and everywhere radically wrong, one needs to witness or hear about only one of those abominations if that.”²⁶ The scale of atrocity experienced in the Second World War, both in terms of the level of heinousness and the widespread and collective effect it had on the international system, for Morsink, make the validity of human rights universally apparent across all ethnic and cultural lines.

Morsink admits that moral intuitionism is a highly contested philosophical concept. He notes that John Rawls’s highly influential framework of procedural justice takes moral intuitionism as its “main bugbear” in its effort to put forth a theory of rights grounded in notions

²³ Morsink, *Inherent Human Rights*, 98.

²⁴ United Nations. *Universal Declaration of Human Rights*, Preamble, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

²⁵ Morsink, *Inherent Human Rights*, 58.

²⁶ *Ibid.*, 60.

of rational reciprocity. For Morsink, any grounding of the UDHR and the normative regime of human rights it establishes as an extension of the Golden Rule [i.e. the common moniker by which rational reciprocity is often known] is a mistake.²⁷ Morsink admits that reciprocity has a place in international affairs.²⁸ However, he argues that reciprocity should have no place in the understanding of human rights or the reasons such rights are respected. Morsink argues that “It makes no sense for people A (or their government) to say that if the dictator of nation B commits crimes of genocide, people A will also no longer respect the lives of whichever minority or majority is the hated one within their territory.” Instead he claims that human rights are grounded in something so basic to human experience and so essential to being human that the rational consideration of interest need not play a part in its moral conception. The moral recognition that genocide is wrong and that other human rights should be respected is so deeply ingrained in human beings that it can be, and should be for Morsink, understood as a matter of intuition.²⁹

The experience of Nazi atrocity is central to Morsink’s counterargument to these skepticisms regarding moral intuitionism as a ground for human rights. He argues that “[t]he experience of radical evil with its attendant discovery of human rights cannot...be reduced to or be full explained by contemporary theories of procedural justice,”³⁰ and that to reduce “the voice of conscience to the dictates of formal reason *without remainder*, [robs] our rational capacities of their independent helpmate and watchdog.” For Morsink, grounding human rights in rational reciprocity without any reference to the check of conscience and moral intuition amounts to “epistemic reductionism.”³¹

²⁷ Ibid., 98.

²⁸ Morsink cites, for instance, the breaking of a bilateral treaty. He gives the example of a party breaching an agreement on fishing rights as license for another party to then refuse to honor its portion of the agreement. Ibid., 131.

²⁹ Ibid.

³⁰ Ibid., 59.

³¹ Ibid., 99.

The historical record lends support to Morsink's contention that human rights are a matter of universal moral intuition engaged and focused by encounters with atrocity and stories of atrocity. Examining the historical record, Morsink notes that:

From medical experiments, [the drafters of the UDHR] went straight to the right not to be tortured; from the slave labor camps attached to the ovens, straight to decent working conditions; from brainwashing in Nazi schools, straight to the right to development of one's personality without the interference of a sick state-sponsored ideology; from Jews being blocked from escaping Germany, straight to the right to freedom of movement across borders; and from the discriminatory Nuremberg marriage laws, straight to the right to marriage based on the consent of the parties, without state restrictions other than age. . . . While most delegates probably subscribed to the Golden Rule, they do not seem to have used that rule as a justificatory principle from which they deduced the rights they list in the declaration.³²

Morsink admits that while the historical record indicates no direct textual link between the UDHR and the principle of reciprocity, there nevertheless could be an underlying philosophical connection. He argues against this reading. Understanding human rights principles as justified by a rational process based on the principle of reciprocity makes respect for human rights a matter of an agent's desire for the security of their own well-being, including the rational consistency that comes with treating others similarly. According to Morsink this perspective on human rights principles "conflicts with and even negates the idea of inherent rights that are already present in the victim, ready to awaken our consciences before we reach out for the rule."³³

Morsink's account of the direct link between articles of the UDHR and the experience of atrocity as well as his argument against linking human rights principles to rational reciprocity

³² Ibid.

³³ Ibid., 119.

provide a coherent framework for understanding the thinking of the architects of the post-war international human rights regime. His textual analysis of the UDHR and its emphasis on human rights as inherent and afforded by birth support his contention that the UDHR represents not only legal or political positions, but a metaphysical stance on the dignity of the human person.

Morsink's view that the drafters of the UDHR relied on moral intuition to craft the document is consistent with his textual and historical analysis. Morsink's account is weakened by failing to provide a robust account of how and why moral intuitions in general come to be. Morsink only notes that our moral experience points to the existence of a realm of rights tied to the metaphysical status of the human being. However, he provides no account for how moral intuitions rise to the status of general moral, let alone ethical, principles. Additionally, Morsink fails to discuss how conflicting moral intuitions may be adjudicated, as well as how disparate courses of action, even if they are based on a similar moral intuition, may arise.

Against Moral Intuitionism

Morsink's perspective on the intuitive nature of human rights is in some ways supported by the work of Joshua D. Greene. Greene provides a robust account of how moral intuitions not only form, but how they may both be passed down across generations and become widespread. However, Greene's work also points to the dubiousness of relying on moral intuition in situations where cultural values provide a strong counterpoint to such norms or when the circumstances governing moral decision making are rapidly changing. I discussed early in the chapter that cultural values are resurging in importance and that the international sphere is undergoing a period of rapid change. Contemporary scholarship on AHI is conducted in

precisely the context in which Greene contends moral intuition is unreliable. Greene places moral intuition into an explanatory framework that understands moral intuition as a function of learning. Viewing moral intuition in such a frame bolsters Morsink's claims that the drafters of the UDHR and the architects of the post-war human rights regime could in fact be tapping into a transhuman realm of rights accessible through the intuitions of the human conscience. Greene differs from Morsink, however, in that his claim is not a metaphysical one. Though there may exist widely shared, even axiomatically universal, moral intuitions,³⁴ Greene rejects the implication that they necessarily point to a transcendental "universal moral grammar" that is a constituent feature of human reality.³⁵

Morsink's account of the philosophical underpinnings of the UDHR as reliant upon and evident of the sophistication of moral intuitionism is part and parcel of a long tradition emphasizing the philosophical sophistication of moral intuitions stretching back to Aristotle. Morsink's view of moral intuition is not that a human being, independent of any experience or tale of atrocity or oppression, would enumerate a list of human rights and wrongs. Rather, he claims that the shared revulsion to the horrors of the holocaust shared by the framers of the UDHR who came from diverse cultural and ideological background demonstrate that human beings intuitively recognize the inherent metaphysical dignity of other human persons. This is why the holocaust figures so prominently in his account of the drafting of the UDHR and the development of human rights principles. Rather than point to a pervasive and ever working sense

³⁴ Joshua D. Greene, "The rat-a-gorical imperative: Moral intuition and the limits of affective learning," *Cognition* 167 (2017), 66–77. Greene points, for instance to the consistent responses to the famous ethical dilemma of the trolley problem. He notes, "This is because they elicit responses that are, in some respects, surprisingly consistent across cultures (Hauser, Cushman, Young, Kang-Xing Jin, & Mikhail, 2007). More specifically, people from a wide range of cultures typically judge that it's worse to save five lives by pushing the man off the footbridge than by hitting a switch that turns the trolley onto one person. What's most interesting is that this consistency appears in the apparent absence of explicit teaching or accessible knowledge of the principles that govern such patterns (Cushman, Young, & Hauser, 2006; Hauser et al., 2007)."

³⁵ Greene, "Moral Intuition," 68.

of conscience, Morsink and thinkers of his ilk seem to view moral intuition, in the words of Greene, as a philosophical position that is, “sophisticated, flexible, and generally smart, *reflecting a lifetime of hard won experience.*” But Greene argues that this “hard won experience” that informs human moral intuition may even be beyond the lifetime of a single individual. Rather, it extends to the level of the social or even species.³⁶

These experiences are the building blocks of moral intuition and contribute to a process of moral learning. This learning need not be individual, but rather can be socio-cultural, or even understood at the level of species. Greene argues that, “[i]ndividual learning, social/cultural influence, and genetic influence all reflect trial-and-error learning. It is only the time scales and transmission mechanisms that differ.” He gives an example of species learning, the most removed from the individual experience of moral intuition as an exemplar: “an animal with an innate fear of its natural predators has benefitted from the trial-and-error experience of its ancestors (or would-be ancestors), and the lessons embodied in its instincts may be superior to whatever lessons it might draw from its own limited experiences.”³⁷

Greene’s perspective on moral intuition as a learned function at each of these levels (individual, socio-cultural, and species) provides a robust explanatory framework for how and why shared moral intuitions develop and provides a coherent theory for why the near universal moral revulsion to atrocity catalogued by Morsink in his account of the drafting of the UDHR existed among drafters from diverse sets cultures, situations, and ideological frameworks. The revulsion with which people from all over the world, especially the drafters of the UDHR and the UN delegates who adopted the Declaration, responded to the atrocities of the Second World War seemed to be almost instinctual, a reaction born more out of reflex than reason. Like the

³⁶ Ibid., 67-68. Emphasis mine.

³⁷ Ibid., 68.

experience of dealing with predators, Morsink's account of human experience with "radical evil"³⁸ such as the atrocities of the Holocaust hearken back to lessons learned so deeply that they are ingrained as a part of human society, if not genetically encoded into human nature itself.

Greene's view of moral intuition as learned behavior lends credence to the optimistic notion that moral intuition is reliable and can often be trusted—the core idea upon which Morsink bases his claims of the validity of human rights norms. However, Greene rightly notes that there are two situations when moral intuitions can become confused or become a source of strife between parties skeptical of conflicting claims of moral intuition. First, "intuitive decision-making is likely to fare poorly in a changing world...intuitions do poorly when the causal relationships between actions (in context) and consequences differ between the world in which the intuitions were acquired and the world in which they are subsequently deployed." Second, when the moral dilemmas faced are not a part of what Greene calls the "Me vs. Us" variety, but rather become issues of "Us vs. Them" moral thinking. In "Us vs. Them" moral dilemmas, common experience can no longer be relied upon to elicit common conclusions regarding moral norms. Both issues pose problems for conceiving of human rights as grounded in and justified by widely shared moral intuitions.³⁹

For modern humanitarian interventions, the first of Greene's caveats to the reliability of moral intuition is certainly at play. The world has changed rapidly since the drafting of the UDHR and especially since the circumstances of international global war that inspired its drafting. The conclusion of the Second World War ushered in an unprecedented period of peace

³⁸ Morsink, *Inherent Human Rights*, 58.

³⁹ Greene argues that the distinction between these two ways of understanding how moral intuitions responds to these two types of moral dilemmas lies in the manner in which our understanding of their moral intuitions and the consequences of breaching our moral taboos are formed. "Me vs. Us" moral dilemmas are informed by social or even genetic learning. They cover our everyday moral experience and interactions with others. "Us vs. Them" moral dilemmas are generally outside of this everyday moral experience, informed not by common experience, but by competing or even conflicting experiences and values. Greene, "Moral Intuition," 72.

and cooperation between nations. It made possible the drafting and adoption of such a comprehensive, wide ranging, and aspirational document as the UDHR. The atrocities of the Axis powers were coupled with a militaristic drive that threatened the stability of the international system and brought conflict not only within, but between states, conflict that threatened and would eventually engulf the whole world.

The UN Charter affirms “fundamental human rights directly after it references the World Wars recent to its adoption as a scourge upon all of humanity.” The UDHR argues that human rights are the “foundation of freedom, justice, and *peace in the world.*” The delegates that drafted, debated, and adopted the documents drew a direct link between disrespect of human rights and the onset of devastating global wars. In some ways, the global response to the human rights norms outlined in the UDHR are conceptually tied to their historical circumstances. That is to say that human rights norms and the commitment to uphold them are bound up with the threat that such crises can spillover and cause devastating global war. The notion of common threat may be a great mobilizer and unifier of effort toward armed intervention.

Human rights crises have not often taken the same form in the contemporary world, nor do they have the same consequences. While interstate conflict has declined since the World Wars, intrastate conflict has risen prominence. Intrastate violence, especially when that violence is rooted in widespread cultural bigotry against another group can lead to mass atrocity. Despite the experience of the holocaust, ethnonational violence that shares, if not the quantitative level of the holocaust, many qualitative similarities. The examples of genocides and ethnic cleansing since 1945 are tragically easy to enumerate: the Rajshahi massacres in East Pakistan in 1962, the Serbian campaign against Croats in the former Yugoslavia, the Hutu led Rwandan genocide of 1994, the forced conversions and murder of Yazidis across the middle east, and the widespread

targeting of Tigrayans in Ethiopia and Eritrea. This violence, however heinous, has not posed, or at least been perceived, as the same type of threat to the international community as those of the Axis nations. Major world war has not broken out because of these conflicts. The violence being perpetrated has not spilled over to significantly threaten other sovereign states. Nor have these episodes of atrocity elicited the same resolve or resounding response in the form of mass military mobilization. The causal connection between human rights violations and the ravages of the proliferation of war are not particularly apparent in the contemporary world. The circumstances, especially the observed effects of human rights violations thus differ significantly from those experienced by those who framed the UDHR. Recall that Greene ties the reliability of intuition to the stability of cause and effect, action and consequence. Thus, GHRR operant in the contemporary world that stems from the principles the UDHR puts forth loses some credibility, and the intuitiveness of human rights norms is called into question.

The fact that the human rights abuse of the Nazis and Imperial Japan came coupled with a palpable threat to international security is but one contributing reason that delegates to the conventions that drafted both the UN Charter and the UDHR saw the need to agree on a general idea of human rights. However, the need for cooperation to defeat and prevent the reanimation of an ideology that posed a common threat is not the only reason that the norms in the UN Charter and UDHR were put forth and ratified by international society. According to Morsink's reading, both documents frame the human rights principles that arose during those conventions as products of a unified global mindset. Morsink's account of the UDHR philosophically arising from the common experience of atrocity and arousing similar moral intuitions in diverse cultures would seem to indicate that moral disagreement between parties to the ideals and instruments

that comprise the global human rights regime should be moral dilemmas of the “Me vs. Us” variety in Greene’s parlance.

The UN Charter does indeed refer to a “common interest” and a singular “mankind” that commonly experienced the scourge of war. The UDHR even more strongly posits both the existence of a “single human family” operating under a common “conscience of mankind.” However, the more detailed discussions delineating the nuances of human rights, their emphases, and the extent of their applicability and enforceability was in the aftermath of the Second World War, as they are now, a matter of debate and division between societies and cultures. Eric Posner’s account of the debates surrounding the drafting of the UDHR demonstrates that disagreement was “swept under the rug at the start,” but that the emergent world powers of the United States and the Soviet Union were in conflict over the content of human rights principles.⁴⁰

While Americans argued for human rights conceived of as political rights not surprisingly similar to those found in the U.S. Constitution (e.g. suffrage, free speech, freedom of from arbitrary detainment, religion, etc.), the Soviet Union favored a view of rights that centered on social and economic concerns (e.g. the right to work, health care, education, etc.). Beyond these philosophical differences, the political practices of governments called into question not only the strength of their commitment, but also the validity of their conceptions of human rights. Posner notes that in the era of the Second World War, “virtually all governments abused citizens in ways that at least echoed Nazi ideas or practices.” He specifically mentions Jim Crow in the United States, colonial abuses by the United Kingdom and France, and “all kinds of repression and misery” in the Soviet Union. He also notes that the UDHR faced opposition until the end from authoritarian governments. The Soviet Union, Yugoslavia, Poland, Czechoslovakia, and

⁴⁰ Posner, *Twilight of Human Rights Law*, 15.

Saudi Arabia refused to vote in favor of adoption. The UDHR is thus not an unequivocal statement codifying the full force of a common conscience. Disagreement about the substance and scope of human rights norms forced drafters to speak of human rights in “vague, aspirational terms” that did not “augur well for the project of mandating the protection of human rights.”⁴¹

Exploration of those debates shows that even with the common aim of establishing respect for human rights, the moral dilemmas faced by delegates and the societies they represented were matters informed by deep cultural and ideological divisions. The moral dilemmas faced by the delegates were not “Me vs. Us” matters, but rather “Us vs. Them” matters in which moral intuition, according to Greene’s explanatory theory, becomes not only unreliable, but far from the universally accepted and authoritative force it is characterized as by figures like Morsink.

David Little’s Defense of Human Rights Norms in light of Universal Rationality

Moral intuition and the recognition of the inherent metaphysical dignity of the human person is not the only universal ground that has been put forward for human rights. David Little, for instance, agrees with Morsink regarding the universal validity of human rights principles and their enforceability thereby. However, he does not look to intuition and the dubious “fact” of universal revulsion to human rights abuses. Instead he grounds the universal validity of human rights norms in the assumption that all human beings possess a common and universal rational faculty that leads us to, logically, understand the need to avoid and relieve mass suffering. Little calls this the “logic of pain.” I turn to Little as an exemplar of one who grounds the universal validity of the GHRR and the justification of AHI in rationality. However, in the end, I argue that the logic of pain fails to account for context and the myriad ways pain can be interpreted (as

⁴¹ Ibid., 15-17.

something that might be pleasurable, or, at the very least, preferable to whatever situation would allow one to avoid pain). The variability of how one interprets pain and how one incorporates the experience of pain into one's moral analysis makes it a poor ground for vindicating the notion that the GHRR is universally valid and AHI justified even if it contradicts local culture and custom.

Little argues that human rights and their enforcement derive their legitimacy from “the logic of pain.” Taking a cue from David Hume, Little argues that it would be absurd to ask a human being why they avoid or seek to relieve physical pain. “Resisting [pain’s] occurrence or seeking relief from it constitutes, non-inferentially, a prima facie good and a justifying reason for evasive or compensatory action, whatever limitations there may be as to how one goes about it.” The “logic of pain” may be extrapolated from physical pain to other human experiences of harm salient in human rights discourses. Little mentions specifically ideas of “death, impairment, disablement, deprivation, severe pain, and involuntary confinement” as other harms whose avoidance is similarly a prima facie good.⁴²

The direct connection between the faculty of reason and the avoidance of pain has moral implications. The logic of pain makes it so that the moral default is to behave in ways that avoid or relieve pain. Conversely, the logic of pain implies that inflicting pain or opposing its relief is morally problematic. This is not to say that there are no circumstances under which pain can, from a moral standpoint, be inflicted on another person. The logic of pain makes the avoidance and relief of pain a presumptive moral good. The logic of pain demands therefore that the

⁴² David Little, *Essays on Religion and Human Rights: Ground to Stand On* (New York: Cambridge University Press, 2015), 42-43

infliction of pain be accompanied and justified by reason significant enough to override this moral presumption. Those inflicting severe pain bear a “heavy burden of proof.”⁴³

Little provides a schema of reasons for overriding the presumption against pain. “Only certain kinds of reason may pass muster,” he says. These reasons are: “(1) those that support actions designed to help the recipient avoid or relieve overall pain, such as an excruciating surgery; (2) those that support actions intended to achieve some other compelling benefit from the recipient’s point of view, such as survival; or (3) those that support actions undertaken to deter or restrain the recipient from, say, overreacting to mistreatment by excessively (unjustifiably) inflicting pain or failing to relieve it.”⁴⁴

Little is forthcoming that “the critical reference point of the reasons justifying the infliction of pain or the failure to relieve it is the benefit or discipline of the recipient who is, of course, the primary locus of the pain-related reasoning process.” For Little, this means that the primary moral consideration when considering the infliction of pain is the experience of the individual or individuals who directly experience pain. Their preferences and desires are paramount. While the logic of pain makes its argument from the individual experience of pain, having the individual be the reference point for judging the moral acceptability of inflicting pain does not follow necessarily from this logic. The reasons Little enumerates share the common quality of using the individual experience of pain as a reference point. Little readily admits this, but does not fully explore the implications, especially in light of particularist critics against which he offers the logic of pain as a defense of the GHRR. The logic of pain as a defense of the GHRR is an assertion too casually rooted in the unstated metaphysical assumption of the fundamental importance and equality of individuals. However, the fundamental equality of

⁴³ Ibid., 43.

⁴⁴ Ibid.

individuals does not mean that their preferences and goods should be considered equally. Nor does it always make sense to give preferential status to the interests and well-being of those who are experiencing pain. Indeed, there are reasons to override Little's presumption that the pain of a *specific* individual must be the primary moral reference point in any calculus of pain. Even Little admits this.

For instance, Little takes into account the obvious case of inflicting pain for the sake of sparing another individual pain. He calls the introduction of third party considerations when thinking about the moral justification of deliberately causing someone extreme pain for the sake of another a "necessity excuse." Little provides an obvious example to highlight when and why conditions merit the override of the presumption against causing or refusing to alleviate another's pain.

"An example," says Little "[of a valid necessity excuse] is painfully knocking an individual unconscious who might otherwise unintentionally divulge the whereabouts, and thereby occasion the death, of an innocent fugitive." Though the act in question is similarly to relieve or help someone avoid extreme pain, the example deviates from the schema Little presents where the individual receiving pain is the unit of moral concern. Little makes it explicit that "[t]he example...clearly violates that expectation and thereby causes harm, because pain is inflicted not for the benefit of the recipient but of someone else."

A necessity excuse and the circumstances that occasion it do not invalidate the presumption against causing or failing to relieve pain that the logic of pain seems to imply. Rather, circumstances in which a necessity excuse is morally proper are difficult cases where other moral values, or the moral interests of a more complex set of parties may be difficult to disentangle. The validity of a necessity excuse for deliberately exposing a person to extreme

pain, “presupposes a sharp clash of practical prescriptions, involving a decision knowingly, if regretfully, to violate a standard expectation – in this context, the expectation that decisions concerning the infliction of pain or the failure to relieve it will attend primarily to what benefits or disciplines the recipient.”

Little’s necessity excuse seems morally intuitive and one that leaves, for the most part, the moral implications Little draws from the logic of pain intact. It is a fairly simple caveat, one that simply shifts the avoidance of pain from one individual to another. What seems to be at first glance simply a shift of the unit of moral concern in the calculus demanded by the logic of pain becomes much more morally complicated when the logic of Little’s necessity excuse is extended beyond the individual to the level of social and political choices and relationships. At the social level, the logic of pain is less helpful.

The example of knocking out someone so that they cannot divulge the whereabouts of a fugitive is artfully presented. But it is the details of Little’s example rather than some necessary conclusion of the logic of pain that makes it morally intuitive. First of all, Little’s example presents a case of asymmetric consequences. The injuries each party suffers are far and away more severe for the fugitive than they are for the potential divulger. To be knocked out certainly is painful, even extremely so. However, scores of American children, some not yet old enough to operate a vehicle, risk and receive such injuries playing sports every year. While the risk is minimized as much as possible, these knockouts are a pain many consider worth enduring for the sake of playing a sport or even simply a roughhousing game with friends. The fugitive, however, is faced with the permanent and ultimate harm of death. The example would not be so easy to swallow, for instance, if the choice to protect the fugitive required one to more severely hurt, maim, or even kill the potential divulger.

Even if one accepts the moral asymmetry, the moral conclusion that one should knock out the divulger is based on more than simply the logic of pain, but in a deeper reading of the circumstances. Little's necessity excuse is only morally acceptable because he specifies that the fugitive is innocent. Even with the disproportionate harm caused to the fugitive relative to the pain imposed on the divulger, the moral situation is much more complex if the fugitive is guilty or even if their guilt or innocence is not established. Close analysis of Little's example illustrating a "necessity excuse" demonstrates that "necessity excuses" are much more than "modifications of the schema of the 'logic of pain'" as he describes. Rather, they introduce further considerations that cannot be directly derived from the human tendency to avoid or relieve pain. Indeed, they seem to demonstrate that our judgment, our very rationality, about the avoidance, relief, and even infliction of something as basic as pain is conditioned and bounded by social and psychological values that stem from sources other than basic human physiology.

Little's example of a necessity excuse is necessary to sidestep the issue of third-party interests that is an obvious challenge to the logic of pain. It is a fact of everyday life that discomfort, delayed gratification, or other sacrifices are often made in order to achieve goods rated as of more importance, not only to the self, but to others for whom the self cares. But these sacrifices are not simply made by the moral agent, but sometimes imposed upon others. Anyone who has ever been on a long-haul flight with a crying baby understands this. For the more sympathetic among us, it is a cacophony endured silently for the sake of the social good of civility and, though it may not be at the forefront of our minds while we suffer, because family welfare and even freedom of movement are held to be worthwhile.

Little's example differs from mine in that it trades on pain being in some ways qualitatively different than mere discomfort. Pain, especially extreme pain, as Little says,

requires a higher moral threshold. My example of imposed discomfort without some sort of balancing relief of discomfort is, I argue, simply a matter of degree rather than quality. Imposed pain, even extreme pain, is often inflicted on involuntary sufferers not for the relief of a greater or even equal pain that may plague another person. Extreme pain may be inflicted to achieve some other ideal held to be more important than pain relief.

One need not look far for a real and concrete example where the endurance or imposition of extreme pain or even death have been warranted not simply as morally acceptable, but morally necessary in order to achieve an alternative ideal. The conflicts that are the main concern of this work are glaring examples of the fact that the endurance and infliction of pain are not simplistic utilitarian-like calculuses that measure an individual's pain against that of another. Wars are fought not simply for the physical protection or benefit of certain persons or even groups. They may be fought, indeed are often fought, for ideological reasons not necessarily tied to the relief of physical pain or suffering, but to achieve some vision of good.

The importance of cause and ideology over the relief of physical pain and suffering in war is illustrated by Napoleon's assessment of the siege of Genoa. Napoleon, a military commander famously in tune with the pain and hardships of his troops famously declared, "if one thinks always of humanity--only of humanity--one should give up going to war."⁴⁵ In this context Napoleon was referring not to humanity as an abstract concept, but rather in terms of the suffering specifically of the citizens of Genoa who had surrendered to the Austrian General Melas after a devastatingly prolonged siege. Napoleon castigated Massena, the French general charged with holding the city, for not holding out ten more days in order to achieve the larger goals of the campaign and the Republic. Whatever one may think of the specific moral character

⁴⁵ Andrew Roberts, *Napoleon: A Life* (New York: Penguin, 2014). 329.

of Napoleon's exploits, Napoleon's understanding of the human cost of conflict and, more importantly, his willingness to pay that cost for a larger ideal is the essence of any war.

If one thinks singularly in terms of the relative measure of pain against pain or death against death, even the moral quality of the Second World War is called into question. By some estimates 17 million persons were killed by the Nazis away from the battlefield. Millions were murdered in the extermination camps set up to carry out the "final solution" concocted at Wannsee, millions more through pogroms, death marches, engineered starvation, and forced labor. There is no uncontrived context where the loss of this many human lives and the conditions in which they were taken is not significant, where struggle, sacrifice, and even war against such a force is demanded. However, if the moral calculus were only weighed pain for pain, life for life, the nearly 70 million killed and millions more maimed or scarred in spirit during the war seem to tip the scales toward viewing the victims of the Holocaust as acceptable losses. This is clearly not the case and most, including Little, would argue that the moral merit of waging war against the Axis powers far outweighed the pain and sacrifice Allied leaders demanded of their citizens. The absurdity of viewing the Second World War in the simplistic terms of a ratio of pain informed by the logic of pain demonstrates the untenability of drawing moral conclusions from the common human tendency to avoid pain.

The logic of pain may, in a basic sense, capture a constituent feature of rationality for a human being that exists in a hypothetical vacuum, but the reasons human beings endure and inflict pain are complex. Common human physiology certainly makes the experience of pain, deprivation, or other corporeally detrimental stimuli similar across the wide swath of humanity. Little may be correct that human beings tend to avoid pain as a matter of physiology when the experience is unmitigated by other considerations. However, neither on the personal level, nor on

the social or political levels, is the experience of pain or other types of suffering justifiably unmediated.

The physical sensation of pain may be felt at the individual level, but it is processed and given meaning through a process of social construction. Pain is mediated through the experience of others and through the experience of a world. This does not mean that the logic of pain does not play a part in moral formation. While the logic of pain then is processed by a universal rational faculty, that rationality is nevertheless bounded by context, culture, and circumstance. The moral implications of pain are not a matter of simple logic, but are rather formed out of the multiple hermeneutics through which the self-interprets its world and itself as a self.

These hermeneutics and at least some attachment to the wider world is necessary for pain to have moral implications. Without these attachments, pain cannot be interpreted as anything more than a physical sensation. However, when these wider contexts are considered, when the universal experience of pain is nuanced with cultural values and perceptions, historical trends and experience, or when differing cosmic concerns come into play in the interpretation of pain and its infliction, it becomes more difficult to cast any rationale for the infliction of pain as arbitrary, self-contradictory, or otherwise irrational in light of the logic of pain.

There are obvious cases in which the infliction of pain is purely cruel and morally repugnant. Little, for instance, provides the graphic case of torturing a baby for fun. For Little, and I daresay for most sane human beings, the example of torturing a baby for pleasure is condemnably arbitrary reason for the infliction of pain. But the condemnation reserved for this extreme example and its characterization as arbitrary is not necessarily extrapolatable to the reality of war, even when the acts of war under consideration are similarly monstrous.

The battle of Targoviste provides a particularly poignant case study. Vlad Tepes Dracula, the inspiration for Bram Stoker's infamous Count, looked to shock and repulse the invading Ottoman forces of Mehmed II through the creation of a grotesque scene of massacre. The contemporary historian Laonikos Chalkokondyles described the scene:

The sultan's army entered into the area of the impalements, which was seventeen stades long and seven stades wide. There were large stakes there on which, as it was said, about twenty thousand men, women, and children had been splitted, quite a sight for the Turks and the sultan himself. The sultan was seized with amazement and said that it was not possible to deprive of his country a man who had done such great deeds, who had such a diabolical understanding of how to govern his realm and its people. And he said that a man who had done such things was worth much. The rest of the Turks were dumbfounded when they saw the multitude of men on the stakes. There were infants too affixed to their mothers on the stakes, and birds had made their nests in their entrails.⁴⁶

Chalkokondyles's description is gruesome. It entails not the hypothetical, but very real torture of infants impaled along with countless others. As revolting as the scene may be, while cruelty may certainly have played a part in the choice of act Vlad Tepes employed to repulse the invasion of Mehmed, it cannot be said to be arbitrary or purely self-serving. The tactic was used not only to repulse and invading army through sheer shock, but may have been colored by religious undertones, a Christian prince doing whatever it took to keep his lands and subjects from the sway of Islam.

As extreme as Tepes's act may seem, it demonstrates that the logic of war in terms of war's justifying reasons extends beyond the logic of pain. Vlad's act is an example of rationality colored by cultural context and possibly fueled by religious fervor. While individual cruelty is easy to dismiss as patently and prima facie immoral, acts like the field of the impaled, like modern terrorism, like the dropping of an atomic bomb are much more difficult to outright

⁴⁶ Laonikos Chalkokondyles, *The Histories: Volume II Books 6-10* trans. Anthony Kaldellis (Cambridge, MA: Harvard, 2014).

condemn as immoral because they do, in some way, subscribe to a non-arbitrary system of value beyond the individual. These examples complicate the notion that the logic of pain can be used as a ground for vindicating the universality of the GHRR and the permissibility of AHI to enforce it over and above local customs and conceptions of morality.

The Mechanics of Pain

There is also the question of whether even the universal experience of pain may lead to the moral conclusion that pain must be relieved. Little's argument rests on the notion that the experience of pain and the desire to relieve it in ourselves automatically, in a morally attuned human being, results in the desire to see the pain of others similarly relieved. It results in a moral duty and even desire to care for the other. Rather than a logic of pain that naturally and necessarily manifests in the conclusion that one should care for another's human life equally to one's own and to all other lives, the experience of extreme pain seems to denude the human being not only of rationality, but also of moral concern for others. Elaine Scarry's seminal study, *The Body in Pain*,⁴⁷ provides an account of pain that in many ways contradicts the natural connection between logic, pain, and moral concern. Scarry turns to torture to reveal the mechanics of pain and its effects on the individual human psyche. Contrary to Little, Scarry's account of the experience of extreme pain demonstrates not a natural logic that motivates moral concern for others, but rather a contravention of conscious thought and a contraction of the moral world.

⁴⁷ Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (Oxford: Oxford, 1985).

The moral world of the individual experiencing pain contracts and thus their moral concern cannot be extended outward toward the pain and suffering of larger groups outside the self, let alone humanity as a whole. Scarry provides a vivid account of the use of common household objects to inflict pain, an apparently common practice among torturers of diverse regimes. The use of domestic objects as instruments of torture is particularly devastating. It turns objects that normally denote safety and protection objects that become expressions of: “individual contraction, of the retreat into the most self-absorbed and self-experiencing of human feelings, when it is the very essence of these objects to express the most expansive potential of the human being, his ability to protect himself out of his private, isolating needs into a concrete, objectified and therefore shareable world.”⁴⁸ Torture causes moral contraction and hinders the ability of individuals to have, let alone exercise, moral concern for others. The experience of extreme pain causes the individual to retreat inward, extending its concern to the most basic and immediate of experiences, that is the pain itself. Scarry goes on to argue that, rather than a position of pain, moral concern for others is possible, “only when the body is comfortable, when it has ceased to be an obsessive object of perception and concern.” The language of comfort is somewhat confusing here. It cannot mean total relaxation or lack of any niggling bodily issue. The possibilities of having moral concern for anyone besides the self would be few and far between if this were the implication of Scarry’s language. I interpret her language of “comfort” to mean a level of bodily well-being in which discomfort is not the overarching sensation that dominates individual thought and concern. It only from such a position of comfort, explains Scarry, “that consciousness develops other objects, that for any individual the eternal world...comes into being and begins to grow.”⁴⁹

⁴⁸ Scarry, *Body in Pain*, 41.

⁴⁹ *Ibid.*, 39.

Scarry admits that her study of torture and its effect on the moral agent stands is counterintuitive. Little's view of the logic of pain as expanding the moral world is a common perspective and that it stands to reason that "the obliteration of consciousness, the elimination of world ground, which is a condition brought about by the pain and therefore one that once objectified (as it is in confession) should act as a sign of the pain, a call for help, an announcement of a radical occasion for attention and assistance." Rather than a cry for help answered by all fellow humans, the experience of extreme pain "instead acts to discredit the claims of pain, to repel attention, to ensure that the pain will be unseen and unattended to." According to Scarry, rather than sympathy, the experience of pain may even earn the sufferer, "not compassion, but contempt."⁵⁰

The work of sociologist Stanley Cohen demonstrates that something like Scarry's account of pain causing moral contraction in the individual is often at work in international society when it is faced with accounts of gross human rights violations. Despite Little and Morsink's assertion that accounts of human rights violations have and should arouse universal moral indignation, Cohen observes that in the face of overt atrocity, too often "the level of shame, outrage and protest, is not psychologically or morally appropriate."⁵¹

In his seminal published lecture *Human Rights and Crimes of the State: The Culture of Denial*, Cohen analyzes avoidance and denial behavior in the face of gross human rights violations. Cohen is clear that the subject of his inquiry is not those whose avoidance and denial stems from their support of human rights violations, but rather those whose ideological predisposition is to be disturbed by such acts. Cohen discusses as motivation for his inquiry his

⁵⁰ Ibid., 37.

⁵¹ Stanley Cohen, "Human Rights and Crimes of the State: The Culture of Denial," *Australian & New Zealand Journal of Criminology*, Volume: 26 no. 2 (December 1993), 103.

personal experiences living in Israel during the *Intifada*. He discusses his puzzlement at “the apparent lack of overt reaction (dissent, criticism, protest) in just those sectors of Israeli society where one would expect to be reacting more.” Cohen notes that, “in the face of clear information about what's going on - escalating levels of violence and repression, beatings, torture, daily humiliations, collective punishment (curfews, house demolition, deportations), death-squad-type killings by army undercover units,” Israeli citizens seem to deny or remain unphased at the moral ills perpetrated by their government.⁵²

Cohen admits that there exist, “special reasons in Israel for denial, passivity or indifference,” part and parcel of “a complex political history - of being Jewish, of Zionism, of fear and insecurity.”⁵³ Nevertheless, Cohen argues that these patterns of denial extend to the more “emblematic events of the 20th Century.” He mentions his own experience growing up during Apartheid in South Africa. He turns powerfully to:

Holocaust "texts" about the good Germans who knew what was happening; the lawyers and doctors who colluded; the ordinary people who passed by the concentration camps every day and claimed not to know what was happening; the politicians in Europe and America who did not believe what they were told...[and] contemporary horrors reported every day in the mass media and documented by human rights reports - about Bosnia, Peru, Guatemala, Burma, [and] Uganda.⁵⁴

Cohen couches his analysis of denial in social and cognitive psychology without drawing conclusions about moral concern in the same manner as Scarry. However, his similar account of the human reaction to incredible suffering supports both Scarry's account of moral contraction and provides further counterpoint to Little's ground of the validity of human rights in the logic of pain. The moral import of the experience of pain, even

⁵² Ibid., 103-104.

⁵³ Ibid., 104.

⁵⁴ Ibid.

extreme pain, is subject to interpretation. Even the use of human reason is bounded by context and, as the example of Scarry shows, does not automatically lead one to affirm the GHRR as universally valid, nor AHI always justifiable because it relieves extreme forms of suffering.

This is not to say that the torture Scarry describes or the gross violations Cohen recounts are acceptable tools of state or society. I am not arguing that the moral condemnation Little brings to bear on acts of atrocity are the wrong conclusions to draw from moral calculus involving extreme pain. Like any mathematical test, however, the test of good moral philosophy also requires one to show one's work. Little's aim, however, was not simply to defend the principle of human rights themselves, but rather to demonstrate that they can be established on surer ground than *prima facie* revulsion or gut reaction. His self-stated task is to move human rights principles from the realm of moral intuition to the realm of ethical certainty.

There is no question that relieving pain can be a moral good. The logic of pain certainly does that. However, Little wants the logic of pain to offer universally incontrovertible evidence that all people should be given the same consideration and treated under the same moral system. This inference is an interpretive leap rather than the next necessary logical step in a philosophical proof. The work of Scarry and Cohen shows that moral inclusion does not necessarily logically follow from the logic of pain and the universal experience of pain. Both Scarry and Cohen do seemingly reach a similar conclusion regarding the infliction of pain and suffering, namely that it is undesirable. I readily admit that, in a moral and cultural vacuum, the relief of pain is desirable, even sought after by human beings. However, I argue too that human beings do not exist in a moral vacuum, but are rather shaped by their context and situation. Their conception of moral values is in some ways determined by this context.

Little may not be wrong about the desirability of pain relief to the human being. However, the works of Scarry and Cohen call into question Little's extrapolation of the logic of pain to universally applicable moral principles. This is especially true when the strong influence of social norms are considered. Little may not be wrong about the moral good of human rights principles. Both Scarry and Cohen would no doubt agree with his moral conclusion regarding the appropriateness of human rights norms and the benefit of such norms, morally and politically, to human society. What the work of Scarry and Cohen does demonstrate is that Little is wrong about the psychological mechanics that govern pain and their ability to provide a definitive defense of the universal moral validity of human rights.

Conclusion

Despite its seeming utility (and perhaps even necessity) for providing justifications for setting aside the interests and sovereignty of particular societies, I argue that existing appeals to the human rights regime established after the Second World War hinder rather than helps the establishment of a robust moral theory for wars of rescue-whether they take the form of humanitarian interventions or are billed by some alternative name. The shaky theoretical ground that universalist assumptions place human rights protection, especially coercive forms like humanitarian warfare, in a precarious position both in terms of their moral viability and political practicability. A theoretically coherent and politically viable framework of humanitarian warfare must give pride of place to the particularities of culture.

Efforts have been made to theoretically account for cultural particularities in moral frameworks justifying humanitarian warfare. In the next chapter I will explore efforts by political theorists to shift frameworks for humanitarian warfare so that they are more sensitive to particularist concerns. Namely, I will explore the work of Michael Walzer, his presentation of the “legalist paradigm” that governs war as a moral enterprise, and his “politics of rescue” that serves as a critical corollary and emendation of the legalist paradigm in light of gross human rights violations. I will also explore the emerging doctrine of the “responsibility to protect” that emerged from the work of the International Commission on Intervention and State Sovereignty (ICISS).

While both Walzer’s work and the work of the ICISS call for greater cultural sensitivity and understanding of local concerns, I argue that they nevertheless continue to rely on the universalistic assumptions of the global human rights regime that this chapter has worked hard to challenge. Despite their best efforts, my next chapter demonstrates that these political perspectives on humanitarian warfare have failed to answer the particularist challenge. A means of synthesis between the drive to rescue populations facing abuse that common persons like my grandmother found so compelling after the experience of the atrocity of World War II and the voices of the Majority world calling out for greater attention and respect of their unique cultural claims must be sought in theoretical landscape other than the political, a challenge that the constructive portion of this dissertation will take up in the fourth and fifth chapters

Chapter 3: All Political Atrocities are Local—A Critique of Perspectives on Intervention that Claim to be Extensions of Local Sovereignty

It was taught in the universities and from the pulpit that the institutions in which men formerly used to embody their needs of mutual support could not be tolerated in a properly organized State; that the State alone could represent the bonds of union between its subjects; that federalism and “particularism” were the enemies of progress, and the State was the only proper initiator of further development.¹

The State, based upon loose aggregations of individuals and undertaking to be their only bond of union, did not answer its purpose. The mutual-aid tendency finally broke down its iron rules; it reappeared and reasserted itself in an infinity of associations which now tend to embrace all aspects of life and to take possession of all that is required by man for life and for reproducing the waste occasioned by life.²

-Peter Kropotkin

Intervention in Defense of Self-Determination

The previous chapter critiqued justifications of armed humanitarian intervention based on the notion that human rights principles are universally valid, according to either an intuitive shared morality or the operation of a universal rationality. Given this universal validity, the protection of human rights and the enforcement of human rights norms were thought to take precedence, normatively speaking, over claims of state sovereignty. Chapter 2 provided reasons to doubt this claim. This chapter will explore efforts within ethical literature and international law to justify armed humanitarian intervention on alternative grounds. I will investigate the claim

¹ Peter Kropotkin. *Mutual Aid: A Factor of Evolution* (Claremont: Pitzer College, accessed 30 March 2021), Chapter 7. http://dwardmac.pitzer.edu/Anarchist_Archives/kropotkin/mutaidch7.html.

² *Ibid.*, Chapter 9.

that armed humanitarian intervention need not be thought of as a breach of sovereignty, but as an extension of sovereignty. This is possible if sovereignty is explored as more than a principle of international affairs³ to include its connection to moral commitments meant to valorize the collective will of a particular people group, that is in terms of its support of popular sovereignty.

Popular sovereignty is the principle that the legitimate right to rule comes from the consent and will of the people. Australian international relations scholar Luke Glanville notes that the idea of popular sovereignty replaced the notion of sovereignty by divine right as the dominant theory of legitimate governance in European international society. It spread from there to wider international society. The idea of popular sovereignty forms the philosophical underpinnings of the international custom of respecting state sovereignty and national self-determination, the rights of a people to live and govern themselves at they see fit within the borders of the territory of their state. Glanville notes that, “government by popular consent...eventually confirmed national self-determination as a principle of international legitimacy, complemented by a tentative right of nations to freedom from external interference, at the end of the First World War.”⁴

Humanitarian warfare is a technical breach of state sovereignty and national self-determination as it has been often interpreted in international relations. However, the concept of sovereignty and its relationship to armed intervention has been revisited in recent decades by moral and political scholars alike, especially in light of the emphasis on human rights and the practice of armed intervention that arose after 1945. Though they approach the conclusion from

³ Scholar of international affairs John Ruggie defines sovereignty as “the institutionalization of public authority within mutually exclusive jurisdictional domains.” The implications of sovereignty in international affairs literature precludes any uninvited intervention, especially coercion by force of arms, into the internal governance of a state. John Ruggie, "Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis," in Robert O. Keohane, ed., *Neorealism and Its Critics* (New York: Columbia University Press, 1986), 143.

⁴ Luke Glanville. *Sovereignty and the Responsibility to Protect: A New History* (Chicago: University of Chicago Press, 2013). 60-61.

different angles, both Michael Walzer's legalist paradigm, which he articulates in his 1977 work *Just and Unjust Wars*, and the Doctrine of the Responsibility to Protect (R2P), introduced by the report of the International Commission on Intervention and State Sovereignty in 2001, justify armed humanitarian intervention as something in the spirit of sovereignty rather than opposed to it. Specifically, both argue that armed intervention may, in certain cases, help rather than hinder a people's exercise of the right to self-determination, the primordial moral right that undergirds the principle of sovereignty as it is widely used in international affairs and the scholarship of international relations and law.

Both the legalist paradigm and R2P enjoy widespread acceptance in policy and scholarly circles, and their emphasis on protecting the right of self-determination seems in some ways to sidestep many of the critiques of the particularist challenge. How can an intervention fail to respect culture or be imperialistic if it is, in fact, an extension of sovereignty itself and a boon to the self-determination of the most vulnerable populations around the globe? I will argue that to try and justify armed humanitarian intervention as an extension of state sovereignty in this way is a wrongheaded approach. Neither the legalist paradigm nor R2P are as congruent with respect for sovereignty or the notion of societal self-determination as they purport to be. They are especially challenged by cases of societal fracture and humanitarian crises when atrocities are not committed by some tyrannical force separate from the population but are locally rooted and enjoy wide popular support.

I will turn first to the legalist paradigm to explore the bulk of the issues surrounding societal fracture and the complications it presents to Walzer's view of intervention as a defense of the right to self-determination that undergirds sovereignty. By "societal fracture" or "societal fragmentation," I mean the subdivision of a society's population into sub-groups defined by

racial, ethnic, religious, political, economic, ideological, or other identities and where those subgroups are self-perceived to have separate and even competing interests with one or more other subgroups. Societal fracture is more than simply disagreement between groups over the direction of the society's commonweal, but rather a perception that each group's commonweal is distinct, if not downright disconnected from the commonweal of another group. I will then turn briefly to exploring the responsibility to protect and its semantic redefinition of sovereignty. I argue that, though R2P is framed as an aid to local authorities in the discharge of their sovereign duties, it too fails to adequately address cases of societal fracture. Both perspectives pay lip service to the necessity for cultural sensitivity and the need to attend to the exigencies of the particular situation as correctives to the problematic universalist thinking in armed humanitarian intervention debates explored in the last chapter. Ultimately, however, their correctives fail to navigate the issue of societal fragmentation and lack clarity regarding whose collective will should take precedence in moments of intra-state conflict as well as whose well-being within a state a ruling regime should be promoted and protected.

Michael Walzer and the Legalist Paradigm on Intervention

The legalist paradigm's exemplary articulation comes from Michael Walzer's seminal work *Just and Unjust Wars: A Moral Argument with Historical Illustrations*-now in its fifth edition. The legalist paradigm is so called because it understands just warfare as conflict that "consistently reflects the conventions of law and order" in international society.⁵ Law and order at the international level is significantly different than at the more familiar domestic level. Unlike

⁵ Michael Walzer. *Just and Unjust Wars: A Moral Argument With Historical Illustrations 5th Edition* (New York: Basic Books, 2015), 61.

domestic societies within states or territories whose governance is hierarchical, the international sphere brooks no overarching authority to which aggrieved parties who feel they are wronged may appeal to coerce redress from an offending party in the same way that a police force and criminal justice system does in a domestic society. The hierarchical system of domestic law enforcement effectively limits the legitimate use of force to instances widely accepted by society and seen as beneficial for social order. It gives citizens of a society an avenue of appeal so that there is no need, nor justification for, taking matters of violent enforcement of rights into private hands. That is, it prevents vigilante justice and the problem of determining without reference to a larger order what wrongs need be righted and how they may be righted.

In the more familiar world of domestic law-enforcement, legitimate law enforcement actions and deployments of force are monopolized by government institutions. This is not to say that all uses of force by these institutions are legitimate, only that law-enforcement actions are only legitimate if they are conducted *intra vires*. It is therefore easy to determine legitimate and illegitimate uses of force because there is a clearly established hierarchy between the law, subjects of the law, and agents of the law. The international sphere has no such established hierarchy. The legalist paradigm posits an international arena that is structured anarchically, not in the conventional sense that term “anarchy” has acquired denoting societal chaos, but in the technical sense of the term. That is, no formal higher authority exists that regulates relations between parties. Even the United Nations is not a supranational authority over states. The U.N. Charter makes this clear when it states in Article 2 both that: “the Organization is based on the principle of the sovereign equality of all its Members,” and that “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters

to settlement under the present Charter.”⁶ States responsible for following and, more importantly, enforcing the norms that analogically constitute law and order in the international realm among themselves, though they may do so collectively under the auspices of organizations like the United Nations. Nonetheless, the legalist paradigm borrows from domestic law enforcement “the familiar world of individuals and rights, of crimes and punishments” in order to provide “the fundamental structure for the moral comprehension of war.” Walzer notes, however, that the only international crime, that is the only crime that can be committed by states and societies, for which they may be collectively held responsible and punished, is the crime of “aggression.”⁷

“Aggression,” Walzer notes, is the blanket term given to “every violation of the territorial integrity or political sovereignty of an independent state.” It covers acts from relatively minor seizures of pieces of territory to the full conquest and political subjugation of one state by another. Walzer argues that the use of a blanket term “aggression” to cover such a wide range of international conflicts lies in the moral significance of these acts. Specifically, acts of aggression, no matter their relative seriousness in international affairs, “justify forceful resistance.”⁸ In other words, “[a]ggression is a singular and undifferentiated crime” because it violates the right of communities to self-determination and occasions the exercise by communities of their right to use force in self-defense.⁹

The hierarchical nature of domestic government limits the proliferation of violence by limiting the legitimate use of force to police and other societally commissioned law-enforcement

⁶ United Nations. *United Nations Charter*. <https://www.un.org/en/about-us/un-charter/chapter-1>

⁷ Walzer, *Just and Unjust Wars*, 61-62. There are also “war crimes” addressed by a “war convention” that addresses the laws and rules of how wars are fought once begun (*jus in bello*). However, these crimes are understood to be perpetrated by individuals or small groups, rather than states or societies. The Nuremberg trials, for instance, did not try the German government as a whole for the crimes of the holocaust, but rather individual officers and persons for their acts during the war. See *Ibid.*, 289-296.

⁸ *Ibid.*, 52.

⁹ *Ibid.*, 53.

institutions. Similarly, the legalist paradigm works to provide parameters for the use of force in an anarchic world in order to limit the proliferation of conflict. Even the smallest skirmishes between parties in the international sphere can yield devastating results, and not only for combatants. The effects of war can be destructive to neighboring societies into which violence spills over or even be harmfully destabilizing to the international system as a whole.

Nevertheless, war persists as a practice of states and societies. Because of war's destructive potential, jurists, politicians, theologians, and thinkers of many stripes have invested much time and effort into articulating theories of just and unjust warfare.

The legalist paradigm is Michael Walzer's attempt to articulate one theory of how one may judge the justness or unjustness of going to war. The legalist paradigm thus acknowledges the moral necessity and appropriateness of war while still working to limit it by providing guidance on the specific act, i.e., the crime of aggression, that can suitably occasion it. Walzer argues that examples from modern history and state practice tend to show a general agreement that the repulsion of aggression, the punishment of aggressive acts in order to deter future aggression, and almost no other circumstance, provides a morally valid reason for the resort to war. More fundamentally, one may wage war to repulse and punish aggression in order to defend the international norm of respect for political and territorial sovereignty, because political and territorial integrity is the practical expression of the ability of a society through its government to collectively exercise its rights to existence and self-determination within the bounds of the international sovereign state system.

The legalist paradigm's account of just warfare therefore severely constrains the use of armed intervention as a *prima facie* breach of state sovereignty and the moral principle of self-determination which underlies the legal concept. Walzer argues that it is neither possible nor the

purpose of international society to “establish liberal or democratic communities, but only independent ones.”¹⁰ However, Walzer maintains that armed intervention in some forms are allowable under the legalist paradigm because they can, in certain cases, manifest as a bulwark rather than a breach of sovereignty and self-determination.

Walzer cites three instances where intervention may be an aid to self-determination. These are: secession, civil war, and humanitarian interventions in response to the massive violations of human rights. It is the last that is of primary interest to this work, but a discussion of the contours of allowable interventions in cases of secession and civil war will help to illustrate and reinforce the myriad ways in which Walzer conceives of self-determination for a political community and the importance that interpretation of this specific concept has on the construction of moral justifications for intervention.

The first allowable case of intervention under the legalist paradigm is to aid in secessionist movements. These interventions often take place during struggles of independence from a colonial or imperial power. Interventions in independence and secession movements have sometimes even been lauded by the international community. French aid to the nascent United States in its struggle for independence against the British Crown comes to mind as one such intervention whose impact long into the modern era has been powerful and celebrated as a defense of the principles of liberty, sovereignty, and self-determination. Walzer brings up the example of Hungarian secession from the Austrian Empire, a movement that even the staunchly anti-interventionist John Stuart Mill argued should have elicited an intervention by Britain to aid the secessionist Hungarians. Mill calls the Hungarian secession a “noble struggle,” noting that the Austrian government was “in some sense a foreign yoke.” Mill’s argument for intervention in

¹⁰ Ibid., 94.

the struggle, however, was not based purely on the nobility of the Hungarian cause, nor even the gravity of their grievances against Austria. Rather, Mill argues for intervention based on Austrian recruitment of Russia to put down what had, for the Hungarians, been trending as a successful secession campaign. Mill says:

But when the Hungarians having shown themselves likely to prevail in this struggle, the Russian despot interposed, and joining his force to that of Austria, delivered back the Hungarians, bound hand and foot, to their exasperated oppressors, it would have been an honorable and virtuous act on the part of England to have declared that this should not be, and that if Russia gave assistance to the wrong side, England would aid the right.¹¹

For Mill, as well as for Walzer, the justifying aspect of an English intervention was twofold. First: the Austrians had recruited what was clearly a foreign power to put down the Hungarian revolt rather than demonstrating their own ability to govern and suppress their own subjects. Second, and more importantly: the Hungarian campaign for independence from Austria had been successful until the point of Russian interference.

For Walzer, Hungarian success during the independence struggle is crucial. The fact of Hungarian success allowed Britain to justify intervention as an aid to Hungarian sovereignty and self-determination because it demonstrated the presence of a sufficiently organized and unified popular will. In general, Walzer argues that the successful waging of a war for independence is an act that circumscribes a political community, differentiates it from the community from which it seeks independence, and opens the door for assistance in the form of foreign intervention on the seceding community's behalf. This is especially the case if formal territorial separation or significant geographical and cultural distance between the governing power and the seceding people exists. For Walzer, even if final victory is not assured, the seceding political community

¹¹ John Stuart Mill, "A Few Words on Non-Intervention," *New England Review* Vol. 27, No. 3 (2006), 263.

demonstrates its galvanization through a successfully organized campaign and the willingness to expend its resources and sacrifice its members in order to achieve collective self-determination for the group so circumscribed. Walzer argues that in such cases:

The rule against interference is suspended because foreign power, morally if not legally alien, is already interfering in the “domestic” affairs, that is, in the self-determination of a political community. Mill is right, however, to suggest that the issue is easier when the initial interference involves the crossing of a recognized frontier. The problem with a secessionist movement is that one cannot be sure that it in fact represents a distinct community until it has rallied its own people and makes some headway in the “arduous struggle” for freedom.¹²

Under these conditions, intervention on the side of secessionists is no longer interference in the domestic affairs of another political community. It is rather an act of removing foreign interference that is preventing the seceding political community from exercising its right to self-determination and sovereignty. This is an extremely limited mandate and, once the removal of foreign influence is achieved, the intervening force must also rapidly withdraw in order to avoid becoming yet another foreign meddler in the domestic affairs of a people. This rapid withdrawal is a sign of respect for sovereignty and the right of self-determination. Walzer argues that interventions, in general, must adhere to this rule. He notes that “foreign intervention, if it is a brief affair, cannot shift the domestic balance of power in any decisive way toward the forces of freedom, while if it is prolonged or intermittently resumed, it will itself pose the greatest possible threat to the success of those forces.”¹³

¹² Walzer, *Just and Unjust Wars*, 93.

¹³ *Ibid.*, 88. NB: In the 5th edition of *Just and Unjust Wars*, this quote contains a typographical error. I have corrected this error in the body text above. In Walzer’s text the quote reads: “foreign intervention, if it is a brief affair, cannot shift the domestic balance of power in any decisive way toward the forces of freedom, while if it is prolonged or intermittently resumed, it will itself pose the greatest possible threat to the success of those forces.”

The second allowable case of armed intervention under the legalist paradigm comes in the context of civil war. The moral justification for intervention in the case of civil war is similar to that used by Walzer in the case of secession. The critical difference is that moral evaluation of the merits of intervention must proceed without the benefit of a “recognized frontier” or facilitating the separation of distinct political communities. Walzer admits that, in general, civil wars would not meet the Millian criteria for intervention because no “foreign power” can be said to be meddling in the affairs of a society. Rather, civil wars are moments where societies, within themselves, are working out their differences and establishing their own order, albeit through violent means.

Walzer argues, however, that in certain cases foreign action in a state’s civil wars may be warranted when certain conditions are met. Assistance on the side of an established government is generally allowable according to the legalist paradigm. Walzer notes that established governments are, “after all, the official representative of a communal autonomy in international society.” However, once a force of citizens establishes effective control over a significant swath of territory and persons within a state, they become de facto a competing sovereign on par with the established government. They acquire “belligerent rights,” entitling them to equal protection from interference as an established government.¹⁴ Once belligerent rights are established, the legalist paradigm requires the would-be foreign intervening power to maintain an attitude of “strict standoffishness.” According to Walzer, neutrality in war, though an optative condition in wars between states and according to international law, is morally required of foreign powers in cases of civil war.¹⁵ Walzer argues that self-determination cannot be served by foreign interference in cases in which a society is effectively divided. Such interference would not be an

¹⁴ Ibid., 96.

¹⁵ Ibid.

aid to any self-determinative exercise of a population, but would sway a society according to the will of the intervening party.

The exception to intervention in civil wars that Walzer grants is connected to preventing undue interference. Intervention in civil wars is not warranted if belligerents wage war on the merits of their own efforts. However, should another foreign power violate the rule of neutrality and come to the aid of one of the belligerents, Walzer allows for the counter-intervention of another foreign power. This too is rooted in Walzer's deep commitment to the right of self-determination.

Counter-interventions should never, for Walzer, be conducted to win a war. Rather, counter-intervention must "balance, and do no more than balance, the prior intervention of another power, making it possible once again for the local forces to win or lose on their own."¹⁶ The limited mandate of such interventions extends only to ensure that the large mass of citizens stand a chance to exercise their right to self-determination against a government force that is being propped up by a foreign power. Once again this means that once a loose parity between intra-state combatants is achieved, an intervening force must rapidly withdraw, without establishing or influencing other social choices-even if this means leaving ambiguous the status of particular rights and protections for vulnerable groups.¹⁷ A lengthy presence or continued interference by a counter-intervening foreign power is a suppression of the exercise of self-determination the counter-intervention was waged to combat in the first place.

Just as the principle of state sovereignty derives from a more foundational moral right of political self-determination, so does the right of political self-determination derive from a yet more primordial rights granted to the individual. The sovereignty of the political community is,

¹⁶ Ibid., 101

¹⁷ Ibid., 96-97.

for Walzer, derived from the natural rights of the individual. These include both individual life, liberty, and security, but also self-determination involving the ability to choose the type of political society in which one chooses to live.¹⁸ For Walzer, if a broad mass of citizens desires and demonstrates a willingness to work for the right to live they are morally entitled to that way of life.

Walzer and Humanitarian Intervention

I turn now to intervention on humanitarian grounds that is the main concern of this dissertation. Interventions into humanitarian crises stand in stark contrast to intervention in cases of secession or civil war. In the case of secession or civil war, the recognition of a legitimate international personality that may be assisted through intervention is determined by a “self-help” test, that is, the demonstration by a belligerent that they represent a distinct political community ready, in terms of will, organization, and power, to govern themselves. Persecuted groups within a state may not meet any of the criteria, having neither power, nor organization, nor even the self-recognition of themselves as a distinct political community. Though persecuted persons may be defined as a group through some common ethnic, religious, ideological or other bond as a community, this definition may not be self-recognized. As I will argue more fully later in this chapter, the case of LGBTQI+ persons in Uganda is a case in point. LGBTQI+ people, because of suppression, may or may not be directly connected to each other as a community. While LGBTQI+ organization efforts and some communal identity may exist in Uganda, the imposition of cis-heteronormativity by the government and prevailing social attitudes in Uganda may be far

¹⁸ Ibid., 53-54.

more consequential to the treatment of LGBTQI+ persons than any other identity or group affiliation that LGBTQI+ persons might have.

I argue that what binds some persecuted persons in need of the assistance of armed humanitarian intervention should not be not their status as a political community with a specific will to self-determination, but their abuse by institutions and powers within their own state. That is to say, LGBTQI+ persons in Uganda may not be unified. Their ethnic, religious, and class ties may be different and conflicting. Indeed, they may vehemently disagree, on other matters of identity, values, and interest. They may indeed, exclude and discriminate against each other based on other markers of group identity, or even on the basis of disparate expressions of LGBTQI+ identity¹⁹--but they are unified by the fact of societal persecution. However, the fact of social persecution of a class of persons does not, often times, demonstrate the same markers of unified societal will, organized exercise of self-determination, or political community that something like political independence movements, ethno-cultural community, or religious sects do. Walzer's emendation to the legalist paradigm excludes such persecuted groups from the aid and assistance of AHI.

Walzer's bar for abuse that warrants AHI is high—perhaps too high. He is clear that government malfeasance or even abuse do not constitute a legitimate ground for intervention according to the legalist paradigm. Many governments may be corrupt, working for the

¹⁹ While LGBTQI+ communities are often thought of as cohesive, Kelly et al., discuss that LGBTQI+ communities “are better thought of as smaller nodes within a larger network of people with a shared minority status around gender and sexual identities.” Kelly et al. note that “Queer people of color report experiencing racism from within queer communities, including romantic partners and friends.” LGBTQI+ communities are sites of intra-LGBTQI+ discrimination. One particularly prominent example they record is the significant and politically consequential discrimination of trans women by cisgender lesbians. See Maura Kelly, Amy Lubitow, Matthew Town, and Amanda Mercier. “Collective Trauma in Queer Communities.” *Sexuality and Culture* 24 (2020) 1522–1543.

enrichment of an elite rather than the common good of an entire population. They may even oppress certain segments of their population. These groups need not be defined ethnically, racially, or religiously. Many examples exist in which socio-economic classes face oppression from government elites. Intervention is not strictly warranted in most of these cases according to the legalist paradigm. The legalist paradigm holds that those who wish to see reform or revolution should work to instigate such changes at the domestic level. For Walzer, the self-help test must be applied in order to ensure that reform or even the overthrow of a regime are products of a people's galvanized will.

Everyday Morality and Humanitarian Intervention

Walzer argues that some governments commit abuses so heinous that foreign intervention is warranted, even if those heinous acts are directed solely at the offending government's own citizens. Intervention into humanitarian crises is warranted when the acts of a state towards its members, in the words of Walzer, "shock the moral conscience of mankind."²⁰ Walzer argues that massacre and massive human rights violations are moral breaches with political consequences that forfeit the right to self-determination. He argues that "people who initiate massacres forfeit their right to participate in the normal (even in the normally violent) process of domestic self-determination. Their military defeat is *morally* necessary."²¹

Walzer is unequivocal in his condemnation of massacre and human rights violations. He is staunch in his insistence that such acts are indeed criminal, indeed are the most heinous of crimes. Walzer argues that the perpetration of massacres demonstrates a government's fall from

²⁰ Walzer, *Just and Unjust Wars.*, 107.

²¹ *Ibid.*, 106.

legitimate sovereign to criminal gang. Though a government of this type may not break domestic law since they ostensibly control the legal system, Walzer argues that they are guilty of crimes against humanity and thus subject to law enforcement action by the international community in a manner similar to the way domestic criminals are dealt with.²²

Despite this analogy and strong moral conviction, Walzer acknowledges that military interventions into human rights crises are not, strictly speaking, allowable under the terms of the legalist paradigm, which permits warfare only for the repulsion of aggression or to punish the crime of aggression. In the anarchic world of sovereign states, there can be no law enforcement action where no formal higher authority exists into the domestic affairs of a state or society. Despite the lack of a formal law enforcement authority, Walzer does not abandon the notion of justified humanitarian intervention, even AHI. Rather, he notes that the legalist paradigm simply does not and perhaps cannot account for the moral realities of AHI into human rights crises. Walzer concedes that the moral realities of mass atrocity thus require that the legalist paradigm be amended to accommodate cases beyond instances of state aggression against other states. Humanitarian interventions must therefore be judged according to a different standard, one that arises out of the terms of “our common morality” rather than the historical patterns of self-defense against aggression that undergird the legalist paradigm.²³

Walzer’s emphasis is akin to that of Morsink and Little in the previous chapter, drawing on a sense of shared morality. Walzer shares with Morsink and Little the concept of a common “conscience of mankind” that is shocked by a certain set of heinous acts. For Walzer, however, this common morality is shared, but not universal. This is a subtle but crucial distinction between Walzer and the work of Morsink and Little.

²² Ibid.

²³ Ibid., 107

Morsink and Little both in their own way appeal to incontrovertible universal principles that govern the treatment of human beings. As discussed in the previous chapter, these norms precede and thus supersede local customs and conceptions of value and morality. Walzer is not so definite in his account of morality. While the moral universe may be shared for Walzer, moral thinking is nevertheless a local matter and, when it is extended into the realm of international politics, is a process of persuasion, justification, extrapolation, and argument rather than simply the application of a preexisting principle.

That the morality of war does not simply turn an application of universal, preformed, and eternal principles, but rather a way of thinking about a basic human activity that “could hardly have been developed except through centuries of argument,” is the bedrock assumption of Walzer’s discussion of the ethics of war in general, not just AHI. His note, however, that the morality of war is an ongoing argument rather than fixed doctrine does not mean that the morality of war simply devolves into the sort of “doctrine of probable opinion” excoriated by Pascal where one may “follow the opinion which suits [them] best.”²⁴ Rather, Walzer is clear that the “possibilities of manipulation [of moral meaning] are limited.” Even if arguments are presented in good faith, one cannot “say just anything they please” about the morality of war.²⁵

Walzer argues that at some point in the discourse of moral argument one is “required to provide particular sorts of evidence,” make claims and make points that will inevitably be “true or false.” In this way, Walzer says, “morality refers in its own way to the real world.” This world is shared in the sense that it is a common reference point for our arguments about morality. Even

²⁴ That is the learned opinion of some authority. Blaise Pascal, *The Provincial Letters* trans. Thomas M’Crie (NP: Veritatis Splendor, 2012), 76-77.

²⁵ Walzer, *Just and Unjust Wars*, 12.

if those arguments may at points provide interpretations that diverge, they can diverge only so far from each other and from the common reference point of the experience of war.

Walzer notes that the morality of war and the terms people use to describe the moral experience of war has been somewhat stable over the course of time and situation. He notes that even if one considers “fundamental social and political transformations within a particular culture” the experience of war “may well leave the moral world intact or at least sufficiently whole so that we can still be said to share it with our ancestors.”²⁶ Walzer argues that this may be attributed to the fact that “by and large we learn how to act among our contemporaries by studying the actions of those who have preceded us. The assumption of that study is that they saw the world much as we do.”²⁷

For Walzer, the stability of the ethics of war over time is evinced greatest by “the unchanging character of the lies soldiers and statesmen tell. They lie in order to justify themselves, and so they describe for us the lineaments of justice.” The stability and commonality of morality is thus notably revealed when it is honored in the breach. Even if breaches occur according to some grim necessity or hypocrisy, Walzer notes that our ability to argue and sharply condemn differing points of view about the finer points and applications of morality are possible only because fundamentally, those disagreements are “structured and organized by our underlying agreements, by the meanings we share.”²⁸

²⁶ Ibid., 16.

²⁷ Ibid. Walzer gives the example of the stability of a “military code” in western ethics that endures from the middle ages despite the decline of chivalry, warrior idealism, and feudalism in Europe. He discusses specifically the moral prohibitions against both killing prisoners and targeting non-combatants that were present, breached, condemned, and also rationalized at the battle of Agincourt by both French and English forces. These precepts continue to hold sway in modern laws of war despite the change of historical circumstance from the middle ages to the modern age. See Walzer, *Just and Unjust Wars*, Chapter 9 for a fuller discussion of these prohibitions.

²⁸ Ibid., 19.

These shared experiences of war and the shared meanings we make of those experiences are interpreted and articulated in what Walzer calls “the opinions of mankind.” This is not a universal rationality or otherwise singular and unified mind on the experience of war. It is rather referential to “the activity of philosophers, lawyers, publicists of all sorts” who comment on the morality of war. This commentary can take the form of formal treaties or international legal instruments like those signed in Geneva Conventions that were drafted and evolved in the 19th and 20th centuries, to the literature of Tolstoy whose *War and Peace* influences Walzer’s own philosophical thinking about the nature of soldiering in *Just and Unjust Wars*. In this respect he is a conventionalist and historicist about the existence and use of moral norms.

Walzer is clear, however, that these opinions are not formed or judged, “in isolation.” Rather, these opinions refer and interpret the experience of combat, and their value is predicated on whether “they give shape and structure to that experience in ways that are plausible to the rest of us.” That is to say these opinions are plausible to those who have experienced combat, directly, adjacently, or in some way in which we have some tangible understanding of the far reaching effects of war.²⁹

Massacre, gross human rights violations, and the violence that may arise from them seem to be a special species of experience for Walzer. While he is wary of arguments that point to a universally valid set of principles governing war and especially intervention, he nevertheless finds fitting the descriptions of acts that warrant intervention as those acts which “shock the conscience of mankind.” Walzer notes that “the old fashioned language seems exactly right,” because such acts run against the grain of “the moral convictions of ordinary men and women, acquired in the course of their everyday activities.”

²⁹ Ibid., 15.

While the everyday activities that inform moral prohibitions against massacre do not, for Walzer, automatically point to a transcendent principle against massacre and human rights violations, they do seem to constitute a common reference point from which persons can make a persuasive argument regarding the necessity of stemming slaughters, one that, for Walzer seems to be enduringly convincing.³⁰ Walzer argues that in cases where “cruelty and suffering are extreme and no local forces seem capable of putting an end to them” that the “supposedly decent people of the world” should stop them. The extremity of human rights violations “invite us, or require us, to override the presumption of using force inside countries that have not threatened or attacked their neighbors.”³¹

Despite his strong stance on the necessity of stemming the tide of slaughter and massive human rights violations, Walzer is not particularly forthcoming as to what everyday experiences and activities lead to the specific moral convictions that point to the necessity of humanitarian intervention in the face of massacre. Close examination of “common responses” to mass atrocity prove to be morally inconclusive. On the one hand, if mass atrocities are exceptional cases, every day morality constructed from every day experience may lack the resources for morally theorizing and morally motivating responses to atrocity. The history of responding to human rights crises and incidents of mass atrocity is not consistent. One need not look far back in history or far away from the supposed centers of liberal democracy and human rights to notice the weakness of everyday responses to mass atrocity. Samantha Power puts the point bluntly in the introduction to her widely read work, *A Problem from Hell*:

Despite graphic media coverage American policymakers, journalists, and citizens are extremely slow to muster the imagination needed to reckon with evil...It is in

³⁰ Ibid., 107.

³¹ Michael Walzer, *Arguing About War* (New Haven: Yale, 2004), 68.

the realm of domestic politics that the battle to stop genocide is lost. American political leaders interpret society wide silence as an indicator of public indifference. They reason that they will incur no costs if the United States remains uninvolved but will face steep risks if they engage.³²

Indifference for the suffering of those far removed from one's everyday experiences and concern for those close to home who would be sacrificed in an intervention may be strong influences on the formation of moral response towards atrocity. The "public indifference" toward atrocity Power records in American society does not in itself rule out deriving a norm of AHI from the conventions of everyday experience. AHI into a foreign land is not always rejected by a society.³³ What American indifference does demonstrate is that Walzer's appeal to moral convictions derived from the everyday experience of ordinary people requires more elaboration if it is to be convincing.

While Walzer is not explicit regarding this matter, I argue that it seems that justification for humanitarian intervention may perhaps be drawn from the common desire to self-determination. Walzer describes how individuals form political communities and share a common life, and how the right to self-determination is derived from the experience and valuation of this common life. Walzer does not argue that the right to self-determination is natural and inherent to the human being as Morsink and Little do. Rather, whether it is a natural or an invented right is beside the point. The right is a fundamental feature of our moral world because human societies are, without exception, a manner of association that has been shaped by "shared experiences and cooperative activity" that lead to processes of "association and mutuality." These may stem from a shared history with which a community commonly

³² Samantha Power, *A Problem from Hell: America in the Age of Genocide* (New York: Perennial, 2003), xvii-xviii.

³³ Gary Bass, for instance, demonstrates convincingly that intervention can be a cause celebre. as it was in the case of British intervention into the Greco-Turkish war. See Bass, *Freedom's Battle*, Part II: Greeks.

identifies: legacies of struggle against nature or other communities, foundational myths, legal constitutions, shared ancestry, or language. They may be products of natural forces: climate, geography, available natural resources, that influence the cuisine that is cooked, the industry that is practiced, the community layout and architecture, and other artifacts that bind societies together into a common culture.

The right to self-determination is the fundamental right with which the legalist paradigm deals and the core of its central prohibition against aggression. Aggression is a breach of the legal rights of territorial integrity and state sovereignty and thus classified by Walzer as “the crime of aggression.” These rights are the collective legal expression of a community’s moral right (and thus the rights of the individuals within it) to self-determination, especially as they “choose their form of government and shape the policies that shape their lives.” Aggression is a disruption and external coercion away from this chosen life.³⁴

That the right to self-determination logically precedes the legal right to state-sovereignty and territorial integrity is crucial to the justification of humanitarian intervention in Walzer’s thought and for reconciling intervention with the spirit of the legalist paradigm. The sovereignty of any government is predicated on “the reality of the common life it protects and the extent to which the sacrifices required by that protection are willingly accepted and thought worthwhile.” Should there be a dissonance between a state, that is the government of the state, and the common life it purportedly protects, or if no such common life actually exists, the defense of a government and the privileges of sovereignty that protect it may not be justified.³⁵

Though Walzer does not explicitly make the connection himself, Terry Nardin, following Walzer, charts the path from the self-determination protecting the spirit (though not letter) of the

³⁴ Walzer, *Arguing About War*, 54.

³⁵ *Ibid.*

legalist paradigm to the moral right to intervene in cases of slaughter, massacre, and massive human rights violations. Nardin argues that in cases of massacre or severe human rights violations by a government on its own people, humanitarian intervention is undertaken on behalf of “subjects of a state whose own government has become an ‘aggressor’ against its own people.”³⁶ While a government may de jure maintain its sovereignty and status in the international community, such a government can no longer claim to represent the collective will of a political community. Such a government no longer embodies or executes the domestic will of a population. A government that no longer represents the collective will of a people and no longer executes the will of a domestic population functionally become an external occupying power, interfering in the self-determination of a people in the same coercive manner that a truly foreign occupying force does. Armed intervention is thus viewed as an aid to a people’s self-defense and self-determination against the interference of this external power, allying with a population under attack whose resources and organization may be incapable of repulsing their own government’s aggression without assistance.

In Walzer’s moral framework for military interventions, self-determination is the right upon which interventions, humanitarian interventions included, are justified. Even the rights to individual life, or the rights to live prosperously or well take a backseat to self-determination.

Walzer is clear that:

Humanitarian intervention involves military action on behalf of oppressed people, and it requires that the intervening state enter, to some degree, into the purposes of those people...it also cannot stand in the way of their achievement. The people are oppressed, presumably, because they sought some end-religious toleration, national freedom, or whatever-unacceptable to their oppressors. One cannot intervene on their behalf and against their ends.³⁷

³⁶ Terry Nardin, “From Right to Intervene to Duty to Protect: Michael Walzer on Humanitarian Intervention,” *European Journal of International Law* 24, no. 1 (2013): 69.

³⁷ Walzer, *Just and Unjust Wars*, 104.

This forefronting of “the purposes of the oppressed,” that is: their self-determinative will, “directly parallels the autonomy that is a necessary feature” of the interventions into civil wars and secessions that Walzer also discusses.³⁸ It is for this reason that Walzer argues that the true test of an armed humanitarian intervention is its commitment to the rapid withdrawal of forces after the tide of slaughter has been arrested.

For instance, Walzer condemns the United States occupation of Cuba in 1898. The occupation occurred after U.S. intervention against the atrocities of the Spanish on the island. While intervention against atrocity was warranted, occupation was a bridge too far. Walzer charges that the U.S.’s prolonged presence in Cuba after defeating Spain interfered too greatly with local efforts at self-determination. In contrast to the actions of the U.S. in Cuba, Walzer raises up India’s 1971 intervention in East Pakistan as an exemplar for humanitarian interventions. India’s military action in East Pakistan was exemplary according to Walzer “not because of the purity of the government’s motives, but because its various motives converged on a single course of action that was also the course of action called for by the Bengalis.” Walzer notes that this commitment to the purposes of the Bengalis resulted not in Indian occupation of East Pakistan or of India imposing or even securing rights for itself with a newly installed regime grateful and friendly to India because of the aid it rendered. Rather, the Indian forces “were in and out of the country so quickly, defeating the Pakistani army but not replacing it, and imposing no political controls on the emergent state of Bangladesh.”³⁹

I want to argue, however, that such clear-cut instances of humanitarian intervention are rare. It is not because the Indian government’s motives were purely humanitarian (Walzer notes

³⁸ Ibid.

³⁹ Ibid., 105.

that in this case as in most interventions motives were mixed and included strategic considerations). It is rare because of the singularly *external* character of the oppression. The Bengali people who occupied Eastern Pakistan were both linguistically and ethnically distinct from the primarily Punjabi and Urdu speaking citizens of Western Pakistan. These two groups found themselves after the partition from India in a territorially unified state in which the Urdu speaking Punjabis of Western Pakistan held power but were outnumbered in terms of population by the Bengalis. The government of the ostensibly united country of Pakistani cracked down on the Bengalis with a program of forceful assimilation that included cultural suppression, violence, systematic rape, and genocidal killing. Indian intervention was accepted by the Bengalis of Eastern Pakistan; the Bengalis eventually gained their own independence, even without further Indian aid, and became the modern state of Bangladesh. The rapid withdrawal of India had no detrimental consequences to the population and, indeed, is praised as a sign of the effectiveness and truly humanitarian character of India's military action.

The situation in East Pakistan certainly fits Nardin's characterization of governments who commit horrendous rights violations against their own people. It bolsters the credibility of the narrative of an external or foreign tyrant committing mass violations on people within its territory as the primary motivator for armed humanitarian intervention. This narrative is crucial for those who wish to extend or amend Walzer's legalist paradigm to accommodate within it the violations of sovereignty that armed humanitarian interventions necessarily entail. The situation in East Pakistan was a situation where rapid withdrawal was not only warranted, but seemingly beneficial to the self-determinative goals of the Bengali people. Though Pakistan was not formally a foreign tyrannical power because the Bengali people resided within Pakistan's internationally recognized borders, a wide swath of territory separated two culturally and

ethnically distinct groups, one of which violently imposed its will on the other. This made Indian intervention a fairly clean-cut case of morally justifiable interference. Most humanitarian crises are more complicated.

The characterization of human rights violators as always somehow external or morally detached from the societies in which they commit violations is questionable. To be sure, some atrocities are committed by larger than life tyrants (an Idi Amin, Muammar Qaddafi, or Saddam Hussein). However, mass atrocities can also grow out of popular sentiment and widely held cultural values. Too often mass atrocity is a deliberate choice, by a critical mass of citizens (rather than a minority of citizens or even simply government forces), or at the very least the inevitable end of the political path they choose to walk. Such atrocities occur within societies or between two societies that have historically been circumscribed by territories in close proximity, or, in many cases, in territories that have historically been populated by persons of mixed demographic markers--ethnicity, religion, language, ideology, or culture. They are perpetrated not only by a tyrannical figure, regime, or even a powerful minority, but with the support, consent, or at least tacit approval of a majority of citizens. One need not look far for examples.

Consider Nazi Germany. Despite the demonization of Nazism after the second World War, the Nazi ideology rose to prominence because of its public popularity. Hitler's rise to personal power was not orchestrated through a violent coup, but through fair democratic elections. More pointedly, no singular tyrannical figure instigated or organized the Rwandan genocide. Mass murder was perpetrated by the victims' former family, friends, neighbors, and random strangers. The list of such acts is long, and even societies that are ostensibly "free" or whose self-understand themselves to be champions of liberty, equality, and rights, have the skeletons of abuse in their historical closets. Indeed, the very freedoms and prosperity that enable

such societies to function may be built on the backbone of such atrocities. Consider as well the founding of the United States and its enslavement of African persons and their descendants. What happens to our carefully constructed moral frameworks when mass atrocity is not a historically aberrant event, but part and parcel of the regular pattern of history? What happens when it is not carried out by some tyrant external to the societal culture, but is perpetrated by people who are “terribly and terrifyingly normal”?⁴⁰ In such cases, I argue, both the specific praise of rapid withdrawal and the deeper commitment to self-determination as the primary concern of armed humanitarian intervention must be reevaluated and moral frameworks adjusted or constructed to accommodate such situations.

Intervention in Humanitarian Crises Rooted in Widespread Cultural Bias

Walzer deals with this problem about the justification of armed intervention in *Arguing About War*. In an essay penned 20 years after the publication of *Just and Unjust Wars*, he notes that the armed intervention emendation he makes in that work assumes that the “inhumanity” of the acts of massacre are “conceived as somehow external and singular in character: a tyrant, a conqueror or usurper, or an alien power set over against a mass of victims.”⁴¹ Walzer admits that in such cases rapid withdrawal and even the commitment to self-determination do not seem adequate for addressing the extent of the moral evil of massacre and massive human rights violations.

Walzer argues that when “the trouble is internal, the inhumanity locally and widely rooted, a matter of political culture, social structures, historical memories, ethnic fear,

⁴⁰ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin, 2006), 273.

⁴¹ Walzer, *Arguing About War*, 70.

resentment, and hatred” or when it involves “overlapping sets of victims and victimizers” it is clear that mass atrocity cannot be properly conceived of as a symptom of some external element’s effect on a state or society as it was in the case of East Pakistan. More importantly, Walzer acknowledges that if one rejects the premise that the root cause of mass atrocity is “an external and singular evil” that rapid withdrawal of intervening forces may allow for the “reappearance of conditions that led to intervention in the first place.”⁴²

However, problems remain. Even if long term engagement and even occupation is morally permissible, this accommodation does not solve the large theoretical problem of armed humanitarian intervention in these cases. In situations where human rights violations are local and popular, it is difficult to argue that the cause of self-determination is aided by armed intervention. Walzer does mention that when atrocity is locally and culturally rooted, groups who are victims of human rights violations “are not determining anything for themselves.”⁴³ The case might be made that armed intervention into situations of locally popular human rights violations facilitates the exercise of self-determination of an abused group. At the least, AHI removes the barrier of any proximal atrocities that hinder the exercise of the right of members of the group to self-determination. But understanding intervention as facilitating the rights of specific members of an abused group raises problems that threaten the viability of theories of intervention.

Theories of intervention do not often deal well with the problem of defining a self-determinative group. Practically, these groups may split into an infinite number of networks and subdivisions. These subdivisions may define their interests or even the organizing principle that unites them differently than any external observer. An appropriate locus of self-determination for any group of people may be difficult to determine. Even more problematic, especially to theories

⁴² Ibid., 70-71.

⁴³ Ibid., 81.

of intervention that rely on an understanding of state or societal responsibility to care for members, is the problem of understanding whose values and interests institutional powers are morally obligated to promote and protect. More importantly, when membership within a group is disputed or when cultural affinities differ from preconceived definitions, whose self-determinative will should guide political decision making is difficult to determine.

The right to self-determination has traditionally been conceived of as a right held collectively by a “people.” Both Article I of the United Nations Charter and Article I of the International Covenant on Civil and Political Rights grant the right to self-determination specifically to “peoples.” These documents are the only international instruments recognized by the international community as legally binding to mention in detail the right to self-determination.⁴⁴ The language of the ICCPR is particularly illuminating regarding the definition of peoples and their specific holding of the right to self-determination.

The language of the ICCPR implies that a “people” is a collective group bound by some intersubjective sense of commonality. The ICCPR indirectly defines a people as an entity composed of individuals and groups with a mutually recognized sense of political, social, economic, and cultural connection. The ICCPR mentions these categories specifically in its delineation of the aspects of common life that a people may self-determine. The ICCPR also specifies that the right of self-determination allows for a people to dispose of their “natural wealth and resources” for their own subsistence and benefit, implying that a people has a tie to a specific territory. The ICCPR also makes clear, that while a people may be connected to a specific state that has legal personality and sovereignty recognized in the international sphere, that a people and a state are not synonymous, making mention of the fact that “States parties to

⁴⁴ Hurst Hannum, “The Right of Self-Determination in the Twenty-First Century,” *Washington & Lee Law Review*, 773 (1998), <https://scholarlycommons.law.wlu.edu/wlulr/vol55/iss3/8>

the covenant” who administer “non-self-governing and trust territories” shall within those territories “promote the realization of the right to self-determination” for the peoples within those territories. Peoples are separate entities from the states and regimes that govern them.

The ICCPR does not grant the right of self-determination to individuals. Individuals living in a society cannot and should not have the absolute right to self-determination, and the larger community, society, or state regulates the behavior of the individual. The ICCPR has also made the impropriety of imbuing an individual with the right to self-determination clear. Legal scholar Hurst Hannum notes that the United Nations Human Rights Committee, the independent body that monitors implementation of the ICCPR by states parties, has consistently interpreted the language of the ICCPR as not applying to individuals. The UNHCR rejects claims that the right to self-determination has been violated that are raised under the First Optional Protocol to the ICCPR, the treaty that established the complaint and redress mechanism for individuals who claim that their rights as outlined by the ICCPR have been violated.

That the right of self-determination granted by the ICCPR and the UN Charter to a people is not strictly held by states, nor applicable to individuals, is clear. What the language leaves ambiguous is what communities, groups, or other collectives constitute legitimate claimants to the moniker of people, enough so that they are said to possess a collective right to self-determination. This is especially difficult in cases of humanitarian crises where victims facing atrocity or human rights violations are a vulnerable minority, especially if they are dispersed across a wide swath of territory populated by myriad others belonging to distinct groups. What principle grants a collective the right to self-determination, especially to members of a group that falls short of the definition of a people—people who are required to give up some of their rights and practices as a condition of living within a society?

When human rights violations are locally rooted and in cases where patterns of violence continually reverse the roles of victim and victimizer, the issue of legitimate intervention becomes more complicated. In both of the above situations, territory is shared and the collective life between groups intertwined so thoroughly in terms of territory, resources, and history that they cannot be extricated from each other and partitioned into different sovereign states whose rights to self-determination and non-interference may be protected. At best in these situations one is able under a Walzerian framework to make an arbitrary choice regarding which community's right to self-determination takes precedence unless one can prove that the acts that are being committed are morally *malum in se*.

Walzer seems to argue that the acts that “shock the conscience of mankind,” whether committed by an external tyranny or widespread and locally rooted are acts that are, in and of themselves, recognizably evil. As he does with the emendations made to the legalist paradigm for armed interventions warranted by “external” tyrannies, Walzer relies on the supposedly self-evident nature of the evil of these acts to warrant the exceptional measure that armed humanitarian intervention is. He says, “I don't mean to abandon the principle of nonintervention-only to honor its exceptions...One reads the newspaper these days shaking. The vast numbers of murdered people; the men, women, and children dying of disease and famine willfully caused or easily preventable; the masses of desperate refugees-none of these are served by reciting high-minded principles.” Here, as in the case of external tyranny, Walzer's appeal is not to the logic of a universal rationality, but to moral sentiment once again cultivated by the everyday activities of human beings, the gut reactions and apparent revulsions of what he calls “the decent people of this world” to such acts.⁴⁵

⁴⁵ Walzer, *Arguing About War*, 81.

Without the clarity of the customary right to preserve the right to self-determination that exists in cases of external tyranny, cases of armed intervention into locally rooted humanitarian crises face an uphill battle for moral justification. For one thing, the decent people of the world do not and have not demonstrated a common definition of an “act that shocks the conscience of mankind.” Walzer posits no universal rationality that defines and provides a benchmark for the shared moral world he argues exists, but neither does he provide demonstration that our attitudes and acts regarding atrocity agree.

Walzer does argue at the beginning of *Just and Unjust Wars* that the existence of our shared moral world need not, indeed will not, result in universal moral agreement. Rather, the fact that argument and disagreement are possible points to shared, albeit not always fully articulated, moral concepts and frameworks. “The moral world of war,” says Walzer, “is shared not because we arrive at the same conclusions as to whose fight is just and whose unjust, but because we acknowledge the same difficulties on the way to our conclusions, face the same problems, talk the same language.”⁴⁶ I maintain that when one faces human rights crises and navigates the moral calculus that work through the issue of armed humanitarian intervention, one finds that more than our conclusions are disparate.

Our approaches to the problems, the difficulties, and especially the language we use to approach human rights is often extremely particular to the issue, situation, and involved parties. Despite some stability in the moral meanings of war as a whole that Walzer holds that are discussed above, moral meanings, definitions, and terms do not seem to have the same stability in situations of human rights violations and armed intervention. Walzer acknowledges this himself in other works and even posits the necessity of a common culture to navigate moral

⁴⁶ Walzer, *Just and Unjust Wars*, xxvii.

meaning—the very thing that seems to be absent or in conflict in humanitarian crises where an overarching external evil cannot be blamed for the acts of atrocity.

In his monograph, *Spheres of Justice: A Defense of Pluralism and Equality*, Walzer chafes against what he calls “the deepest assumption of most of the philosophers who have written about justice from Plato onward” that there exists “one, and only one, distributive system that philosophy can rightly encompass.” Instead, he writes that “justice is a human construction and it is doubtful that it can be made in only one way.”⁴⁷

Walzer is referencing the philosophical situation in which “ideally rational men and women would choose if they were forced to choose impartially, knowing nothing of their own situation, barred from making particularist claims, confronting an abstract set of goods. He has in mind the contention of John Rawls in his seminal work *A Theory of Justice*.⁴⁸ Walzer admits that it is possible that, given such constraints, perhaps so called “rational” men and women would indeed choose one, and only one, distributive system of justice. However, Walzer contends that the constraints imposed cannot and do not represent the reality of how systems of justice and the moral principles that comprise them are derived, applied, and justified.

Walzer argues that any single conclusion regarding the nature of justice or system of morals “is surely doubtful” if those hypothetically impartial persons “were transformed into ordinary people, with a firm sense of their own identity, with their own goods in their hands, caught up in everyday troubles...” For him, the primary touchstone of moral inquiry must not be

⁴⁷ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 5. Walzer’s concern in *Spheres of Justice* is primarily with the question of distributive justice rather than specifically the rights of parties directly engaged in and adjacent to wars. His views on distributive justice shed light, however, on the question of armed humanitarian intervention that he takes up in *Just and Unjust Wars* and in other works because, for Walzer, the distribution of political power between segments of societies and between the international and domestic realm is understood to be central to instances of secession, civil war, and humanitarian persecution.

⁴⁸ See John Rawls. *A Theory of Justice: Revised Edition* (Cambridge: Harvard University Press, 2009).

exploring the moral choices of “rational individuals under universalizing conditions,” but rather the moral choices of persons “who are situated as we are, who share a common culture and are determined to go on sharing it?”⁴⁹

Walzer is clear that this move toward the individual in situ as the moral subject does not imply that individual moral choices should be nor even are determined by self-interest. He acknowledges that human beings may set aside their own particular interests to pursue some sense of public good. However, more difficult to escape for Walzer is the influence of history, culture, and group membership on the ways that individuals and groups perceive both private and public goods. In short, though Walzer argues that radical individualism can be transcended, his description of moral formation implies that the patterns of shared and common life influence not only *what* we think about morality, but *who* morality privileges. I want to argue, however, that both of these aspects of morality are inescapably viewed through the lens of culture. Differences in culture and the cultural biases that engender human rights violations are those that are precisely at issue in discussion of armed humanitarian intervention. The worst atrocities seem to come when disagreements as to who is eligible for a share in common culture occur. Though groups may be circumscribed by a common international border, like the case of East Pakistan, one or both parties may see themselves as totally separate from the other and view their interests, national destinies, and identities as separate and even conflicting. These societies are fractured and present a significant problem to any moral framework where identifying the locus of and supporting the right to exercise self-determination is key.

Walzer’s emendation of the legalist paradigm to accommodate AHI into situations where acts are so widely acknowledged to be heinous they can be said to “shock the conscience of

⁴⁹ Walzer, *Spheres of Justice*, 5.

mankind” fails then in two specific ways. First Walzer grounds justifications of AHI not in the clear-cut historical patterns of state-practice and juridical consensus regarding the right to self-defense of one’s state, society, and culture that undergird the legalist paradigm, but rather in the much murkier conception of common moral principles that arise from the everyday experiences of human beings. Walzer’s conception of common morality is that it is a product of created meanings, interpretations of the moral significance and the implications of common human experiences. Walzer argues that these meanings, especially concerning war, have been relatively stable over the expanse of time and place because the experience of war, the emotions it evokes, the personal and political considerations it demands, and the devastation it causes is similar.

However plausible (or not) Walzer’s notion of common morality may be, his trust in the ability human beings to extrapolate principles justifying and governing the deployment of AHI from everyday experience is suspect because the notion that there are experiences common enough to inform those conclusions is questionable. Mass atrocities are outside the realm of common everyday experience. The type of violence that constitutes mass atrocity is, by Walzer’s own admission, outside the bounds of even the “normally violent” process of “domestic self-determination.”⁵⁰ It would be overly simplistic to understand them as simple and relatable acts of malice, psychosis, anger, or even a notion of “evil.” Perpetrators of mass atrocity often draw upon complex motivations like questions of group identity, the interpretation of history, cultural value, and the pressures of social, economic, religious, and ideological forces to justify their acts. The pressure these types of forces exert is deeply contextual rather than common. Whether something qualifies as a mass atrocity or justified act is often a matter of interpretation. Walzer himself takes up a famously complex case of varying interpretation in Chapter 16 of *Just and*

⁵⁰ Walzer, *Just and Unjust Wars*, 106.

Unjust Wars, namely, whether or not American deployment of atomic bombs on Japanese cities were legitimate, albeit tragic, military actions, or acts of mass atrocity. Walzer himself, contrary to much of public opinion at the time of the bombings and in the decades of subsequent reflection, argues that they were the latter.⁵¹

Second, the issue of societal fracture remains a significant hurdle to Walzer's emendation of the legalist paradigm. There is no political collective in which the interests and rights of certain sub-groups are sacrificed for the benefit of the collective. There are always certainly elements in a community, criminals for instance, whose acts threaten a community and whose basic rights are forfeit because of the deliberate danger in which they place the community. There are also, however, instances where, though no deliberate malice to society is intended by the restricted parties, the rights of certain parties have been curtailed in order to promote public goods. One need only look at restrictions placed on individual behavior enforced during global pandemics in order to promote the collective good of public health. Societies generally make these decisions for themselves as a matter of collective self-determination.

The question of whose interests, goods, and cultural values should take precedence when taking collective action is always a matter of membership and priority. However, things like membership in a society and what qualifies certain citizens for the protection, benefit, and exclusion from societal prioritization are matters that are generally considered domestic aspects of a society. The question I raised last chapter regarding the prioritization of Jewish over Palestinian interests in Israel is a prominent instance of this problem. It is difficult to adequately

⁵¹ Walzer, *Just and Unjust Wars*, 268. See also, Stephen Ambrose. "The Bomb: It was Death or More Death." *New York Times*. August 5, 1995. <https://www.nytimes.com/1995/08/05/opinion/the-bomb-it-was-death-or-more-death.html>. Accessed 04 June 2021; and John C. Hopkins, "The Atomic Bomb Saved Millions: Including Japanese." *Wall Street Journal*. August 05, 2020. <https://www.wsj.com/articles/the-atomic-bomb-saved-millionsincluding-japanese-11596663957>.

answer questions regarding internal membership from an external perspective, let alone respond to them with a measure of external coercion like AHI.

Examining the Problem of Societal Fracture Through the Case of LGBTQI+ Rights in Uganda

An effective moral framework for human rights and especially armed intervention to protect those rights requires more consensus than is possible under a Walzerian conception of a shared moral world. It is not enough to understand that a regime of rights can and does exist to create an efficacious moral framework for armed humanitarian intervention. The specific and minute differences of opinion in what does and does not constitute a human right, or to whom those rights apply, can have dire consequences for the lives and well-being especially of populations placed at risk and the willingness of potential intervening parties to undertake armed interventions. The case of LGBTQI+ rights provides an example of the problem that societal fracture can have for Walzer's justification of AHI. The case demonstrates that minute differences in the interpretation of human right principles, questions of group membership, and priority of interests can significantly affect moral considerations of AHI.

As early as 2011, the U.N. Human Rights Council expressed “grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.”⁵² A 2016 resolution by the same body provided even stronger language, stating that it “strongly deplore[d] acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation or

⁵² United Nations Human Rights Council, “Human rights, sexual orientation and gender identity” A/HRC/RES/17/19 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>

gender identity” and acknowledged that anti-LGBTQI+ discrimination constituted an “attempt to undermine the international human rights system by seeking to impose concepts or notions pertaining to social matters, including private individual conduct, that fall outside the internationally agreed human rights legal framework.”⁵³ The 2016 document thus acknowledges the status of LGBTQI+ rights as fundamental human rights under international law.

As clear as this statement is about the recognized status of LGBTQI+ rights under international law which supposedly enjoys widespread international consensus, it also acknowledges that the rights are disputed at local levels. The document states that the UN Human Rights Council holds LGBTQI+ rights to be protected rights. However, it refuses to take the step of authorizing any form of external coercion, even short of AHI, to enforce LGBTQI+ rights. Indeed, it condemns such actions. The document clarifies that, despite its affirmation of LGBTQI+ rights, the UN Human Rights Council is:

Reiterating the importance of respecting regional, cultural and religious value systems as well as particularities in considering human rights issues,

Underlining the fundamental importance of respecting relevant domestic debates at the national level on matters associated with historical, cultural, social and religious sensitivities, and

Deploring the use of external pressure and coercive measures against States, particularly developing countries, including through the use and threat of use of economic sanctions and/or the application of conditionality to official development assistance, with the aim of influencing the relevant domestic debates and decision-making processes at the national level.⁵⁴

⁵³ United Nations Human Rights Council, “Protection against violence and discrimination based on sexual orientation and gender identity” A/HRC/RES/32/2

https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/RES/32/2

⁵⁴ Ibid.

The 2016 resolution thus affirms LGBTQI+ rights as a subset of human rights, but still equivocates on the justifiability of actions to protect those rights.

This dubiousness is indicative of the confusing place that protections for LGBTQI+ persons have within the realm of international law. While the claim that LGBTQI+ rights are universally valid and therefore binding upon every society, the oppression of LGBTQI+ persons and the suppression of their activities related to their identity is widespread. The repression of LGBTQI+ rights cannot be traced to a single tyrannical figure, nor even a particular ideology or time period, not construed as something the particularly heinous acts of cruel and unusual actors alone. There has historically existed cultural and religious taboos and biases against LGBTQI+ persons. These taboos and biases are widespread and are not limited to any one particular culture, religion, or tradition. These taboos and biases continue into the present day in many places resulting in persecution of LGBTQI+ persons and the violations of their rights under international law as indicated by the ICCPR.

Sub-Saharan Africa is of particular note when considering LGBTQI+ persecution because of the mix of cultural and religious attitudes that fuel it in these countries. In their 2013 survey “Tolerance and Tension: Islam and Christianity in Sub-Saharan Africa” analyzing Muslim and Christian attitudes on a variety of issues, The Pew Research Forum found significant moral opposition to homosexual behavior among both Muslims and Christians in every country surveyed in Sub-Saharan Africa. Thirty-two Sub-Saharan African Countries criminalize same-sex relations. Even in the most tolerant nation of Guinea-Bissau, Pew found that more than $\frac{2}{3}$ of persons self-identifying with one of these Abrahamic faiths opposed homosexual behavior. In the countries surveyed by Pew, 67% of self-identifying Christians and 71% of Muslims surveyed held that homosexual behavior was morally wrong. In several Sub-Saharan African nations, Pew

found over 98% of surveyed of Muslim and Christian persons surveyed opposed homosexual behavior as morally wrong.⁵⁵

Even beyond religion, there are significant cultural oppositions in many Sub-Saharan African countries to homosexual identity and behavior. In another Pew survey conducted specifically to gauge global attitudes toward LBGTQI+ issues, Pew found that consistently 95% of more of Ugandans held that “homosexuality should not be accepted by society” when surveyed at intervals across an 11 year period from 2002-2013.⁵⁶ Ugandan attitudes toward homosexuality are especially significant in light of the Ugandan Anti-Homosexuality Law passed by the Ugandan Legislature and signed into law by President Yoweri Museveni in 2014. The act called for life imprisonment for those convicted of homosexuality. Harsh measures against LBGTQI+ persons seem to enjoy wide popular support from both legislators and Ugandan voters. This is evidenced by the popularity of an earlier effort at anti-homosexual legislation in Uganda considered between 2009-2011 that even called for the death penalty for certain cases of “aggravated homosexuality.” This bill enjoyed near universal support in the Ugandan parliament according to legal scholar Daniel Englander. This earlier measure only missed passage because it was not voted upon before the close of the parliamentary session in 2011.⁵⁷

LBGTQI+ oppression in the case of Uganda is no external tyranny, but rather an implementation of the will of an overwhelming majority of the Ugandan people. Legislators have framed LBGTQI+ persons and acts as threats to the “traditional heterosexual family” and the

⁵⁵ Pew Forum on Religion & Public Life, *Tolerance and Tension: Islam and Christianity in Sub-Saharan Africa* (Washington D.C.: Pew Research, 2010), 276.

⁵⁶ Pew Global Attitudes Project, *The Global Divide on Homosexuality* (Washington D.C.: Pew Research, 2013), 23.

⁵⁷ Daniel Englander, “Protecting the Human Rights of LGBT People in Uganda in the Wake of Uganda’s Anti Homosexuality Bill, 2009” *Emory International Law Review* Vol. 25 Issue 3 (2011), 1263-1264.

“cherished culture of the people of Uganda...against the attempts of sexual rights activists seeking to impose their values of sexual promiscuity on the people of Uganda.” Though some justifications for anti-LGBTQI+ acts are rooted in baseless claims regarding the connection between the LGBTQI+ community and the sexual exploitation of children, the right to preserve and protect one’s traditional culture and moral values, even at the expense of others, has wide purchase in Uganda and beyond. Though the Constitutional Court of Uganda would eventually strike down the 2014 law on procedural grounds, even as late as 2019 legislators in Uganda were working to retable the anti-homosexuality measure, with the death-penalty clause re-included.⁵⁸ LGBTQI+ persecution in Uganda continues to be perpetrated by both private citizens and public officials despite the lack of any capital crime legislation legally banning LGBTQI+ acts.

The Franklin and Marshall Global Barometer of Gay Rights which scores the relative freedom and security of LGBTQI+ persons in a country gives Uganda a grade of F. Uganda’s Global Barometer of Gay Rights score of 11% is among the lowest in the world. This score indicates that Uganda is not simply intolerant, but a country in which vast amounts of active persecution against LGBTQI+ persons occurs.⁵⁹ Ugandan police forces have conducted many mass arrests of LGBTQI+ persons, often on trumped up charges unrelated to LGBTQI+ behavior. Such arrests have included physical violence, including the forced anal probing of detainees.⁶⁰ Violence against LGBTQI+ people continue throughout the country including acts of assault and even the murder of prominent LGBTQI+ activist Brian Wasswa in 2019.⁶¹

⁵⁸ Jason Burke and Samuel Okiror. “Ugandan MPs press for death penalty for homosexual acts.” *The Guardian*. October 15, 2019.

⁵⁹ Franklin and Marshall Global Barometer of Gay Rights, “Uganda,” <https://www.fandmglobalbarometers.org/>

⁶⁰ Human Rights Watch, “Uganda: Stop Police Harassment of LGBTQ People.” 17 November 2019. <https://www.hrw.org/news/2019/11/17/uganda-stop-police-harassment-lgbt-people>

⁶¹ Human Rights Watch, “Uganda: Brutal Killing of Gay Activist.” October 15, 2019. <https://www.hrw.org/news/2019/10/15/uganda-brutal-killing-gay-activist>

Taking coercive measures in order to change the behavior of the Ugandan people, whether this be through economic or other sanctions or especially the armed humanitarian intervention that is the main consideration of this dissertation, is not even a questionable and murky interference into the right of the Ugandan people's self-determination. It directly contravenes it. Walzer's appeal to the common morality of human beings learned by their everyday interactions is of limited help when considering the violation of LGBTQI+ rights in Uganda. While many nations have expressed moral outrage at the treatment of LGBTQI+ persons in Uganda and significant international pressure has been applied, there are many both within and without Uganda supportive of continued persecution.

It may perhaps be argued that the violation of LGBTQI+ rights in Uganda does not rise to the level of an "act that shocks the conscience of mankind" either in terms of the heinousness of the crimes committed against LGBTQI+ persons or in terms of the number of persons affected. But this too exposes yet another flaw in Walzer's moral framework for humanitarian intervention. It is not enough to say that "the decent people of the world" will oppose acts of human rights violations. Many decent people of the world have opposed Uganda's anti-LGBTQI+ measures, but many nations and many persons support oppression. What if the acts of terrorization and violation shock the consciences of some, but not all of humanity? If only the Nazi final solution, the Rwandan genocide, or the various slaughters in the Balkans qualify, but the terrorization of Uganda's 500,000 strong LGBTQI+ community with acts of rape, arbitrary imprisonment, murder and threats of state-sanctioned execution do not, is the bar for AHI perhaps set too high?

The Responsibility to Protect and its Pitfalls

I now turn to the doctrine of the “responsibility to protect” (R2P). R2P is a relatively new international human rights norm that first became well-articulated in the eponymously titled report of the International Commission on Intervention and State Sovereignty commissioned by the Canadian government in 2000.⁶² R2P understands the concept of sovereignty to imply an obligation for states to protect the individual human rights of persons within their territory. Should a state fail in this duty, either through inability or unwillingness, the principle vests the international community not simply with the right, but the responsibility to intervene in order to protect those rights. Though humanitarian intervention is meant to be a last resort within the confines of R2P, armed intervention has often been the central focus of discussions surrounding R2P.

The move from defining sovereignty as imbuing a state with the right to non-interference to defining sovereignty as responsibility for the citizens of a state’s territory shifts the locus of humanitarian warfare away from questions regarding the permissibility of engaging in coercive measures to alleviate humanitarian crises. Instead, it asks questions regarding the extent of one’s obligations to expend effort and resources to alleviate such crises. In short, it moves the focus of moral discussion from an intervener’s right to interfere to a population’s right to rescue. This semantic shift also opens the door for justifications of humanitarian intervention that do not require appeal to a vague “everyday” morality of a globally understood set of “decent people,” but rather to an assessment of local situations and aids to local governments in the discharge of

⁶² Gareth Evans et al. *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001).

their duties. In this respect, it comes closer to the framework that I will defend in chapter 4. Nonetheless, problems surround R2P, as I wish to make plain here.

By pushing forward a definition of sovereignty that makes the first duty of states the protection of its citizens within its territory, R2P seemingly sidesteps the concerns of critics of armed humanitarian intervention that coercive measures are a violation of the legal principle of sovereignty and its implied right to non-interference in domestic affairs. Sovereign rights are granted commensurate with the discharge of sovereign duties. This is not a new concept per se. Walzer, for instance, grants belligerent rights to combatants in a civil war who administer a significant amount of territory in contravention of the control of an established governmental regime.⁶³ These belligerent rights effectively amount to sovereignty for those belligerents who administer goods and services and provide protection for the people within the territory of their control regardless of whether they are an officially and internationally recognized sovereign government. Where R2P is innovative and indeed controversial is in the power it grants to the international community to evaluate the performance of a sovereign according to certain international principles rather than simply acknowledging de facto command and control over people and territory.

While the semantic shift that R2P promotes may be linguistically convenient for those hoping to demonstrate the compatibility of non-consensual armed intervention with the legal right of sovereignty, the validity and utility of R2P beyond its definition in international documents is more difficult to determine. The innovation regarding the definition of sovereignty that is the primary contribution of R2P to considerations of armed humanitarian intervention is controversial both functionally and philosophically. Practically speaking, what qualifies parties

⁶³ Walzer, *Just and Unjust Wars*, 96.

to adequately judge states and the mechanism by which states are appropriately judged are unclear. Philosophically speaking, and as we saw with Walzer's thought on humanitarian intervention, moments of societal fracture within a territory raise questions regarding to whom governments owe the moral duty to protect, and who may fairly take up the responsibility to aid and rescue vulnerable populations.

R2P was developed as an international norm in response to the experience of gross human rights violations occurring in the 1990s. The Rwandan genocide of 1994, and the various conflicts in the Balkans were tragedies in which the lack of response, lateness of response, and/or adequacy of response were criticized by many within the international community. Ironically, despite this outcry, military interventions into these matters were also heavily criticized. NATO intervention into Kosovo, for instance, was seminal and extremely controversial, despite the fact that NATO's collective action in the form of a nearly three month military operation was a multilateral effort and seemingly enjoyed wide, albeit not universal, support from a diverse set of societies.

NATO intervention in the Balkans, along with simply the growing disquiet over the botched responses to human rights crises in the 1990s brought the issue of humanitarian intervention to the fore of international debate. Consideration of the issue exposed a deep divide among states and societies as to how to properly assess and respond as an international community to these situations and the status of the right of sovereignty in light of human rights violations. In the document "We The Peoples: The Role of the U.N. in the 21st Century" published in 2000, then Secretary General Kofi Annan noted the deep divides and grave concerns over humanitarian intervention. Annan acknowledged the worries of some states that humanitarian intervention "could become a cover for gratuitous interference in the internal

affairs of sovereign states,” that “it might encourage secessionist movements deliberately to provoke governments into committing gross violations of human rights in order to trigger external interventions that would aid their cause” and the fact that the costs and risks of humanitarian intervention almost always entail relatively strong nations interfering in the affairs of weaker ones.

Annan was clear that the principle of sovereignty “offer[s] vital protection to small and weak states” and thus a key feature to an equitable international order. However, in light of the human rights crises that plagued his term as secretary, he posed this piercing question: “ If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?” Like Walzer, Annan framed this not as a legal duty, subject to objection under the laws protecting sovereignty in the international order, but rather as a moral issue.⁶⁴

In response to Annan’s challenge, the Canadian government convened the International Commission on Intervention and State Sovereignty (ICISS). The commission was co-chaired by former Australian MP Gareth Evans and former Algerian Ambassador Mohamed Sahnoun. Their report *The Responsibility to Protect* (from which the R2P doctrine derives its name) lays out the shift in the definition of sovereignty that forms the basis of R2P’s contribution to the discussion of intervention, as well as more technical recommendations regarding institutions, procedures, and mechanisms that the committee felt would facilitate greater efficacy of humanitarian interventions as well as aid in bolstering its claims toward international legitimacy.

⁶⁴ Kofi A. Annan. *We The Peoples: The Role of the U.N. in the 21st Century* (New York: United Nations Department of Public Information, 2000). 47-48.

From the ICISS report and its recommendations, R2P has become an increasingly influential international norm. The principle was adopted without objection by acclamation by the general assembly as part of the outcome document (UN Resolution 60/1) of the United Nations' 2005 World Summit. The 2005 World Summit outcome, which also established the Millennium Development Goals, was attended by over 150 heads of state and government and represented "a unified stance by the international community on a broad array of crucial issues, including concrete steps towards combating poverty and promoting development to unqualified condemnation of all forms of terrorism along with the acceptance of collective responsibility to protect civilians against genocide and other crimes against humanity."⁶⁵ Beyond the affirmation of R2P in principle, the United Nations has used R2P as the basis for active humanitarian warfare. The U.N. Security Council invoked R2P as a basis for intervention in 2006 to authorize the deployment of U.N. peacekeepers to Sudan.⁶⁶ Since that time R2P has urged states to end their perpetration of gross human rights violations (more on which below). More importantly to the discussion of armed intervention, R2P has been the basis for direct military actions against human rights violating regimes.

The core logic of R2P was the primary basis for military action in Libya in 2011. The UN Security Council adopted resolution 1973 on March 17, 2011 which authorized states, "acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi." These measures were authorized on the basis of the

⁶⁵ United Nations Conferences Meetings and Events. "The 2005 World Summit High-Level Plenary Meeting of the 60th session of the UN General Assembly (14-16 September 2005, UN Headquarters, New York)," https://www.un.org/en/events/pastevents/worldsummit_2005.shtml.

⁶⁶ United Nations Security Council, *Resolution 1706* (31 August 2006).

government of Libya's failure to meet the Security Council's demand "that the Libyan authorities comply with their obligations under international law, including international humanitarian law, human rights *and refugee law and take all measures to protect civilians and meet their basic needs, and to ensure the rapid and unimpeded passage of humanitarian assistance.*" The Libyan government, having failed in this duty, was therefore subject to action and intervention by the international community based on R2P. Resolution 1973 was adopted without any "nay" votes, with 10 votes in favor and 5 abstentions, further affirming the widespread acceptance of R2P as an accepted international norm in principle.⁶⁷

Later in March of 2011, the U.N. adopted resolution 1975 which authorized military action in Cote d'Ivoire. The resolution condemned the gross human rights violations perpetrated by both the forces of ex-President Laurent Gbagbo who was maintaining his hold on power by force, and the forces loyal to President in waiting, Alassane Ouattara, who were fighting to claim de facto control of the country after his electoral victory. This resolution was adopted unanimously. In April following the resolution, United Nations forces launched a military campaign to defeat Gbagbo's forces. The operation resulted in the installation of Ouattara as President. Military forces loyal to President Ouattara with assistance from French troops detained and arrested Gbagbo and eventually remanded him to the International Criminal Court for trial on charges of crimes against humanity.⁶⁸

The core contention of R2P and the primary justification for intervention in Libya and Cote d'Ivoire noted above is that sovereignty entails a government's *responsibility* to care for all

⁶⁷ United Nations Security Council. *Resolution 1973* (17 March 2011). While resolution 1973 paragraph 4 authorizes "all necessary measures" to protect civilians, it adds the caveat that "a foreign occupation force of any form on any part of Libyan territory" is specifically prohibited. Emphasis mine.

⁶⁸ United Nations Outreach Program on the Rwandan Genocide, *Background note on the Responsibility to Protect* (New York: U.N. Department of Public Information, 2014), 2-3.

of the people within its territory.⁶⁹ The ICISS report concluded that: “where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international *responsibility to protect*.”⁷⁰ The R2P language that holds governments responsible not only for their “people” but for their population, those persons within the bounds of their sovereign territory, is crucial. It opens the door to armed humanitarian intervention should a government breach this duty by committing genocide or other crimes against humanity against persons they do de jure or de facto treat as equal citizens of their regime. Unlike the right to self-determination that is held by a “people,” the ICISS report implies that any group within a territory is owed the duty of protection by a regime if it falls within the territory of that regime. However, like the legalist paradigm, R2P emphasizes a society’s right to self-determination and minimal interference by those who intervene. It is thus plagued by many of the same philosophical and practical issues that hamstring humanitarian intervention under the legalist paradigm. Like Walzer’s emendation of the legalist paradigm discussed above, this emphasis on self-determination is a theoretical roadblock for measures that may be required for the transformation of social values that long-term protection of vulnerable populations may require. The ICISS is clear that, “any use of military force that aims . . . for the alteration of borders or the advancement of a particular combatant group’s claim to self-determination, cannot be justified. Overthrow of regimes is not, as such, a legitimate objective.”⁷¹

Despite this stated commitment against regime change, both AHI in Libya and in Cote d’Ivoire justified under R2P ultimately resulted in what amounted to regime change supported by

⁶⁹ Evans et al., *Responsibility to Protect*, xi.

⁷⁰ Ibid.

⁷¹ Ibid, 36.

intervening forces. The political and practical realities of AHI justified under R2P thus do align with its moral commitments. It is true that the ICISS report acknowledges that removing “a regime’s capacity to harm its own people may be essential to discharging the mandate of protection.”? According to the ICISS report, “what is necessary to achieve that disabling” may require harsher measures depending on the nature of the conflict, despite the fact that a stated end of the report is “to strengthen the order of states by providing for clear guidelines to guide concerted international action in those exceptional circumstances when violence within a state menaces all peoples.” This seemingly crucial threshold of when self-determination may be sacrificed for the protection of the vulnerable is vague. More importantly, it seems to put the moral underpinnings of R2P in conflict with the political exigencies of safeguarding the well-being of vulnerable populations. A robust moral framework for AHI should unify these two concerns in a way that R2P does not.

This conflict between the *raison d’être* of R2P and the means necessary to secure protection extends also into the issue of continued influence and even occupation by an intervening party. There does exist within the ICISS report language that specifies that part and parcel of the international community’s responsibility to protect includes not only prevention prior to atrocities occurring, but also a commitment to rebuild and heal societies after conflicts. Extended stays by an intervening force may be justified under this principle, but it is not specifically called for, only permissible under the vague language that authorizes intervening forces to provide assistance with “recovery, reconstruction, and reconciliation.”⁷²

Rather than provide a specific threshold for measures from initiating a military intervention in the first place to authorizing the extended presence of an intervening force, R2P

⁷² Ibid., 35-36.

as envisioned by the ICISS report assigns to the U.N. Security Council and the Secretary General a prominent role in determining both the legitimacy and extent of AHI. According to the report, “the UN . . . is unquestionably the principal institution for building, consolidating and using the authority of the international community.”⁷³ While the report declares the U.N.’s authority to arbitrate between cultural consensus and international norms to be “unquestionable,” criticism of the U.N. and its ability to adjudicate just humanitarian interventions nonetheless persists.

Walzer, for instance, raises the point that multilateralism and specifically the mechanism of the United Nations may not be ideal for the authorization of armed humanitarian intervention. He argues that if this route is taken, the “result is very likely to be stalemate and inaction, which cannot always be the general will of international society.” Walzer notes that the humanitarian interventions that relieved the abuse of Bengalis in East Pakistan and stemmed the atrocities in the killing fields of Cambodia and the oppression of Idi Amin in Uganda would likely not have been authorized by the United Nations, though he acknowledges that U.N. backing would bolster both claims to moral legitimacy and operational political effectiveness.⁷⁴ Yet Walzer’s confidence in the moral legitimacy that U.N. sanction would lend support to armed intervention if the U.N. and especially the Security Council got up the gumption to authorize and organize a humanitarian intervention is not universally shared.

Recall for instance, Hardt and Negri’s critique of U.N. authorizations of AHI I discussed in chapter 1. Hardt and Negri state that “supranational jurisdictional practices” (i.e., U.N. and Security Council authorized acts) lack the legitimacy of consistent and equal application. They warned that “[o]ne has to recognize how selective this application of justice is, how often the

⁷³ Ibid.

⁷⁴ Walzer, *Arguing About War*, 78.

crimes of the least powerful are prosecuted and how seldom those of the most powerful are.”⁷⁵

Certainly the unequal application of R2P has proven true, hindered not in spite of the U.N.

institutions meant to lend legitimacy to the doctrine, but because of them.

The failure of the U.N. to apply R2P against Security Council members demonstrates its inadequacy as a moral authority and arbiter of R2P actions. R2P failed to be invoked in order to force the cessation of China’s abuse of its Uighur population. China’s abuse of its Uighurs involves the forcible transfer of population, sterilization, abortion, and systematic rape.⁷⁶ All of these acts are classified as crimes against humanity by the Rome Statute.⁷⁷ R2P has not been invoked to authorize any military action on behalf of the Uighurs in Xinjiang. This may perhaps be politically impossible given China’s veto power in the U.N. Security Council, but it reinforces the points of Walzer and Hardt and Negri that critique the U.N. as an inadequate institution for judging and authorizing what may be morally necessary armed humanitarian interventions. R2P has been invoked only to interfere in Majority World nations and has authorized only two direct military actions in Libya and Cote d’Ivoire, both nations in the Majority World.

Though R2P is beset with implementation problems like those seen in the case of Chinese Uighurs, it may perhaps be argued that inconsistency of application or failures in practice do not invalidate R2P in principle. R2P’s insistence that sovereignty entails a responsibility to protect one’s subjects and the idea that the international community is obligated to step in should a sovereign state manifestly fail in this duty has appeal and support beyond the foundational

⁷⁵ Michael Hardt and Antonio Negri, *Multitude* (New York: Penguin, 2004), 28-29.

⁷⁶ Associated Press. “China cuts Uighur births with IUDs, abortion, sterilization.” 28 June 2020.

<https://apnews.com/article/269b3de1af34e17c1941a514f78d764c>; Matthew Hill, David Campanale, and Joel Gunter.

“Their goal is to is to destroy everyone: Uighur Detainees allege systematic rape.” BBC News. (February 2, 2021).

<https://www.bbc.com/news/world-asia-china-55794071>

⁷⁷ International Criminal Court, “Article 7,” *Rome Statute of the International Criminal Court* (The Hague: International Criminal Court, 2011), 3.

documents in which the doctrine was first articulated. The work of Luke Glanville does much to establish this relationship between sovereignty and protection beyond its contemporary expression in the ICISS report and the 2005 World Summit document.

R2P and historical sovereign responsibility

Glanville's account demonstrates that, though sovereignty has been a dynamic and evolving concept, sovereign rights have always been "conceived to be limited by the responsibilities upon which their authority was legitimated." In the early modern period in Europe, this meant that the sovereign, while absolute in their power, was responsible to God and to neighboring princes for the treatment of their populations.⁷⁸ Even the idea of absolute sovereignty popular in this period was conditional on the proper discharge of one's sovereign duties. Glanville notes in particular that Jean Bodin, while denying subjects the right to resist a tyrannical absolute monarch, did not abridge the right and responsibility of neighboring sovereigns to hold tyrants to account for violations of the higher law of God. Bodin argues in fact, that it is not only within a sovereign's right to fight a tyrannical fellow sovereign, it is an honorable act.

For just as it is right and proper for anyone to take forcible action to defend the honour and life of those who are oppressed unjustly when the law offers no remedy, so it is highly honourable, and befitting a prince, to take up arms in defence of a whole people unjustly oppressed by a cruel tyrant. . . . In such a case there is no doubt that a virtuous prince can proceed against a tyrant either by force of arms, diplomatic intervention, or process of law.⁷⁹

⁷⁸ Luke Glanville. *Sovereignty and the Responsibility to Protect: A New History* (Chicago: University of Chicago, 2013), 214.

⁷⁹ *Ibid*, 36.

Even in the early modern period, the responsibility to care for those oppressed by a tyrant devolved to the international community in a way similarly authorized by R2P. However, Bodin's justification both for absolute sovereignty and the right of just sovereigns to punish tyrannical sovereigns rested on the belief in a divinely ordained order that placed sovereigns at the head of their subjects as well as sovereigns as subject to the dictates of the law of God. This divine law was knowable and all persons, sovereigns included, were accountable to it.⁸⁰

Modern conceptions of R2P cannot rely on a common conception of the metaphysical order of the universe, let alone on the specifically Christian character of the world that Bodin assumed. In the previous chapter I argued that no universal conception of morality or natural law can be relied upon for establishing the right of societies to intervene in the affairs of others. Sovereignty would not and has not, however, lost its legitimacy as a concept with the wane of notions of divine right. Rather, legitimation of sovereign rights and understandings of sovereign responsibility have shifted to "the people" as the legitimating authority of the sovereign and the body to which the sovereign owes its duty.

Glanville records that the 17th and 18th centuries saw the rise of popular sovereignty as the dominant conception of sovereignty, replacing sovereignty by divine right. He notes that this shift entailed that "rulers were responsible not only for but to the people for the protection of their safety and security."⁸¹ No metaphysical order was necessary to legitimate and delineate the parameters of sovereign rule. Rather, rights and responsibilities of sovereignty derived directly from the will of the people they ruled.

⁸⁰ Ibid, 37.

⁸¹ Ibid.

Should they fail in this duty, the people have the right to resist and revolt, and, as the source of sovereignty call for assistance in the form of intervention against an abusive regime. This continues to be the dominant understanding of sovereign legitimacy to this day. R2P's primary contention that a government's sovereignty is predicated on the fulfillment of the duty to protect those within its territory seems to directly derive from the idea of accountability to the people within the discourse of popular sovereignty.

Glanville's work makes clear the historical warrant for R2P's definition of sovereignty and, more importantly, gives intellectual and historical precedent for intervention. However, what Glanville's work cannot settle is the issue of what *people* a sovereign owes the duty to protect. R2P assumes in principle that the security and well-being of all persons within a territory should be of paramount importance to any regime that claims sovereignty within a state. However, in practice, no government can secure absolutely equitably the well-being of every segment of persons within its state. Indeed, the protection of every person may run counter to the popular will of the people that Glanville argues legitimates sovereignty in the contemporary period and that defines the scope of a regime's responsibility to its people sometimes precludes protecting every segment of society. In many nations, the United States included, felons are denied even the basic right to vote. Certain minority racial, socio-economic, or groups of particular national origin are targeted and profiled for police action and abuse rationalized as a maintenance of order for the larger society. Certainly, the case of LGBTQI+ persons in Uganda and the abridgment of their rights is an applicable example of the failure of deriving the responsibility to protect from popular sovereignty. Every state has haves and have nots.

Some states are even more extreme and actively cultivate this disparity. Some states do not consider their governments to be governments for the entirety of the populations within their borders, but rather for a specific segment of that state's society. The state of Israel is a particularly prominent example of this, especially because it formalized the specificity of whose well-being the government serves into law. On July 19, 2018 the Knesset, Israel's governing legislature, passed "The Basic Law: Israel as the nation-state of the Jewish people." The law formalized into Israeli law 3 basic principles: a) The Land of Israel is the historical homeland of the Jewish people, in which the State of Israel was established; (b) The State of Israel is the nation state of the Jewish People, in which it realizes its natural, cultural, religious and historical right to self-determination and; (c) The exercise of the right to national self-determination in the State of Israel is unique to the Jewish People.⁸² Rather than acknowledging a duty to protect and promote the well-being of all persons within its territory, the Basic Law seems to imply that the regime owes its allegiance only to Jewish persons. The rights, including the right to self-determination, of other groups-most prominently the Palestinian Arabs who occupy the territory (or alternatively whose territory is occupied) are left out of the Basic Law's conception of whom the government exists to serve.

The legal and moral status of the Basic Law's specific privileging of the Jewish people over and above the numerous Palestinian Arabs residing within the territory of the state is a matter of vehement debate. What it unequivocally demonstrates is the pitfall of connecting the responsibility to protect to territory rather than other, perhaps dearer, loci of societal identification. A strict application of R2P would seem to require the

⁸² The Knesset. *The Basic Law: Israel as the nation-state of the Jewish people* (trans. Susan Hattis Rolef). 1. <https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf>.

international community to step in to compel the state of Israel to provide equal protection to Palestinian Arabs since they reside within territory held by the Israeli State. Despite its acclamation by the international community, R2P's application by that community has proven to be complicated. A government may argue that its actions, while oppressive to a particular minority, actually serves to protect the people to whom it owes its sovereign duty. R2P's demand that all persons within a territory be protected is not necessarily congruent with the historical notions of sovereign responsibility. Though the ICISS and the 2005 World Summit document may set the scope of sovereign responsibility as pertaining to all persons and populations within a governed territory, this is an arguable and ahistorical standard.

Looking Ahead toward the construction of Dialogical Ethical Framework

Both the frameworks for intervention articulated by Michael Walzer and by proponents of R2P are inadequate to deal with complex cases of humanitarian crises in intra-social conflicts and the justifications required in such cases to legitimate armed humanitarian intervention. Both are overly reliant on the assumption of a direct connection between state, nation, people, and territory. The lack of clarity on these concepts in turn muddies the connection these concepts have to the self-determinative will of a society that both the legalist paradigm and R2P are adamant about protecting. Humanitarian crises are often rooted in ethnic, religious, or ideological divisions within a society, even a society circumscribed within the borders of a state. The suppression or infringement of the so-called human rights of a segment of a society may enjoy popular support domestically, even for events considered infringements of human rights by

the larger international community. These infringements may even have strong support among certain and even majority domestic groups. I want to argue that when the relationship between state, nation, people, and territory is troubled, justifying humanitarian warfare as aids to societal self-determination becomes exceedingly difficult. Human rights crises often mark moments of societal fracture, or periods where groups within a society seek to separate or distinguish themselves from one another. In such cases it may become difficult to identify a unified “will of the people” and to determine which society is determining what for themselves and whose cultural rights take precedence.

Secondly, an overemphasis on societal self-determination often excludes the possibility of an intervener’s prolonged presence and, frankly, cultural indoctrination that the protection of populations placed at risk may practically require. Both the legalist paradigm and R2P utilize the rapid withdrawal of forces as the mark of a militarily and morally successful humanitarian intervention. However, the emphasis on rapid withdrawal can lead to the leaving in place cultural cancers like simmering ethnic hatred or religious bigotry that may metastasize into resurgent violence. Neither the everyday morality of decent people put forward by Walzer nor the doctrine of the Responsibility to Protect recognized by the international community provide a robust enough moral framework to answer the criticisms of the particularist challenge. They deal well with tyrannical figures, small cadres, or minority groups who through historical circumstances happen to have a preponderance of power they use to abuse a majority of citizens. Here the emphasis on both Walzer and R2P place on protecting the local right to self-determination is far more effective than appeals to universal morality. It dovetails with the particularist challenge in some way as a protection of the overwhelming will of a people and defense of their common culture and political life. They may very well be viewed as extensions and aids to local

sovereignty if sovereignty is conceived of as residing in the will of the people. However, when human rights crises are brought on by local and widespread bias culminating in popular acts of atrocity these frameworks fail.

Armed humanitarian intervention suffers from an inescapable philosophical paradox under both the Walzer's thought and R2P. The same basic right to individual self-determination that undergirds justifications for humanitarian intervention seems to lend credence to narratives of cultural sovereignty and the ability for a society to choose its political and social path, even if it seems morally abhorrent to outsiders. On a practical level, religious, ideological, and ethnic movements often entail concerns for one's social group reinforced by cultural symbols and practices that are nearer and dearer than internationalist considerations or care for an abstract "humanity." In such cases, armed humanitarian interventions are denied the legitimacy and widespread buy-in necessary for them to be successful after an intervening force withdraws. A radical rethinking of the purpose and basis of armed humanitarian intervention is therefore required.

Armed humanitarian intervention must not simply be thought of as a force for the defense and restoration of inalienable and inherent rights. It must become a creative force that *establishes* the rights of vulnerable populations and assures their *recognition* within a society. This is a difficult theoretical task to navigate if one is committed to pluralism as a philosophical norm and its recognition as a political fact. It is possible, however, if scholars and policy makers jettison the understanding of both individual and social identity and value formation as an atomistic and solely self-determined process. Rather, this process must be viewed as something dialogical. Armed intervention under such a framework becomes a force that creates spaces in which the values, symbols, and visions of the good from the cultures of the intervener and the intervened

upon intertwine and challenge each other, eventually being channeled into the transformation of both cultures ostensibly toward the end of greater respect for the rights of all persons and groups.

James Gustafson's "theocentric ethics" provides a starting point for the construction of an ethical model of armed humanitarian intervention. Gustafson understands moral formation and the conception of moral good as an intersubjective process. Moral decision making and value formation are a process of discernment, a dialogue between an agent's moral imagination, their ability to articulate and implement new forms of social life, and the forces that constrain their actions. Proper discernment is predicated on an agent's recognition of their interdependence within larger and larger networks of these forces and their ever-expanding understanding of what constitutes the good of larger and larger wholes.

Based on Gustafson's theological and ethical perspective, in the next two chapters I will work to construct a dialogical ethical framework for AHI. I will first demonstrate the suitability of Gustafson's religiously rooted perspective for the analysis of AHI, even amidst the fact of pluralism. I will then argue that a model for armed interventions rooted in Gustafson's theocentric ethics will hold significant philosophical and practical promise over both the universalistic narratives put forth by Morsink and Little, and the moral framework for intervention proposed by Walzer and proponents of R2P that currently dominate the ethical discourse.

Gustafson's ethics is rooted in a singular religious tradition and provides tools and justifications for working from a limited perspective that can answer the particularist challenge in a more nuanced and culturally astute way than appeals to universalistic moral schemes. I am confident that the dialogical nature of Gustafson's ethics will remove the internal incoherence that an overemphasis on self-determination presents to the theories of armed humanitarian

intervention. Second, it anticipates the strong objections that armed intervention as a concept faces from proponents of cultural sovereignty. Finally, it offers insight into policies and actions intervening powers may take that are precluded by both the legalist paradigm and R2P, but whose implementation may be necessary to secure lasting peace and the long-term respect of the rights of vulnerable populations.

Chapter 4: Toward A Dialogical Ethical Framework for AHI, Part I

The ways of the Almighty are His own.¹

-Abraham Lincoln

The major contention of this dissertation is that religious patterns of thinking provide resources for constructing an alternative framework for AHI that can better answer the particularist challenge. In Chapter 1 I noted that the religiously informed work of Talal Asad, at the very least, reframed the particularist challenge in a way that opened the theoretical possibility of AHI despite his continued skepticism over its moral validity. Over the course of the next two chapters, I will go a step further and work to demonstrate that AHI is not only theoretically possible in light of particularism, but that it may even be warranted in certain circumstances. I stop short of establishing a categorical right to intervention occasioned by “acts that shock the conscience of humankind” as they are commonly (and I have discussed previously, problematically) described, as well as the recognition of basic human rights upon which such shock is supposedly founded. As an alternative, I will look to vindicate the moral norms often associated with the GHR and the AHI used to enforce them in light of a dialogical ethics.

I will define dialogical ethics and provide its warrants in more detail in a later section. Suffice to say here that a dialogical ethics takes conversation between parties to not only be a practical or political good when determining courses of action, but also a moral necessity. Using the model of conversation, dialogical ethics establishes an Other as a critical reference point for

¹ Abraham Lincoln, “Second Inaugural Address,” (speech, Washington, D.C., March 04, 1865). Abraham Lincoln papers: Series 3. General Correspondence. 1837-1897. Library of Congress. <https://www.loc.gov/item/mal4361300/>

ethical thought, emphasizes response to the needs and demands of the Other as morally critical,² and, finally, understands the ethical enterprise as a matter of a continual communication and negotiation between parties, prior to, during, and continuing after moral actions are taken or attitudes taken up rather than one simply of the application of or even reflection on moral norms.

My dialogical ethics is not a fully formed ethical theory. The latter section will thicken its description somewhat, but even that work is preliminary. I begin to develop this dialogical ethics, however, because I argue that the approach my sketch suggests can provide practical and philosophical advantages for navigating the tension between the moral drive many societies have to rescue populations at risk of atrocity and the emphasis ethical thought after the subjective turn places on respecting at face value cultural authenticity and values as normative for ethical consideration that is the moral basis for the particularist challenge to AHI. My exploration of dialogicality and its relationship to theocentric ethics in this dissertation is mobilized for the analysis of a particular moral and political problem, rather than geared toward developing a moral theory more generally.

My dialogical ethical approach draws upon and follows closely from the theocentric ethics of James Gustafson. Dialogical ethics takes as foundational his theocentric construal of human experience and the warrant it gives for understanding human moral life as a process of continual discernment that takes its bearings from the human experience of being conditioned and constrained by dynamic powers that are 1) beyond the individual's control; and 2) which may not be acting to benefit particular human beings or even the human species. It also draws upon Gustafson's particular understanding of God as Other and how that understanding places communication (i.e., dialogue) at the heart of human experience and the process by which

² I use the word "response" deliberately because it emphasizes not simple acquiescence to the demands of the other, but the ability to submit one's own needs and demands for equal consideration.

culturally generated prescriptive norms may gain significance outside of the communities in which they originate. This fourth chapter is a necessary preliminary discussion that introduces the principal ideas of Gustafson's theocentric ethics, distills the useful insights that may be derived from them for dialogical ethics, and distinguishes dialogical ethics and its particular ethical emphases from those of Gustafson's.

The problem of AHI fades to the background for much of this chapter, but it motivates the discussion in two ways. First, as the discussion of the previous chapters note, the problem of AHI demonstrates the inadequacy of ethical theories based on cultural authenticity as normative (Hardt and Negri), as well as those based on understanding of static moral orders based in human rationality (Little) or the implications of a static moral order on moral concerns like those captured by the idiom of human rights (Morsink and Walzer). Addressing the lacunae and inconsistencies that the problem of AHI exposes in these moral frameworks functions as a principle of selection for the focus of my summary of Gustafson's rich and expansive laying out of his theocentric ethics and those elements that I appropriate, highlight, refine, and amend in the formation of my own dialogical ethics. Second, both the exposition of theocentric ethics and the explication of dialogical ethics are necessary steps that must come prior to delineating the issues that a more robust framework for AHI must attend to in light of the particularist challenge. My exposition aims to set the stage for showing how dialogical ethics can better meet the requirements of robustness than the means that my interlocutors in chapters 2-3 provided which is the subject of the next chapter. It is to this end that I aim the summary work of Gustafson offered here and the appropriation of some his concepts for the construction of a dialogical framework for the consideration of AHI to which I turn at the end of this chapter.

Some Caveats

I will not engage the full breadth of Gustafson's corpus, nor marshal every resource it may provide towards an analysis of AHI and the construction of a more robust moral framework for its consideration. I limit myself primarily to the two volumes of Gustafson's *Ethics from a Theocentric Perspective*. Gustafson himself characterizes these two volumes as his work with the largest scope of consideration, set apart from other some of his other writings "determined by the requirements of a highly specified project with a single issue," or those which were "an effort to analyze the state of a field." Rather, *Ethics from a Theocentric Perspective* in its two volumes is, for Gustafson, "the project of fifty-five years of living" and "at least thirty years of 'homework'," the fruit of "not only of the scholarly life, but of reflection on events in which [Gustafson] participated or which [he] observed, on the lives of persons and communities that have been part of [his] life, and on the experiences of the worlds of nature and culture."³

Gustafson notes that the "distinctive thrust" of *Ethics from a Theocentric Perspective* is "toward the development of a theocentric ethics" that places God as the center of value and holds God and the furthering of God's purposes to be the measure of morality. The appropriateness of attitudes, actions, and values are understood in relation to God. Focus on God is a central feature of many faith traditions, especially the Abrahamic traditions that hold historical and cultural sway in the West. The turn toward theocentrism writ large is not unfamiliar in history. However, in the context of AHI and in light of the particularist challenge and its emphases on cultural authenticity, some discussion of what Gustafson means by a 'theos' is required. Beyond the

³ James M. Gustafson. *Ethics from a Theocentric Perspective Volume I: Theology and Ethics* (Chicago: University of Chicago Press, 1981), x.

definition of a theos, the appropriateness of making it the center of ethics in the context of the modern pluralist international society in which AHI takes place is similarly necessary.

Theocentric Ethics and Pluralism

Theocentrism, indeed religious thought in general, seems, at first glance, an odd place to turn to find anti-inflammatory resources for the relief of the fundamental tension of AHI, especially as it concerns the drive to respect cultural authenticity. A strict adherence to a conception of God and the placement of that God as the center of one's ethics can be a catalyst for conflict between cultures or a factor that reinforces structures of inequality and violence against minorities. The medieval wars between Christian and Muslim states known in the West as the Crusades can be characterized as wars between the adherents of two faith traditions, and the use of force and even atrocity was justified as the divine will of a particular deity. One need not look so far back in history of forms of theocentrism leading to violence, even heinous violence, between different faith traditions, cultures, and even within a particular society. The Crusader motto "*deus vult*"⁴ has become popular white supremacist slogan in the United States and may be seen emblazoned on signs and even replica medieval shields during white supremacist rallies and demonstrations.⁵ Religion was a flashpoint for the violent attacks in Gujarat state between Hindu and Muslim communities in 2002.⁶ Ethno-religious discrimination

⁴ Latin: "God wills it."

⁵ Neda Ulaby. "Scholars Say White Supremacists Chanting 'Deus Vult' Got History Wrong." *All Things Considered*. National Public Radio, September 4, 2017. <https://www.npr.org/2017/09/04/548505783/scholars-say-white-supremacists-chanting-deus-vult-got-history-wrong>.

⁶ Parvis Ghassem-Farchandi notes that while extra-religious political and social factors contributed to the violence that in 2002, Though the violence in Gujarat in 2002 had many complicating political factors, religion played a major part. He notes: "many non- Muslim residents explained the violence as an extralegal collective punishment of a recalcitrant Muslim minority by the Hindu majority, conceived of as "the people."'" Parvis Ghassem-Farchandi.

is a significant factor of ISIS attempts to exterminate the Yazidi population of Kurdistan,⁷ and it is a major factor Chinese government's persecution and alleged genocide against the Muslim Uyghur population in Xinjiang.⁸

Religion and especially moral values rooted in religious tradition have also proven to be an effective tool for shoring up power in repressive regimes. Russian President Vladimir Putin purports to possess a deep connection to and faith in Orthodox Christianity. Putin proposed several changes to the Russian Constitution that would add language affirming Russian's faith in God and defining marriage as between one man and one woman in conformity with Russian Orthodox teaching. The constitutional amendments also included measures to legally allow Putin to stay in power though his term as leader would have ended under the old provisions of the Russian Constitution. Even before Putin's proposal of these constitutional changes, Dmitry Uzlander writing for the Berkley Center for International Affairs at Georgetown University, argued that in the Putin era, Russia has shed the old U.S.S.R. commitment to be "a fighter for the progressive transformation of humanity (away from religion and toward atheism)." Instead it has taken on a conservative religious self-identity, styling Russia as "the last bastion of Christian values" that helps keep the world from sliding into a liberal dystopia."⁹

Given the above examples, one might fear that a theocentric ethics that looks to judge and govern the morality of an international and intercultural phenomenon like AHI seems to be a

Pogrom in Gujarat: Hindu Nationalism and Anti-Muslim Violence in India (Princeton: Princeton University Press, 2012), 2.

⁷ Amy Cheng and Ellen Francis. "Biden said the killed ISIS leader persecuted Yazidis. Here's what to know about the religious minority." *Washington Post*. February 4, 2022. <https://www.washingtonpost.com/world/2022/02/04/yazidi-religion-isis-genocide-syria/>.

⁸ BBC. "Who are the Uyghurs and why is China being accused of genocide?" <https://www.bbc.com/news/world-asia-china-2227803>.

⁹ Dmitry Uzlaner. "Global Culture Wars from the Perspective of Russian and American Actors: Some Preliminary Conclusions." *Berkley Forum* (Washington D.C.: Berkley Center for Religion Peace and World Affairs) December 18, 2019. <https://berkeleycenter.georgetown.edu/responses/global-culture-wars-from-the-perspective-of-russian-and-american-actors-some-preliminary-conclusions>.

retreat from, if not a repudiation of, a commitment to international pluralism and philosophical emphases on respect for cultural authenticity. Theocentrism could very easily, from the standpoint of theoretical consistency, solve the problem of intercultural conflict by appealing to special revelation or divine command, preaching an ethics of exclusion of both other forms of knowledge and the moral concerns of other communities. While the possible dangers of generally religious (and even more so, theocentric perspectives) are well known, an examination of the specifics of Gustafson's specific theocentric perspective shows that it bends towards inclusivity. I do not therefore argue that any skepticism over religious perspectives is unwarranted. I only argue that the unique character of Gustafson's theocentric ethics defies the initial skepticism about the applicability of religious patterns of thinking like theocentric ethics to a pluralistic context, and subsequently to the ethical consideration of AHI. I turn now to a summary of Gustafson's theocentric ethics that demonstrates this.

Summary of Theocentric Ethics

Gustafson's primary constructive task in the first volume of his *Ethics from a Theocentric Perspective* is not ethical, it is theological. Gustafson understands theology to be a way of "construing the world." Gustafson understands this to mean that the enterprise of theology "is an effort to make sense out of a very broad range of human experiences, to find some meaning in them and for them that enables persons to live and to act in coherent ways."¹⁰ Construing the world, or the range or human experience, means that the theological task must not only make the cognitive and rational aspects of human experience sensible, it must also include and make sense

¹⁰ Gustafson *Vol 1*, 158. Gustafson takes the language of "construing the world" from Julian N. Hartt. "Encounter and Interference in Our Awareness of God," in *The God Experience*, ed. Joseph P. Whalen, S.J. (New York: Newman Press, 1971), 52.

of sentiment, affectations, and the other aspects of human experience that, to put it colloquially, are matters of the heart rather than the head.

To delineate the specific elements of human experience which Gustafson looks to “construe” would be task too lengthy for this dissertation. Nor would it be particularly useful. No doubt Gustafson’s understanding of the world that theology construes would admit ever more and more aspects of human experience than are referenced in his two volumes. However, one critical, if not the critical experience, upon which Gustafson’s specific theological effort is informed by is the human observation and experience that “man is not God.”¹¹ The observation is not meant to prove the existence of a particular God, but rather to remind one of the inescapability of human finitude despite the increase in human capacity to control and harness natural forces, as well as the human ability to devise social arrangements that can pursue more and more complex and longer range goods. Human beings are finite, fundamentally limited in our powers by our biology and by the fact that our lives are dependent on a web of interdependence which includes: other persons, institutions, culture, and the natural environment.¹² The fact of human finitude and the experience of interdependence is indicative of powers beyond the human that condition human life and upon which human life is dependent. At the very least, Gustafson argues that this experience requires one to acknowledge one’s dependence on an Other, an ultimate power, beyond the human.¹³ The terms “God,” “Deity,” and “Theos” are interchangeable in Gustafson’s text. They are the symbols given to the experience of these powers beyond the human felt as an “Ultimate Power” that “sustains us and bears down

¹¹ Ibid., 16.

¹² Ibid., 14.

¹³ Ibid., 3.

upon us,” and upon which “all of life depends” and thus the primary objects of his theocentric construal of the world and his subsequent theocentric ethics that follow from it.¹⁴

Despite the fact that Gustafson draws language from the Christian tradition, it is clear that his account of God is does not conform to the deity of a particular scripture. Gustafson’s understanding of God is not reliant on special revelation, nor are the powers that bear down upon us supernatural. Gustafson is clear that: “[t]heology is not reflection upon something supernatural, as if we could reflect on something that is not in any way related to human experiences...religion [and therefore its object, i.e. God] is grounded in experiences of "others": of nature, of human communities, of human creativity and action.”¹⁵ The fact of human finitude and interdependence may be observed in multiple areas of human life. This includes both interdependence with the natural environment, and interdependence in the social world. We are dependent on natural conditions like the availability and flourishing of edible resources in order to sustain our biological health and fuel the exercise of our physical capacities. We are also dependent on social forces like history, tradition, and culture to sustain our political lives and provide the context for the exercise of our social powers. It is in all of these arenas that “we feel powers sustaining and bearing down on us.”¹⁶ Gustafson’s God then is amenable to pluralism. Gustafson’s God is incorporable into systems of belief and meaning beyond any single tradition, and even in understandings of human experience that are non-religious. Gustafson notes that universal condition of finitude may “warrant the hypothesis that something like religious sensibilities are latent in a vast number of thoughtful human beings who consider themselves indifferent if not hostile to historic religious traditions.”¹⁷

¹⁴ Ibid., 195.

¹⁵ Ibid., 134.

¹⁶ Ibid., 229.

¹⁷ Ibid., 16.

The central implication of Gustafson's understanding of God as the symbol of those powers which sustain and order human life is that one must understand God and the purposes of God beyond their utility for human beings and their assurance of human good. This is to say that one must construe the ordering of life not as anthropocentric, but rather theocentric. Gustafson notes multiple aspects of the human experiences of God that demonstrate the fact that "the *theos* is not the guarantor of human benefits," despite the fact that it is the sustainer of human life and the source of any benefits.

Knowledge gleaned from scientific investigations into the origin of the universe and the plays a significant role for Gustafson in sustaining this point. "From what we know about the development of our universe, the development of the preconditions for the evolution of life on our planet, the development of various species and the extinction of many, the contingencies (unless one is sure of a divine providence) that occurred which made possible the evolution of mammals, and the forecasts for the future demise of our universe (to be sure, in billions of years), it is very difficult to sustain the belief that the cosmos was made for man. If there is an ordering power [i.e. God] behind, within, and through all these natural processes out of which human beings have developed, it is difficult to say that God was made for man or even that God developed the universe for the sake of man."¹⁸ The experience of God, as well as a close examination of God's ordering of the universe and its sometimes contradiction of human purposes ought to place caveats on the notion that the purposes of God are aligned with the specific purposes of specific faith traditions, civilizations, nation states, chosen peoples, and especially individuals.

¹⁸ Ibid., 90.

Gustafson's understanding of God in this way affirms some of the insights one might draw from the pluralistic nature of human social life and, in turn, the fact of human pluralism and the human social dependence on the pluralistic and interdependent world may testify to the greater adequacy of Gustafson's conception of God as the symbol for the sustaining and ordering powers beyond the human upon which human beings are dependent. Gustafson's understanding of God thus flies in the face of many of those exclusionary and exclusive religious positions I discussed above (e.g. white supremacy rooted in Christian symbolism, Hindu nationalism, etc.). This alleviates to some extent concerns that theocentrism may support oppression and unwarranted discrimination. The experience of God demonstrates that interdependence with the wider world and the Other (which is another of Gustafson's symbols that highlight the alterity of the powers bearing down upon human beings) is the fundamental condition of human experience and its theocentric construal.

Piety as response God

Understanding and recognizing these powers that bear down on human beings and acknowledging our interdependence with them should engender, for Gustafson, a particular response in a theocentric construal of reality, namely that of piety. The disposition of piety is the foundation of all of Gustafson's conclusions regarding ethical reflection and moral action. Gustafson characterizes this piety as fundamentally the feelings of "awe and respect,"¹⁹ and also at particular moments the "senses of dependence, gratitude, obligation, remorse and repentance,

¹⁹ Ibid., 201.

direction, and hope.”²⁰ For Gustafson, piety is not mere devotion or practice of certain traditionally sanctioned spiritual disciplines. Rather, the disposition of piety and the awe and respect it engenders allows human beings to understand their proper relation to God and the rest of creation. Gustafson’s pattern of ethics stems from the understanding that human life is entirely dependent upon these relationships. Gustafson is clear that this interdependency implies a duty to care; not simply for ourselves or even for our fellow humans, but for all creation. Gustafson observes that:

We are deeply and inexorably dependent upon aspects of the natural world for human survival and flourishing. For these we are grateful, since we did not bring them into being. They deserve our respect, for without them we could not be. We recognize a duty to care for them.²¹

Thus, Gustafson understands the theos-centered moral life as not simply following some sort of divine command. Rather, one must live one’s life subject to a continued “rational assessment” of the requirements of the world through human experience and scientific investigation; thus, living in a manner that is appropriate to that world.²² This form of moral life is comprised of three major facets: consent, enlargement of soul, and discernment.

Consent

Our knowledge of the world and of God leads away from an anthropocentric view to one in which humanity is part of the whole of creation. Humanity is dependent on natural conditions and divine power creating, sustaining, and offering possibilities for development of those

²⁰ James M. Gustafson. *Ethics from a Theocentric Perspective Volume 2: Ethics and Theology* (Chicago: University of Chicago, 1983), 10.

²¹ Gustafson *Vol. 1*, 209.

²² *Ibid.*

conditions. In light of those powers it is humanity's moral obligation to consent to those powers as symbolized in various traditions. Consent is not mere passive acquiescence, but rather an active cooperation with the symbols; it means agreeing with the idea that "there is value in the symbols and in what they yield as a way of construing the world."²³ For Gustafson these symbols come from the Reformed Christian tradition, but they represent powers beyond it. Cooperation is not command, however. A theocentric ethics is not one of unquestioningly yielding to divine command. Consent implies the ability to dissent and, moreover, to judge the adequacy of symbols and systems of symbols as adequate for construing the world coherently, or to judge them as incoherent.²⁴

Gustafson provides the example of how scientific investigations into the natural world beginning in the seventeenth century caused the reinterpretation or outright rejection of certain conceptions of the deity as inadequate. He notes:

A religious interpretation of special providence [and thus a Deity actively working its will on behalf of particular persons in the world] was undercut by the developments of science in seventeenth century; it was replaced by a religious interpretation of the Deity as the clockmaker [sic.]. The Deity as the clockmaker had an agonizing death during the nineteenth century when evidences from geology, biology, and other sciences pointed toward the importance of processes of development in nature and when no static standard of "perfection" could any longer be defended.²⁵

²³ Ibid., 232.

²⁴ Ibid., 233.

²⁵ Ibid., 122.

Beyond Gustafson and the specific symbol of the Deity itself, numerous examples of testing the adequacy of religious symbols abound. One prominent example of this that mirrors Gustafson's discussion of divine providence is the movement away from demonic possession as an adequate symbol for certain non-physical afflictions and toward the understanding of these afflictions as mental health conditions. This shift is driven in large part by behavioral and social-scientific investigations.²⁶ Despite the ability that growing bodies of knowledge and wider evidence gathered from experience may provide for testing the adequacy of religious symbols and their significance, no investigation or development has allowed one to jettison the notion of human finitude. As Gustafson points out, human experience speaks to greater interdependence. Human moral experience thus still involves recognition of powers beyond the human, as well as the recognition that one must live and morally act according to the limits set by those powers.

Enlargement of Soul

Proper consent must judge the adequacy of that to which it purports to give consent. Traditional symbols can be overly laden with anthropocentrism. Given Gustafson's understanding of God and Man, such symbols must be rejected as incoherent construals of the world. Rather, Gustafson requires a shift in perspective. The primary turn "is...from self to other, from anthropocentrism to God as the primary object of attention." Gustafson, however, denies

²⁶ Paul Hollenbach notes this shift: "The evidence in the Gospels indicates prima facie that Jesus was an exorcist...In modern terms this means that Jesus healed people who had various kinds of mental or psychosomatic illnesses. In past scholarship the historicity and significance of Jesus' exorcising, as well as his other healing activities, were most often issues because they were tied up with the question of the miraculous. But the question of the miraculous need no longer be a serious issue because the phenomena of possession and exorcism are now examined and understood via the social sciences as common world-wide phenomena throughout most of history." Paul Hollenbach "Jesus, Demoniacs, and Public Authorities: A Socio-Historical Study." *Journal of the American Academy of Religion* Vol. 49, No. 4 (Dec., 1981), 567.

that this turn fully “enables human beings to see from “God’s point of view.” But it does force persons to perceive and interpret “man in relation to the ultimate power and orderer of all of the creation.” Such a theocentric view enlarges the “context within which humanity is perceived and interpreted.”²⁷ Because humanity can never see from God’s standpoint, a full integration of all considerations is by definition impossible and humanity is not held to such a standard. Rather what Gustafson wishes to avoid is “closed mindedness” or “the satisfaction that makes us content with the level of development of our partial perspectives.”²⁸ Enlargement of soul captures this quality of driving for greater integration of these perspectives so that “Other relationships become more significant than they traditionally have been...Human agency based on our distinctive capacities expands our causal accountability beyond the well-being of the human life to the well-being of various “wholes” of which we are parts.”²⁹

Discernment

Enlargement, notes Gustafson, is not however, “sufficient in itself to resolve the practical issues of how things are to be appropriately related to each other and to God.”³⁰ What he means by this is that a shift in perspective is not able to resolve the moral dilemmas arising from particular contexts. It is only a necessary condition to do so adequately. The resolution of particular moral dilemmas requires instead a view of the moral life as a process of discernment. Gustafson defines moral discernment as a process that requires that “effort be made to gather relevant information, test its accuracy, and not to avoid any that might alter our initial moral

²⁷ Ibid., 308

²⁸ Ibid., 301.

²⁹ Ibid., 317.

³⁰ Ibid., 307.

feelings about things” in order to develop an evaluative description of a moral event or act on the basis of the “salient information, or salient aspects of an event” gathered in this process. More than this discernment indicates a willingness to “respond to an account of the salient features of the event, and to an ordering of those features in such a way that the event has a measure of coherence.”³¹

Even then certainty about moral acts is not guaranteed, but only some measure of certitude relative to the contexts in which the dilemma arises.³² Gustafson argues that discernment requires that construals and explanations regarding the purposes of God and the proper relations between humanity, the world, and God must be imaginative, insightful, but also be testable for accuracy and explanatory power.³³ In short, it is a return to the process of discernment with emphasis on testing for coherence with the various forms of human experience.

These experiences continue to develop; therefore what can be said about God and the moral order that stems from being related to God cannot be timeless and changeless.³⁴ This does not, for Gustafson, descend into radical relativism, but rather maintains that often many positions can be “ethically defended.”³⁵ The process of ethical defensibility implies the testing of positions and moral choices based on the myriad of human experiences in order to come up with an adequate, though never fully certain, construal of what actions and order of relations are appropriate. Indeed, for Gustafson we can never fully know a moral order and conform to it. Rather, “our understanding of the proper relationships, and consequently of those actions which are fitting, is relative to knowledge conditions, to capacities that have developed to control the

³¹ Ibid., 334.

³² Ibid., 327.

³³ Ibid., 329.

³⁴ Ibid., 339.

³⁵ Ibid., 341.

consequences of interventions, and to other aspects of society and culture.”³⁶ Ethics for Gustafson is therefore not a discipline that aims at (or can ever achieve) epistemic certainty. The ethical enterprise can only make qualified moral judgments and those judgments are not final and definitive. “Ethics,” for Gustafson, “is a process of giving reasons for action; the establishment of good reasons both prior to action and in the justifications of actions after the fact.” But even the best of these efforts is not definitive. Gustafson says only that the ethical enterprise is more “likely” to develop more appropriate actions and evaluations.³⁷

Profile of Theocentric Ethics

Gustafson’s observation, drawn from multiple realms of human experience, that human beings are dependent on forces beyond their control for their survival and well-being, forces which are not always disposed to that survival or well-being, is key to the development of his ethical methodology. The experience of powers beyond human control, e.g., forces in the natural world, cultural and social forces, historical circumstances, etc., are collectively understood to be God and are therefore the focus of what human ethical consideration must be attuned. The theologically informed proper human response to God that Gustafson discusses in Volume 1 of *Ethics from a Theocentric Perspective* results in an ethics whose profile distinguishes it from the pattern of much of ethics, especially Western ethics. Gustafson discusses eight “distinctive features” of theocentric ethics and discussing them in detail will lay the groundwork for my application and modification for a framework for AHI.

³⁶ Ibid., 244

³⁷ Ibid., 69.

The first distinctive feature of theocentric ethics and “[t]he most critical difference” from other ethical systems according to Gustafson himself, “is the theocentric focus as such.” Gustafson claims that the Western moral tradition describes human beings, because of their unique capacities of human beings and certain special features of human life, “at the center of all valuation.” A theocentric ethics, in contrast, is clear that “human beings, human communities, and the human species—is not the ultimate center of value.” Ethical calculations made under a theocentric framework may suggest that courses of actions that may most benefit human individuals or communities be foregone for the sake of a greater whole.³⁸

For Gustafson, “ethics necessarily must be based upon, grounded in, authorized and backed by” certain beliefs about god, god's purposes, and especially the proper order of relationships between god, human beings, the natural world, and human created structures and patterns of life. The second feature of theocentric ethics is thus that these “patterns of interdependence and development within which human activity and life occur become a basis, ground, or foundation for ethics from a theocentric perspective.”³⁹ In summary, theocentric ethics takes its cue from the notion of the sovereignty of god and thus god's divine purposes beyond a conception of god as a specific benefactor of human beings. It moves away from anthropocentrism and the notion that god’s divine and moral purposes are in the service of human being and thus will not support the notion that the moral conceptions of particular individuals or cultures may be an appropriate ethical standard.

It is crucial to recall, however, that given Gustafson’s theological understanding of God as a symbol, the divine purposes of which Gustafson speaks are not the divine commands found in the holy texts of any one faith. Rather, Gustafson holds that the theological conviction in an

³⁸ Gustafson, *Vol. 2*, 4-5.

³⁹ *Ibid.*, 7-8.

ultimately sovereign god can be derived, at least in part, on the experience of “dependence upon, interdependence with, and participation in an ordering of nature and other aspects of life which are beyond ultimate human control.” The experience of this radical dependence is not a facet of revelation, but rather can be “described on the basis of evidences from various sciences, and from human experience.” Gustafson claims that proper human ends and right relations are determined in part by these patterns. Gustafson says “in part” because the experience of nature does not, obviously, state directly ethical principles. Rather, these patterns are “indicators of the ways of God, and inferences are drawn from them to aid human beings to discern how they and all things are to be related to each other in a manner appropriate to their relations to God.”⁴⁰

In Gustafson’s account, God is sovereign and therefore the purposes of God are the objective standard for ethics. The notion of discernment is crucial to the theological account that grounds theocentric ethics, because it gives leeway for an objective ethical standard to both account for and be interpreted according to the lens of particular commitments and perspectives. In short, while there may be objective divine purposes according to theocentric ethics, knowledge of those purposes and moral judgments made accordingly are, necessarily, matters in which subjectivity and perspective play a part in interpretation, and context, writ large, continues to be a consideration.

The third feature of theocentric ethics bears close relation to the second. Moral thinking works to direct our natural desires and human impulses. Moral thinking must account for historical and natural forces. It must not be conceived of as something external and contradictory to those forces. That said, theocentric ethics does not equate moral good with natural drives. Reason also plays a part and may even require the restraint of natural impulses. However, even

⁴⁰ Ibid., 8.

in the situation where reason restrains things such as physical or psychological appetites, Gustafson argues that it is nature that is being ordered and directed by human rational activity. Social and political morality is similarly a matter of being in touch with and sometimes directing preexisting policies and institutions toward the purposes of God as theocentric ethics understands them. This note on social and political morality is a crucial insight for the framework I will construct for the moral exploration of AHI, and it is this feature that Gustafson himself claims most distinguishes theocentric ethics from most rationalistic moral philosophies and demonstrates kinship with Christian theological anthropologies.⁴¹

A fourth distinctive of theocentric ethics is that it holds piety to be a critical aspect of ethical thought. Gustafson makes plain that theocentric ethics is not simply a religious ethics because it is grounded in beliefs and, more importantly construals, of God and God's relationship to the universe. It is an ethics that is religious "in the sense that the human community lives in part by those senses of dependence, gratitude, obligation, remorse and repentance, direction, and hope that are fundamental religious affectations." For Gustafson this is an advantage to ethics over moral systems that mandate adherence to universalizable principles, whether they derive from a conception of an immutable moral order or from a rigid rationality. There is an adaptability and responsiveness to nuance and context to an ethics rooted in piety as opposed to rationality. There is also an expectation that deep and perhaps irrational drives are part and parcel of what it means to be fully human. A purely rational ethics imposes coldly rational limits to the sometimes hotblooded passions that sometimes drive human behavior, but an ethics that does not take the subjective and affective aspects of human moral experience is not derived from or applicable to human experience. Gustafson advocates for the superiority of theocentric ethics and

⁴¹ Ibid., 8-9.

its close attention to the experience of dependence to simply judging moral failures in light of universalizable principles.⁴²

Gustafson provides an example of the superiority of theocentric ethics through an analysis of the “universalizable principle that persons are not to be treated simply as means to ends,” made famous in the work of Immanuel Kant. Gustafson argues that it is one thing to condemn actions which violate the principle as immoral, but that the treatment of human beings as mere means rather than ends is more than just a violation of principle, it is a “flawed disposition” that requires not only rationality, but attention to “the deeply affective aspects of moral agents.” While he admits that other systems may account for these morally influential affects, because they arise out of the religious dimensions of experience, the “theocentric perspective, profoundly affects the more “subjective” aspects of human agency. This makes morality “a matter of the heart as well as the mind.” Piety, for Gustafson, plays off what I might call the inescapable “heart sense” of knowing that there are powers beyond the self which determine the self as self and, critically, as moral agent. Rather than moral certainty and confidence of standing upon a moral high-ground, theocentric ethics approaches the moral enterprise with a sense of humility, but also gratitude and hope.⁴³

The fifth distinctive of theocentric ethics is that it “requires a descriptive evaluation of individuals, communities, events, the species, and other things in the context of large wholes.” This feature of the profile is pregnant with implication for moral valuation formation and the development of ethical frameworks, perhaps more than any other single feature of theocentric ethics. Gustafson notes that moral inquiry and ethical evaluations of moral systems tend to focus on individual moral agents acting upon a discrete recipient or set of recipients.

⁴² Ibid., 9-11.

⁴³ Ibid.

The focus on contextualizing moral values within the context of a larger whole has a significant effect, Gustafson claims, on the development of ethical frameworks for evaluating moral acts and values. The consideration of moral acts within the context of larger wholes “enlarges the considerations that are relevant for moral life and particular moral choices and judgment.” Enlarged considerations include considering the constraints on human will and agency that dependence on previously extant social patterns, historical events, and natural forces necessarily present. This is especially critical when considering “nettlesome international situation[s].” Gustafson lifts up the example of “perennial eruptions of violence in the Middle East,” saying that “any explanation... must take into account historical factors of political, economic, and religious sorts, as well as the sequence of particular crises such as the Holocaust and the 1948 war.” Historical experience does not simply illustrate good or bad moral decisions made by individuals, it must inform moral decision making, the formation of values, and ethical judgment.⁴⁴

Enlarged considerations also include accounting for the long-range consequences to any morally significant action rather than the direct effect of any act or larger intervention, not only for both actor and direct recipient or direct object of the act, but the web of relationships within act, actors, and those acted upon are caught up. The focus on larger wholes means that discrete moral acts cannot, or rather, should not simply be evaluated according to their discrete qualities or effects, but in the context within which they take place. Following the work of H. Richard Niebuhr on moral response and responsibility, Gustafson argues that the interpretation of a moral act “is qualified if it is seen in a larger patter of interaction or of causal relationships.” Moral evaluation of a discrete act should also account for the “anticipation of possible responses and

⁴⁴ Ibid., 11

long-range consequences to any initiative that [an] agent takes,” even if this extends only to the probability of anticipated responses and consequences.” Thinking in the context of larger wholes conditions moral judgment by forcing one to look beyond “the immediate relationships and events and to anticipate the kinds of actions the immediate ‘recipients’ will take in response to [the discrete acts of a moral agent].”⁴⁵

Following from the fifth feature’s emphasis larger wholes, the sixth feature of theocentric ethics is an overarching concern for the common good. While aiming at “the common good” is all too common in ethics, Gustafson makes explicit two ways in which moral thinking in the context of large wholes effects moral calculus and ethical judgment. First, Gustafson insists “that no human being can perceive, conceive, and respond to “*the whole*.” It is too large an abstraction and no human being is able fully put aside their own particular perspective in order to perceive without bias a complete understanding of the common good.

Though it is impossible to fully understand the fullness of the common good for extremely large wholes, the consideration of larger wholes at the very least implies that focus on the rights or good of a single individual, group, or era cannot be a determinative factor for ethical judgment. In fact, pursuing even the legitimate end of a particular community, or even a whole larger still than a community, is often necessarily costly to other communities and other wholes.⁴⁶ This observation belies the notion that, “at the deepest level, the good of individual parts and the good of the wholes to which they belong are harmonious.”⁴⁷ Gustafson insists rather that broad “time frames” and “space frames” must be taken into account to both describe the events in which ethically relevant acts and attitudes come to exist and upon which they have

⁴⁵ Ibid.

⁴⁶ Ibid., 17-19.

⁴⁷ Ibid.

effects. While some progress has been made on creating concepts like an “ecosphere” to delineate collective concepts, Gustafson argues that expanding the scope of the wholes that must be taken into account in normative proposals and ethical judgments requires the development of new “concepts, ways of understanding, and procedures to deal with these complexities.” While our understanding of larger wholes, and the moral and “common goods” that correspond to them is asymptotic, Gustafson’s theocentric ethics highlights the necessity to drive ever closer to understanding and for prioritizing the good of the common over the good of the particular.⁴⁸

The common good takes priority in theocentric ethics because of Gustafson’s understanding that interdependence and experience indicate that the purposes of God should be the proper target of moral attention. These purposes are not necessarily conducive to human good because they do not exist in order to serve human well-being, but human good is nevertheless dependent on the good of the whole. Gustafson says for instance, “the gift of [human] life is from the divine goodness; the means of its sustenance and the measure of fulfillment it has are dependent upon that goodness.”⁴⁹ However, he argues that if the purposes of God are God’s own and geared not toward the particular, especially not the particular human, but to the good of the whole cosmos, than prioritization of the common good must be sought not just for the sake of the well-being of each part of the whole, but for the whole itself.⁵⁰

Gustafson is aware, however, that human beings’ understanding of the common good, and our moral perspectives in general, are limited by our ability to perceive and bounded by our subjectivity and particular context. Thus, Gustafson states that a seventh feature of theocentric ethics is that it “accents the experience of moral ambiguity, and even in some particular

⁴⁸ Ibid.

⁴⁹ Gustafson, *Vol 1*, 202.

⁵⁰ Gustafson, *Vol 2*, 19.

circumstances the deeply tragic character of particular choices.” For Gustafson, this stands apart from a great deal of modern moral philosophy and its attempt to develop basic principles or establish common epistemological bases so that “most, if not all, conflicts [of moral value] may be resolved rationally.”⁵¹ The thrust of this feature is that moral choices are not always clear cut. There may not even be a higher good or lesser evil that may be prioritized. Rather Gustafson notes that the nature of moral tragedy is that “legitimate ends, or action in accordance with reasonable moral principles” may inescapably entail “severe losses to others others...and even sometimes diminishes the possibilities for the future life of future generations of human beings.”⁵²

I add that the implications of moral ambiguity as Gustafson construes it dovetails well in some ways with moral frameworks that emphasize authenticity as an ethical standard. The limitations of perspective and a rejection of a static understanding of moral order or principles suggest a wider range of permissible acts and a narrower set of restrictions that hew closer to the particularist perspective and to moral relativism. But Gustafson is clear that this wide set of permissions does not imply that morality is impossible or irrelevant.

Gustafson’s sense of ambiguity and tragedy can, in my view, be taken at face value. It implies that one may make what is clearly a morally inflected choice, for instance to save one person’s life over the life of another (as opposed to an amoral one like choosing the color of one’s shirt), while never being sure of the exact moral ramifications or valorization of one’s choice. But while ambiguity and tragedy are inescapable, Gustafson notes that some issues demand a choice and that there are ways to think through ambiguities. While he uses the language of “resolution of ambiguities,” I would modify his position to say that the process is

⁵¹ Ibid., 19.

⁵² Ibid., 21

still never a full resolution or moral surety, but rather a means of hedging one's moral bets by considering a fuller range of conditions and consequences. Emphasizing a sense of moral ambiguity and tragedy may be morally fraught. There is a danger that, because morality is ambiguous and tragic, one may simply take one's moral bearings from oneself. Gustafson calls this a "vulgar" ethics of "If it feels good, do it."⁵³

To guard against this attitude, Gustafson notes that the eighth distinctive feature of theocentrism is its strong emphasis on "self-denial, and in extreme circumstances on self-sacrifice," which follows from the theological emphasis on piety and subordination of the interests of all the sovereign ordering of god. The prioritization of certain interests over others and the goods of certain persons over others is required for any community to function. Gustafson notes that "restraints on the action and aspirations of individual members both for their sake and for the sake of the common good" may be required. This relates too to Gustafson's emphasis on viewing one's self and one's actions in light of larger wholes. Gustafson acknowledges that, in general, "the interests of a particular social group in society cannot be pursued without taking into account the interests of other groups for the sake of each part and for the sake of social ordering and peace." Gustafson's theocentric ethics seems to take into account the convenient danger of understanding the interests that must be sacrificed for the common good as the needs and aspirations of others. Thus, Gustafson is specific to say that the emphasis is on "self-denial."⁵⁴

I want to note here that Gustafson's emphasis on self-denial avoids the pertinent issue of coercing sacrifices from perhaps unwilling parties. Self-denial is voluntary and Gustafson argues that it comes out of a sense of piety, that humble approach and responsiveness his theological

⁵³ Ibid.

⁵⁴ Ibid.

construal of human experience argues is proper for approaching those powers which bear down upon us. Gustafson is explicit that “[t]heocentric ethics backs a preference for voluntary restraints” and that relating “persons in a manner appropriate to their relation to God requires the honoring of their capacities for self-determination.”⁵⁵ Self-denial and voluntary restraint are thus appropriate responses to the Other and display a proper of subordination of one’s interests to the sovereignty of God.

Despite Gustafson’s preference for voluntary restraint and self-denial, I argue that the sovereignty of God seems to imply that there is also some warrant for subordinating the will and aspirations *of others* to the sovereignty of God. While the eighth distinctive feature of theocentric ethics encourages self-restraint and, by implication, hopes for voluntary restraint from others, the sixth feature of theocentric ethics places the good of the relevant whole over the good (and I add the rights) of any particular part. This not only allows for coercion, the priority of the common good requires it. Gustafson briefly cites conscription during war time as an example of when this might be within a society.⁵⁶

I will argue in the next chapter that pushing the boundaries of relevant wholes beyond cultures implies that coercion may be used between societies and not only within them. Gustafson does note that there exists no hard and fast threshold for when one might justify the use of coercive measures in order to achieve some vision of the common good. He says only that such determinations are “context-bound”⁵⁷ and that they should always be a means of “last resort.”⁵⁸ The precedence of the common good over honoring capacities for “self-determination” is thus a critical aspect of theocentric ethics in terms of establishing a justifying framework for

⁵⁵ Ibid., 247.

⁵⁶ Ibid., 19.

⁵⁷ Ibid.

⁵⁸ Ibid., 248.

AHI. I will demonstrate in chapter 5 that often the specific contexts in which culturally rooted atrocities occur indicate circumstances in which coercion toward patterns of behavior that support the common good are to be valued over the honoring of individual or even communal capacities for self-determination.

From Theocentric Ethics to Dialogical Ethics and its Ramifications for AHI

For Gustafson, theocentric ethics and the collective force of its distinctives challenge “the dominant strand of Western ethics, whether religious or secular, [that] argues that the material considerations for morality are to be derived from purely human points of reference”⁵⁹ and that understand “man’s good [as] the moral measure of all things.”⁶⁰ The thrust of Gustafson’s theocentric ethics is that God, and not human beings, should be the central ethical reference point by which to measure what is and is not moral in terms of human actions, attitudes, and values. This contrasts with ethical theories in which morality is measured primarily against human interests. Gustafson argues that these human interests are “one’s normal perceptions of what is good for me, what is good for my community, and even what is good for the human species.”⁶¹ The shifting of reference point to something not only external and conditioning to the self, but beyond the human is critical. It is a demonstration of the dialogical mode of ethical thinking, i.e., a dialogical ethics, that I argue, is native to and prominent in religion, albeit not exclusively found in that realm of life. My discussion of Gustafson’s theocentric ethics is not meant to stand on its own as an epistemological base from which to derive ethical principles in support of AHI.

⁵⁹ Gustafson, *Vol I*, 88.

⁶⁰ *Ibid.*, 90.

⁶¹ *Ibid.*, 96.

For my own work, Gustafson's ethics rather serves as an alternative account of how morality forms and an exegesis of human experience and the myriad sources of our moral norms and ethical lenses we use to evaluate them. More importantly, it serves as an account that emphasizes not only the salience of dialogue and its potential for forming more robust ethical frameworks, including for the evaluation of AHI, but rather a demonstration that dialogue is an inescapable aspect of moral formation and ethical evaluation.

I have discussed that the root cause of an inability to navigate the two moral drives (the drive to rescue the oppressed, and the drive to respect other cultures) is moral monologicality, that is, an inattention to the dialogical nature of the moral life that Gustafson's theocentric ethics makes apparent. Moral monologicality is a feature of the efforts to find a single universal epistemological foundation for our moral systems so that judgment (and enforcement) of moral principles might be justified. It is also a feature of Hardt and Negri's characterization of societies and cultures as singularities. In fairness, Hardt and Negri note that societies hold some things in common, such as physical bodies and, (for the most part) common humanoid features, life on a shared planet, and of especial importance to Hardt and Negri, "capitalist regimes of production and exploitation."⁶²

Hardt and Negri note that the common features of human life is what makes communication possible between cultures. But commonality and similarity, while perhaps the basis for linguistic communication and translation of concepts between cultures, does not guarantee that moral meanings and symbols (or their authority) become shared between cultures. Societies are moral singularities unless they choose to incorporate the perspectives of the Other. The critical ethical reference point for Hardt and Negri and their cultural singularities, as well as

⁶² Michael Hardt and Antonio Negri. *Multitude* (New York: Penguin, 2004), 128.

for Walzer, the ICISS, and the modern GHRR is that the ultimate ethical reference point is the self and not the other. Even dialogue under these terms has the self as the ultimate reference point. One begins with the self and reaches out to the other only if one wants to. Dialogue is a choice and interpretive authority rests within the self, or a society that is a collective “self.”

Gustafson’s theocentric perspective does not admit this voluntariness. Something beyond the self, beyond the human even, conditions, constitutes, and in some traditions creates the self and provides parameters for the self’s exercise of its faculties. Something external is a critical existential and also ethical reference point. It exists beyond the self, conditions the self, and, as I will discuss in light of Gustafson’s theocentric ethics later, makes moral demands on the self, thereby serving as an ethical standard to which the self must adjust. A definition of religion and religious thought as I use it here will clarify my contention about religion’s ethical emphasis on the external and its natural dialogicality.

By *religion* I do not mean to say the rituals, practices, or system of thought of any single tradition of faith, though religion includes these features. Nor am I referring to the academic discipline of religion which looks to categorize and analyze these traditions, practices, and systems of thought and, according to Jonathan Z. Smith, “is solely the creation of the scholar’s study...created for the scholar’s analytic purposes by his imaginative acts of comparison and generalization.”⁶³ My understanding of religion, like Gustafson’s, is to understand it as a means of expressing a fundamental category of human experience.

Beyond Gustafson, I take my bearings from William James’s definition in his seminal *Varieties of Religious Experience*. Admitting the enormity of the category of religion, James limits himself to the “immediate personal experience” of the religious. He says, “Religion...shall

⁶³ Jonathan Z. Smith. *Imagining Religion: From Babylon to Jonestown* (Chicago: University of Chicago Press, 1982), xi.

mean for us the feelings, acts and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine.”⁶⁴ It is not for me at this juncture to specifically define the divine. Gustafson has already given a definition in his understanding of the theos. I mention only that the divine for James is something that must be “interpreted very broadly” and not limited to conceptions of a superior being or specific deity.⁶⁵ Indeed, for James, the divine is commensurate with a “primal reality,” and I choose the article “a” purposefully because James leaves this primal reality open and a matter of subjective conception. Religion refers then to relation of a human being to this primal reality in a way that conditions them, and, for James, relates to them in such a way that “the individual feels impelled to respond to solemnly and gravely.”⁶⁶ Religion and religious experience, whatever the specific content of its ultimate object or deity, assumes a pattern of existence characterized by dialogue between the self and something external to the self. Religion construes human experience, including the individual human experience, dialogically. This is why James discusses religious experience in relation to “individual men in their solitude.”

This is not to say that an understanding of that which is external as an existential reference point is strictly a religious sensibility or always expressed religiously. Nor is it always appropriate to map religion on to every dialogical construal of human experience.⁶⁷ I only argue

⁶⁴ William James. *The Varieties of Religious Experience: A Study in Human Nature* (N.P.: Seven Treasures Publications, 2009), 26-27.

⁶⁵ *Ibid.*, 28-29.

⁶⁶ *Ibid.*, 30.

⁶⁷ One may find parallels in disciplines outside of religion. In the philosophy of the Greeks, Aristotle characterized human beings as political animals. For Aristotle what sets human beings apart is first the capacity for speech that is the basic dialogical function, but more than this, the essentiality of others, indeed the political community, to define and demarcate an individual human being as human. Aristotle’s anthropology is a dialogical one, expressed in terms of the individual’s relationship with the polis as “Other.” He says, “the city is both by nature and prior to each individual. . . . For if the individual when separated from it is not self-sufficient, he will be in a condition similar to that of the other parts in relation to the whole. One who is incapable of sharing or who is in need of nothing through being self-sufficient is no part of a city, and so is either a beast or a god.” Dialogicality is thus, for Aristotle, an

that religious experience in the broad terms described, and I think accurately, by William James is inherently dialogical. Religious patterns of thinking then will naturally take on a dialogical flavor, capturing an essential aspect of human experience and thus also human moral and cultural formation that is often neglected by other perspectives.

I choose to describe the pattern of ethical reasoning I extrapolate from Gustafson as “dialogical ethics” because it holds dialogue to be a fundamental aspect of value formation between cultures. The validity of moral values that stem from a particular cultural perspective for other cultures and groups who may not share that perspective is one of the most pressing concerns of AHI. The word dialogue denotes both encounter and communication between entities, and these entities may be individuals, groups, ideas, traditions, and even abstractly defined social and natural forces. Ethical considerations are drawn from multiple aspects of human experience (e.g. not just rationality, or affections for particular persons or groups). The moral norms upon which dialogical ethics reflects also do not derive from any particular overarching principle, but rather develop from the interplay between multiple stakeholders circumscribed by a relevant whole, their moral priorities, shared experiences, and interpretive frameworks. I argue this dialogical ethical form of thinking provides a concept of moral objectivity that is informed by and even created by subjective concerns, but exists as more than the sum of those concerns.

It is a quality of the Other that it is not only conditioned by human participation, but also influences it. Such an objectivity can be responsive to the subjective concerns of specific societies, without being ruled by them, as well as provide a standard by which to prioritize the

essential part of human experience. Indeed, it may define human experience. See Aristotle’s discussion in *Politics* 1253a 25-29, Book I, Chap 2, p.5.

conflicting claims of rights that plague rights-based theories of AHI. It operates as a vision of the common good which relativizes rights and claims.

Dialogical ethics build upon concepts and approaches suggested by theocentric ethics. Gustafson's core notion that the critical reference point for both a coherent construal of human life, that is his theological construal, as well as an adequate ethics, is the Other is foundational for dialogical ethics. That the experience of the Other, i.e., the inescapable sense of the interdependence of human life with powers external to it, is universal to all human beings across cultures is a central tenet of theocentric ethics. This sense of interdependence continues to be apparent throughout time, even with rapid progression in technology and social theory that looks to harness ever more the forces of the natural world and social worlds.⁶⁸

Gustafson is thus confident that the theocentric ethics that his theology implies will be neither "private," that is limited to his individual view, nor "sectarian," speaking only with relevance to a particular community or tradition of faith.⁶⁹ Implicitly, neither is the theocentric ethics that follow from it. This does not lead Gustafson to the notion that a single common interpretation of God and the implications of God's character and purposes for the moral life are universally shared. This would be a purely rational and individually achievable task, and the caveats that the profile of theocentric shared above regarding the ambiguity of moral decisions and the impossibility of fully discerning the good of the whole belie the possibility of such efforts. Instead Gustafson argues that "human experience has a deeply social character," that accounts for the sociality of individuals within a culture, as well as between cultures.⁷⁰

⁶⁸ Gustafson, *Vol 1.*, 14.

⁶⁹ *Ibid.*, x.

⁷⁰ *Ibid.*, 120.

Gustafson's view of human experience as social has implications for how moral formation might proceed from culturally specific to more generally relevant prescriptive norms. It is through a process of communication and dialogue between cultures about common moral objects, specifically the purposes of the Other. This process of dialogue that allows for the intercultural formation of norms is an often overlooked contribution of Gustafson's theological and ethical thought. A significant amount of ethical literature deals with Gustafson in light of the radicality of the major thesis of *Ethics from a Theocentric Perspective* regarding the need to move ethics away from anthropocentrism to theocentrism and the significance of its implications for how one accounts for the well-being of the natural world and the ways that investigation of the natural world might inform ethics.⁷¹ However, a description of how the meanings and interpretations of common experience might originate from and yet become shared across communities and cultures has obvious relevance for both connecting theological ideas to a pluralistic frame and for the problem of AHI specifically. Dialogicality is thus a critical feature for justifying both a theology and ethics that can speak from within the limitations of individual human experience to make theological claims that have more general significance, and one that is implied by Gustafson's theocentric construal of the world.

For Gustafson, "experiences occur in the process of interaction, or in the process of responding to the natural world and to events."⁷² Gustafson argues that communication is basic to human experience and that survival itself requires interaction with other persons as well as the use of the natural world of which we are a part.⁷³ However, the deeply social character of

⁷¹ For examples see: Steven Toulmin. "Nature and Nature's God." *The Journal of Religious Ethics*. Spring, 1985, Vol. 13, No. 1), pp. 37-52; and William C. French. "Ecological Concerns and the Anti-Foundationalist Debates: James M. Gustafson on Biospheric Constraints." *The Annual of the Society of Christian Ethics*, Vol. 9 (1989), pp. 113-130.

⁷² Gustafson, Vol. 1., 120.

⁷³ *Ibid.*, 121.

human experience “is not to deny that there are private moments of experience,” and “that there significant differences between individuals in what they experience and in the ways in which they explain and understand the meanings of their experiences.” Nevertheless, Gustafson contends that individual experiences are first “articulated, explained, and given their human meanings through cultures, and cultures are the products of societies and social experience.”⁷⁴

Gustafson does not view culture as something that may only contribute to the isolation of human beings and their interpretations of their circumstances from one another. Gustafson notes that the “meaning of events and actions, and the explanations of them by which individuals and communities understand their larger and more general significance are also products of societies and cultures.”⁷⁵ Human experience is conditioned by the experience of “others,” that is the social component of experience. However, it is also experienced in theological terms by experience of the Other, that is the experience of those forces symbolized in theology as God. This fact plays a crucial role in this process of making general meanings from culturally specific interpretations of experience. Gustafson says that, “[n]o matter how much the characteristics of our responses and actions are determined by our communities, or by individual interests and biases, they are nonetheless responses to “other than self...because there is this objective pole we can engage in ‘reality checks.’ We can assess the accuracy and the adequacy of our knowledge and understanding of that to which we are responding. We can make judgments about the significance of what evokes responses in light of the seriousness of consequences and the effectiveness of means of action. We can act collectively because there is a common “other” to which we respond.” And, critically, Gustafson adds, “a common evaluation of it.”⁷⁶

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.,128.

Gustafson cannot mean that, in every sense, there is a common evaluation of all events and all experiences between individuals or cultures. The presence of and ability to reference objective experience does not imply that cultural interpretations of events and experience will, or even should be, purely objective, that is, uniform across cultures and univocal in cultural assent to them. It does mean, however, that individual and community interpretations of experience are testable for adequacy. Nevertheless, Gustafson is clear that the tests for adequacy are not universal. I note that this means, for instance, that one's interpretations cannot be either affirmed or discarded based on an assumed universal understanding of human rationality. Even what constitutes an appropriate test for an adequate subjective interpretation of objective experience for Gustafson is rooted in the meanings and significance of these interpretations within a community. However, Gustafson is confident that more general tests will “develop as communities interact with each other, as they alter their received traditions and views, and as they evolve into new communities.”⁷⁷

Gustafson's discusses the social nature of human experience in terms of a “conviction” that will “inform and direct” his theological enterprise and his view of God. I take it, however, to be significant not only as a postulate for his theological project but as further evidence that supports his construal of the symbol of God. The fact that meanings and interpretations of events are articulated not individually, but within cultures and the fact that all experience is dependent on some “other” object beyond the self, reinforces the fact of human interdependence with forces beyond the self and upon which it is dependent. The social process of subjective meaning making itself is a testament to an objective Other upon which human beings are dependent.

⁷⁷ Ibid., 124.

My own conception of dialogical ethics is less tied to the symbolic language Gustafson draws from religious tradition, including his use of the terms god, deity, and theos to denote those powers which condition human life and bear inescapably down upon it. Given AHI's situatedness in the context of religious pluralism and the international arena, it is more useful to refer to this externality to which the self responds and dialogues with as the "Other." Gustafson too uses the term "Other" early on in the first Volume of *Ethics from a Theocentric Perspective*. Here Gustafson notes that the concept of God which he goes on to develop need not be limited to religious symbolism. Recall Gustafson's note discussed above that similar descriptions may be offered by persons who have no articulated religious belief. At that preliminary point in his discussion, Gustafson describes God simply as "an Other," an ultimate power that requires some human response and which is, as Gustafson terms it, the critical reference point for human experience and ethical consideration.⁷⁸

This first divergence from Gustafson is, in the colloquial sense, simply semantic albeit appropriate given the AHI that is the primary focus of this dissertation. A second divergence between my dialogical ethics and the theocentric ethics of Gustafson is more substantive. The dialogical framework I discuss in relation to AHI accounts far less for the natural world than does Gustafson and returns focus primarily on human values and human societies. It does this, however, in a distinctly Gustafsonian way.

Dialogical Ethics and its focus on Social Forces Rather than Natural Forces

What Gustafson means by "human points of reference" and "Man's good" that he sees as central to Western warrants some elucidation both in terms of Gustafson's understanding of these concepts, and how they inform an ethics of AHI. Gustafson demonstrates the impact of the

⁷⁸ Ibid., 3.

two different reference points for ethics he contrasts, i.e., by offering different sets of questions respectively asked when determining and conceiving understanding of “good” or “value.” When human beings are central reference points, one asks questions in terms of goods and values like: “What is good for man? Or What is of value to human beings?” In terms of right or wrong actions the questions are “What are the right relations between persons?” When God is the reference point, in contrast, questions of good and value make reference to the good of the whole of creation (this is to say, the universe) and the good of the natural world of which human beings are a part. What conduct is right for man not only in relation to other human beings but also in relation to the ordering of the natural and social worlds?”⁷⁹ This last question regarding ordering in both the natural and social worlds requires special attention because it clarifies what Gustafson means by the anthropocentrism of ethics, demonstrated in sole use of human reference points, that he sets up as a foil to his theocentric ethics and the types of concerns he argues must be included in ethical evaluations.

Two things become clearer in these sets of questions. First is Gustafson’s novel emphasis on the natural world and the ordering of nature as a necessary facet of ethical thinking. This is a critical aspect of theocentric ethics, but one which I will not deal with specifically. The purposes of AHI which, though perhaps conditioned in some ways by the vagaries of geography, climate, and available natural resources, is occasioned primarily by human activity and attitudes. Human rights violators may appeal in some way to the “natural” to justify their acts, but such violations coalesce primarily around human attitudes: hate, bigotry, and bloodlust. I will therefore focus on theocentric ethics’ effect on such humanistic considerations.

⁷⁹ Ibid., 88

The second thing that becomes clearer through Gustafson's proffered set of questions is that even the focus of *human concerns* is altered from traditional ethics when a theocentric perspective is taken. Gustafson's note that theocentric ethics shifts some of the primary questions of ethics from "what is good for me, what is good for my community, and what is good for the human species," to a question of human good defined by social ordering. The foci of the former set of questions are familiar to the discussion of AHI and the discourse of human rights in general. They capture well the emphasis on the respect for individual rights that is central to the GHRR, the concerns over cultural and community authenticity and interest, and the idea that there exists a unified good for the human species as a whole, that are respectively concerns for my interlocutors from chapters 1-3. I argue that each of these emphases, the emphases of traditional ethics, places survival and enjoyment as the primary human concern, whether it is the survival and happiness of the individual, the community, or the species.

Though social order is in some ways a product of human thought and activity, it is nevertheless considered by Gustafson as something distinct from human interest. I argue that Gustafson's turn to social ordering admits the connection of human activity and human society to higher concepts like justice and equality operant at the level of social order that are often attached to human communities, but that do not necessarily always result or aim at human survival or happiness, not even in a species view.

There is something intuitively morally correct about Gustafson's separation of the good one sees in social order from its benefits to individual human beings, specific communities, or even our species. It is the reason, I argue, that we laud Patrick Henry's famous declamation, "Give me liberty or give me death." The abstract notion of liberty as an aspect of proper social order takes precedence for Henry, and for all those who applaud his statement, over his

individual good. The idea of liberty takes precedence even over the good of the constituents he represented, and even the nascent nation (which would be ravaged by violence and potentially existentially threatened by what was at the time the world's greatest military power). Liberty is an aspect of human social order that transcends and takes precedence over the benefits or disincentives its pursuit might bring to particular individuals or societies. The example of Patrick Henry's liberty presents a problem, however, when one looks at whether liberty is separate from the common good of the human species. It may be argued that the good of the human species is, in fact, the appropriate common good to which we should align our moral efforts. Certainly, one understanding of the importance of liberty might be that it is better for the human species to be free than to live under domination. Gustafson's ethics does not preclude such an interpretation. Humanity may be an adequate social whole when considering the struggle for liberty. However, I take the idea to be more complex. One might take Gustafson's insights into social order as a good that should be pursued independent of the good it produces for the human species.

The problem of climate change provides a pertinent example of how this might function. The long-term survival of the human species is very likely tied to arresting climate change. Imposing lifestyle changes on individuals, communities, states, and other corporate entities will be necessary. It would be easy to say that there is simply a lack of political will or a plentitude of power for any one organization to force the implementation of these changes. This may very well be the case. However, the problem of arresting climate change is also made morally difficult by the fact that, despite the obvious benefit of behavior modification for the long-term survival of the human species, social order and the purposes of God that may adduced from it may be dependent on climate damaging activities. For instance, air travel and technological development has allowed human beings to connect and form communities in new and beautiful ways. It is

possible to say that this is simply a selfish choice made by human beings of a particular era choosing their way of life over the long-term survival of the species. Framed in this way it would fly in the face of Gustafson's understanding of an expansive common good that takes into account not only wider geospatial and cultural coordinates, but also more expansive temporal coordinates. I do not think that the issue is that simple. The benefits of greater interconnection between cultures and peoples that is facilitated by air travel and the development of resource intensive communications activity may be a good of social order in and of itself on par with the survival of the species. My example of climate change is meant to draw out the fact that a dialogical ethics that transforms even human concerns treats the common good even at the species level as a matter not simply of "if we live" as a species, but also of "how we should live." The question of "how we should live" is informed not only by the securing of concrete human goods that contribute to well-being, but abstract concepts like liberty, justice, and equality that exist independently from the specific benefits they secure for particular persons, communities, or even the human species.

My dialogical ethics thus focuses on the social powers that bear down upon us--those forces of history, culture, and ideas that condition human life. Our individual and collective lives as human beings are dependent to these forces in ways no less salient than they are to those forces of nature deified by ancient peoples and which even in modern times, in both human promoting forms like bumper crops or human threatening forms like famine or pestilence, continue to influence our behavior and inform our ethics. Thus, in the same vein as Gustafson's contention that the primary task of ethics is to relate all things in a manner appropriate to their relations to God, a dialogical ethics that stresses the necessity of encounter with an Other and responsiveness to it and looks to relate all human social relations, including the interaction of

societies with each other and with larger international norms, in a manner appropriate to their relations to these social aspects of the Other.

But in the same way that human beings have to a limited extent mitigated and even harnessed the natural forces that bear down upon us through scientific innovation and technological advancement, my dialogical ethics notes that human relationship to this social Other is not limited to a passive relationship. In this respect I follow Gustafson on the nature of consent to the Other. For Gustafson, consent to God means living and acting according to the limits set by those powers. But as I noted above consent is not a state of passive acceptance. We are not simply dust blown by the wind. To take a common image from the Abrahamic faiths, we are in fact dust imbued with the breath of God. Consent requires active cooperation to live within the limits set by the Other, but we, in turn have some power to respond and pushback on where those limits lie.

Recall that the fifth feature of the profile of theocentric ethics requires that human beings be described in the context of larger wholes. Within any whole, the human being is described by Gustafson as a “participant.”⁸⁰ Human participation within a whole might range from disinterestedness to involvement according to Gustafson. However, participants are “never mere rational spectators” simply responding to stimuli in a predetermined manner. Rather, Gustafson is clear that they have “feelings and sensibilities” and that “both their impulses to act and their perceptions of what needs to be altered or preserved [within the context of the relevant whole] are affected by their involvement.”⁸¹

Human participation in the natural world through scientific inquiry and its ramifications for ethics is easy to see, especially in the 20th and 21st Centuries. Humans have developed

⁸⁰ Gustafson, *Vol. 2*, 13.

⁸¹ *Ibid.*, 147.

vaccines to stave of diseases that, not too long ago in history, were conceived of as divine punishments or malevolent forces. They have increased the level of human control and freedom over some of the forces that bear down upon us. In contrast, scientific inquiry into nuclear power has also created new limits to human life with a potential sword of Damocles hanging over our heads. This constrains human actions in a morally significant way. In light of the primary concern of this dissertation for instance, the conduct of AHI may be constrained, even if other moral criteria were satisfied, by the potential for it to spill over into a wider major war in which nuclear powers might face off. Nuclear war threatens the common good of the larger whole of human civilization. This consideration in a Gustafsonian framework takes precedence over the violation of the individual rights of persons or groups, even if this means allowing fundamental human rights to be violated in heinous ways.⁸² Gustafson notes that, especially in the 20th Century in which he writes, and I add even more so in our contemporary 21st Century, that “the weight of accountability for the ordering of life” has shifted to be more in the hands of human agents than ever before. It cannot be understood to be fully so as the recent experience of the Covid-19 pandemic demonstrated with its power to disrupt what had been routine human conduct across the globe despite the rapid advance of science.

As humans are participants in the natural world of which they are a part, human beings and human societies are participants in the social world. Influenced in some part by the

⁸² I wish to clarify here that the mere potential for nuclear war should not automatically preclude resort to AHI or any other deployment of force. If such a rule were valid, one could dispense with the particularist challenge as redundant in a nuclear world. War would be a moral impossibility. This is not the case I make here. I mean to say only that nuclear war can be (and must be) one consideration when one weighs the moral appropriateness of the resort to force, including for AHI. Recall that Gustafson emphasizes that it is specific circumstances that must be responded to and that discernment must take into account when contemplating moral acts and attitudes. For example, it is unlikely that intervention in the Rwandan genocide of 1994 would have resulted in a nuclear conflict. Rwanda was of little geopolitical consequence to the nuclear powers of that period. In contrast, direct U.S. military intervention in the Russo-Ukrainian conflict of 2022 has greater potential given the actors and theater of operation involved. The specific circumstances are different and one’s discernment of proper actions must take these differences into account rather than look to apply a general principle.

development of technology, human beings have developed not only tools for mass communication, but attendant social networks that create bonds of affinity that exist beyond the ties of family, tribe, nation, and even state. In the same way our situatedness within family structures and other political societies nevertheless constrain not only what we might do as individual humans as well as groups, our social location and that location relative to others may play a role in determining who we are and what we value.

Part of Gustafson's justification for understanding and describing human beings within the context of larger wholes, (i.e. beyond the self, beyond the family, beyond the tribe and so on and further out) is due to the understanding of the formation of human society and therefore human moral life defined by society through what he calls an "interactional model of society."⁸³ This interactional model represents a dialogical understanding of social reality and lends support therefore for a dialogical ethics focused on understanding proper relations to the Other. Gustafson argues that social values and moral values are generally seen as arising from one of two models, either by either an organic or contractarian interpretation of social reality. The relevant moral whole is determined by the interpretative framework of society one works within.⁸⁴

In the organic model, natural units are understood to more or less "natural" shape moral duties. One's position within a family, for instance, determines one's duties to care for and concern oneself with the good of relatives, and care for them over and above the interest of others outside the family unit. One needs no contract (either tacit or explicit) to care for one's child, nor does affection necessarily play a part in the organic model. The Academy Award winning film "Fences" provides a powerful example of this. In the film, Troy Maxson (played by

⁸³ Gustafson, *Vol. 1*, 293.

⁸⁴ *Ibid.*, 292.

Denzel Washington) tells his son: “A man is supposed to take care of his family. You live in my house, fill your belly with my food, put your behind on my bed because you’re my son—not because I like you. Because you’re my son, because it’s my duty to take care of you. I owe a responsibility to you.”⁸⁵ The family is not the only natural unit, though it provides a proximate and powerful example. Natural units of obligation like village, ethnicity, religion, nation, and social class may also constitute relevant wholes whose common good may be considered determinative in moral calculus.

The contractarian model, on the other hand, emphasizes the individual and individual rights. In contractarian models, Gustafson notes, the rights of the individual are prior in both logic and significance to the good of the whole. Moreover, Gustafson claims that individual agency and autonomy is thus overemphasized. This overemphasis on individual agency and autonomy has significant consequences in ethical evaluation of a society’s values and cultural moral conceptions. First, Gustafson maintains that, “in situations of conflict between the rights of individuals and benefits for a social group, the presumption is always in favor of the former.” Second, Gustafson notes that the view of human beings as free individual agents tends to lead to a view of society as a collection of individual actions and choices.⁸⁶

Gustafson argues that each of these models of society, “falsifies human experience.” I noted above that a theological construal of the world shows human experience to be a social phenomenon that is dynamic, has dialogical dimensions, and accounts for shifts in interpretation of human experience, including moral experience, as the encountering of different interpretations of common experience and the testing of those interpretations proceeds. Both the organic and contractarian fail to account for this. On the one hand, “the organic metaphor excessively

⁸⁵ *Fences* directed by Denzel Washington (Paramount Pictures, 2016).

⁸⁶ Gustafson, *Vol. 1*, 292-293.

highlights the processes of continuous mutual determination between persons, between groups, and in some instances, as in the extreme sociobiological views, between human beings and the rest of nature.” In simpler terms, Gustafson seems to be arguing that the organic model presents a model of society that is overdetermined. In the organic model Gustafson notes that, “the activities of the intellect and other forms of human agency [are seen as] necessary and determined outcomes of other processes.” On the other hand, the contractarian model “makes it difficult to make a case for the restraints and denials of liberty and life for the sake of the well-being of the whole,” that is the notion of common good for which individuals have so often been asked and even forced to sacrifice their individual well-being and rights to safeguard (e.g., instances of conscription). Nor does it account for how much of individual agency and choice is, without being completely determined by society and circumstance, dependent upon and conditioned by larger society.⁸⁷

Gustafson instead advocates for what he terms an “interactional model” of society. Gustafson’s interactional model of society combines the strong features of both the organic and contractarian models of society. It accounts for the priority of society and the common good by recognizing that individual agency and individual experience of what is or is not good are largely a product of societal milieu. Gustafson recognizes that “our initiatives are always in response to what exists and to the actions of others upon us,” and that, “individuals and even most groups do not have the power to create or to recreate larger societies,” according to their unilateral will. Nevertheless, despite these limitations, the interactional model “recognizes...individual and corporate capacities for action” and the imaginative interventions

⁸⁷ Ibid.

that human beings can have on social order, historical events, and, emphasized by Gustafson, “the development of culture.”⁸⁸

Organic social processes are not the sole determinants of moral rightness or moral capacity, but neither is individual will the primary morally effective force or the measure of moral praiseworthiness or culpability. The interactional model understands human beings therefore to be participants in moral experience rather than the products of it, as in the organic model, or creators of it, as in the contractual model. This means, however, that an interactional view, “provides no simple way of deciding in hard cases whether the individual’s autonomy should be curbed for the sake of a larger good, neither can it hold fast to the claims of individuals or particular groups over and against the well-being of a larger community. Deciding in such cases requires valuations beyond the model itself and cannot be universally pre-determined.”⁸⁹ Human rights violations in the case of culturally rooted atrocity is one such hard case. Thus, while the interactional model does not provide a definitive objective standard for what moral claims, duties, or visions of the good take precedence, at the very least it rejects the view that either rights which come out of the contractarian model, nor cultural authenticity which stem from the organic model of society, are in and of themselves appropriate moral standards. It also provides the insight that, if societal formation and value formation are interactional (and thus also dialogical) processes, that any vision of the common good and any ethical standard must account for, though not necessarily acquiesce to, the interests of every stakeholder. Moreover, it stresses the vital nature of both moral creativity and the inescapability of moral constraints in terms of value formation. Such a perspective is commensurate not only with an interactional model of society, but a general understanding of human beings as participants in dialogue with

⁸⁸ Ibid.

⁸⁹ Ibid.

the social Other conditioned not only by received historical and social facts but also the fact of other selves and societies.

Following Gustafson, dialogical ethics understands human beings to be participants, with all our commensurate potential and limitations, within the context of larger wholes and in relation to the social forces that comprise the Other. The interactional model of society is able to unfold parts of human experience that organic and contractual models for societal value formation neglect. But noting these features of human moral experience and approaching the moral enterprise from such a position makes it impossible to posit or defend immutable moral rules. If the Other to which we respond is constantly changing, even by our own influence, our specific relations to the other and the means by which relate different entities and the moral concerns they engender for us must also be dynamic. So how then do ethical standards form and what might they look like? My questions here are generally relevant to the ethical enterprise, but they are particularly pertinent to the AHI that is the central concern of this dissertation and the search for an adequate moral framework for both understanding it as a moral phenomenon and conducting it as a moral enterprise. In the next chapter, I will demonstrate how a dialogical pattern of thinking might relieve some of the theoretical tension surrounding AHI and inform three considerations for an adequate moral framework for the consideration of AHI to which other frameworks for AHI often fail to attend.

Chapter 5: Towards a Dialogical Ethical Framework for AHI, Part II

*Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly. Never again can we afford to live with the narrow, provincial, "outside agitator" idea.*¹

-Martin Luther King, Jr.

Chapter 4 focused on a discussion of the major tenets of theocentric ethics and provided a sketch of my own dialogical ethical pattern of thinking that follows from Gustafson's work. In this chapter I explore the questions of both whether and how thinking within a dialogical frame changes the manner in which one construes and deals with the problem of culturally rooted AHI in light of the particularist challenge I set out in chapter 1. I will note the advantage of dialogical ethics in juxtaposition to what I will call a "traditional position" exemplified by the frameworks presented by the interlocutors with which I dealt in chapters 2 and 3 and their attempts to vindicate the existing Global Human Rights Regime by providing a theoretical ground for its acceptance.

Two threads unite the moral frameworks I examined in chapters 2 and 3. These threads operate as the core ideas of the traditional position. First is the goal of justifying AHI on the basis of a single moral principle that is universally agreeable to all and upon which the recognition and protection of human rights might be grounded. For Morsink this was the metaphysical principle of inherent human dignity, for Little the logic of pain, for Walzer the notion of common decency, and for the ICISS the responsibility to protect apparent, according to

¹ Martin Luther King, Jr. "Letter from Birmingham City Jail" in R. Marie Griffith, ed., *American Religions: A Documentary History* (New York: Oxford University Press, 2008), 503.

their account, in the historical conception and practice of sovereignty. Whatever the specific principle to which they appealed, the ethical frameworks they provided proceeded in a similarly monological manner. Their appeals to a universal principle looked to answer the particularist challenge by establishing an ethics that transcends particularity and thus supersedes cultural moral interpretations. Such positions arguably, in the context of so called “fundamental human rights,”² provide a basis for both judging cultural moralities and prioritizations of rights tout court and justifying their override when that is necessary. Second, the principal object of consideration for each of my interlocutors in chapters 2 and 3 was the individual. Individual rights and individual well-being took precedence over community goods and, while each offered justification for this prioritization, I noted that the problem of culturally rooted human rights violations often brought individual claims and exercises of “fundamental human rights” into conflict with no means of adequately adjudicating between them.

In chapters 2-3 I demonstrated specific difficulties that the framework each author runs into when looking to assess AHI conceptually and apply it practically. I will not repeat the discussion here. In those chapters my aim was to demonstrate that there is significant cause to doubt the specific solutions those figures offered to the problem of particularity for AHI where rights violations are culturally rooted. Those chapters provided a basis for rejecting the traditional position. In this chapter my aim is to generalize those positions, not to provide a general critique, but so that the advantages of considering AHI within the contours of a dialogical ethical framework become apparent.

I argue that the traditional position for considering AHI fails to adequately address three areas of concern critical to a robust theory of AHI in light of the particularist challenge. First, the

² United Nations. *United Nations Charter*. <https://www.un.org/en/about-us/un-charter/>

traditional position is unable to adjudicate between conflicting claims of rights. Given the particularist challenge and its emphasis on the importance of subjectivity in ethics, the traditional position fails to provide a plausible justification for the priorities it presents for why certain rights take precedence over others, as well as why certain persons' rights take priority over the rights of others when the rights in question are considered to be equally fundamental. Second, the traditional position fails to give guidance *internal to the framework* for measures beyond the stopping of slaughter, especially for what I have termed "extended involvement." Extended involvement may include occupation, regime change, and the extraction of reparations and safety guarantees that seem to be practically necessary for the long-term security of vulnerable populations. Finally, it cannot account for the limitations of moral perspective, that is, the inescapability of perspectivalism in ethical discourse.

I have already demonstrated how the traditional position fails in these areas through exploration of specific manifestations of the traditional position in chapters 2-3. In this chapter, I will deal with each of these three considerations in turn and discuss how each is dealt with by a dialogical ethical framework for AHI. I will demonstrate that dialogical ethics brings in concepts and accounts of moral experiences that better navigate these three considerations for the consideration of culturally rooted AHI than does the traditional position. I deal with them in the order I listed them above.

Adjudication between conflicting moral claims and priorities

Conflicting claims of individuals and communities toward rights and the problem of prioritization plagues the traditional position's support of the GHRR and its justifications of

AHI. Even if we accept the traditional position's assumption that human rights norms are universal, chapters 2 and 3 demonstrated the difficulty in defining, applying, and prioritizing human rights norms that are considered basic. This prioritization is not only a conceptual difficulty, it is a practical and political problem that is heavily influenced by matters of perspective. Eric Posner captures the dilemma aptly:

[G]overnments all use the idiom of human rights, they use it to make radically different arguments about how countries should behave. China cites "the right to development" to explain why the Chinese government gives priority to economic growth over political liberalisation. Many countries cite the "right to security," a catch-all idea that protection from crime justifies harsh enforcement methods. Vladimir Putin cited the rights of ethnic minorities in Ukraine in order to justify his military intervention there, just as the United States cited Saddam Hussein's suppression of human rights in order to build support for the Iraq war. Certain Islamic countries cite the right to religious freedom in order to explain why women must be subordinated, arguing that women must play the role set out for them in Islamic law. The right of "self-determination" can be invoked to convert foreign pressure against a human-rights violating country into a violation of that country's right to determine its destiny.³

Beyond the issue of government or cultural priorities of rights and the conflicts that these may generate, Posner notes that NGOs and other organizations that often monitor, address, and put pressure on governments and other institutions to enforce or guarantee human rights do not do so impartially. Along similar lines to Talal Asad, Posner argues that too often these emphases are Western directed. Asad ties the GHRR to the western and specifically Christian tradition and Posner acknowledges this indebtedness. However, Posner adds an additional, more cynical, dimension to the western directedness of human rights priorities and engagement. He argues that "[NGOs] understand that poor countries cannot comply with all the human rights listed in the treaties, so they pick and choose...telling governments around the world that they should reorder

³ Eric Posner. "The Case Against Human Rights." *The Guardian*, December 4, 2014. <https://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights>.

their priorities so as to coincide with what [an NGO] think is important, often fixing on practices that outrage uninformed westerners who donate the money that NGOs need to survive.”⁴

In order to adjudicate between conflicting claims of rights, an objective standard must be found by which to judge the adequacy of conflicting claims and provide a measuring stick for prioritization when conflicts between rights claims occur. One core claim of the traditional position is that basic human rights constitute such an objective standard. Whether they are grounded in universal rationality or in some concept of a common moral order, human rights are given greater weight than other moral considerations. In chapter 2, I noted that after World War II international society increasingly turned to the discourse of basic human rights, especially as they are expressed in the norms of the GHRR as criteria for AHI that could be clearly defined, agreed upon in advance, and consistently applied.⁵ This is to say that they looked to set human rights and the GHRR as an objective and universal ethical standard that could judge cultural mores and justify AHI if cultural norms were not in line with the supposedly fundamental rights set out by the GHRR. However, agreement about what rights should take priority and to whom they should primarily apply in situations where the valid rights claims of different individuals or groups may conflict seems to be a matter of perpetual conflict as I discussed in preceding chapters.

Dialogical ethics offers an advantage because its prioritization of the good over the right at the meta-ethical level. Specifically, the “common good” of larger wholes and, ultimately, the good of the interdependent whole that is the Other, take precedence over even those rights that

⁴ Ibid.

⁵ David Fisher sets these out as qualities of an objective standard for justifying AHI within a robust ethical framework. See David Fisher, *Morality and War: Can War be Just in the Twenty-First Century?* (Oxford: Oxford University Press, 2011), 233.

frameworks like the GHRR consider fundamental. The moral worth of any act, attitude, or relationship must be measured relative to the purposes of the Other. It is much easier to prioritize the rights that may be claimed by individuals (e.g., the right not to be arbitrarily harmed) and by groups (e.g., the right to self-determination) when a standard of good is in place by which to relativize those rights. When the good is prioritized and considered fundamental rather than rights, then no specific right conceptually, nor the specific right of any specific individual or set of individuals, is thought to have priority *ex ante*. In terms of AHI, reference to the good provides a way of thinking about the right to self-determination and the right not to be harmed in terms where the two rights are not viewed as having equal weight as so called “fundamental rights.” Rather, their relative weight in a certain situation can be judged based on discernment of the common good of a relevant whole suitable for the specific circumstances under consideration. This diffuses the intractability of the conflict between two rights accounted as “fundamental” in the GHRR.

Dialogical ethics does then err on the side of larger wholes and common goods rather than individual rights. An Other-centric ethics considers the good of the whole as something conceptually separate from the good of the individual parts that comprise it. Dialogical ethics acknowledges that the health of a whole may be detrimental to individual parts. Gustafson writes that “to pursue a legitimate end of a particular community, or even what seems to be in the interests of the well-being of a natural whole, is often necessarily costly to other communities or other wholes.”⁶ Dialogical ethics is clear-sighted about this fact in a way that human rights discourse perhaps is not. Dialogical ethics is able to relativize and prioritize two rights thought to be fundamental in ways that the traditional approach cannot. The traditional approach considers

⁶ Gustafson, *Vol. 2.*, 18.

both the right of self-determination and the right of individuals to be free from arbitrary harm to be fundamental rights. Rather than being in harmony with each other, these fundamental rights may conflict. Both rights are considered basic. One may simply give way to the other relative to its appropriate position in light of the good of the whole. Gustafson readily admits that theocentric ethics is “weighted more readily” to the good of the whole.

Making certain individual rights inviolable theoretically precludes the sometimes necessary measures that must be taken in order to defend the health of a larger whole. The case of military conscription during war provides an example of when this must take place. When a nation is aggressed upon by a foreign power, not only individual lives, but the collective life of society is threatened. The individual lives of soldiers are sacrificed in part because, if they were not, the well-being of the individual soldiers would be diminished anyway because they would live under occupation and oppression. However, the diminishment of the lives of the individual soldiers under occupation is not the primary concern or justification of conscription under such circumstances. Rather, the health of the whole society is the object of primary ethical consideration. Gustafson is clear: “the common good of various wholes is the object of proper concern not only for the sake of the parts but also for the sake of those wholes.”⁷

The health of a whole may be commensurate in some ways with the well-being of its parts. For instance, the individual interests of soldiers are tied to the integrity of their nations as it is the community in which they practice their preferred pattern of life. However, the health of the whole and the well-being of individuals need not necessarily be commensurate. The case of the Spartans guarding the pass at Thermopylae against the invading Persians provides an illustrative case. The translation by Aubrey de Selincourt of Herodotus’ rendering of the epitaph

⁷ Ibid., 19.

commemorating this act captures the disjuncture between individual interest and the health of the whole powerfully. De Selincourt renders Herodotus thus: “Go tell the Spartans, you who read, we took their orders and here lie dead.”⁸ Through the acts of the Spartans who fought at Thermopylae Sparta and the wider Greek cultural world was saved from Persian domination. In this way the health of the whole was prioritized, and certainly the good of the men who died at Thermopylae required that whole to be preserved for their good. However, their individual interests were sacrificed. Their lives and ability to reap the benefits of that cultural milieu was cut short by their deaths on the battlefield.

There is, of course, a danger to this type of goods-over-rights thinking. Appeals to the notion of a good of a whole may often lead to morally fraught situations in the context of AHL. The notion of a divine order works well for the adjudication of claims when divine order is agreed upon, indeed when a notion of good is agreed upon. However, much is dependent on the definition of a relevant whole. The example of the Arierparagraph and its defense by Schulz and Frercks demonstrates that heinous atrocities are often justified by an appeal to the notion of some common good. The final solution, the internment of Japanese civilians, the atomic bombings of Hiroshima and Nagasaki, and even the slaughter of Tutsis in Rwanda were not simply cases of hysteria or wanton violence. They may all be related back to a vision of a common good: the stability of the German state, the security of the United States from potential spies, the saving of both Japanese and Allied lives, the empowerment of oppressed Rwandan Hutus. Nevertheless, I posit that honest ethical reflection shows that these historical episodes are intuitively morally wrong. Dialogical ethics provides a rationale for this intuition and some suggestions for

⁸ Herodotus. *The Histories* trans. Aubrey de Selincourt revised by J. Manicola (London: Penguin, 2003), 495.

safeguarding against ethical abuses of the concept of common good, as well as providing a rationale for the norms codified by the GHRR.

While dialogical ethics gives weight and emphasis to notions of the “common good,” too often what is thought of as common ignores fundamental interconnections and interdependent relationships when considering what a relevant whole might look like. Ultimately dialogical ethics emphasizes the human experience of interdependence, not a self reaching out to other selves, but a self formed and conditioned by the Other. The concept of the Other in dialogical ethics includes other selves, but also wider social forces that include history, culture, as well as trans-historical concepts like justice and democracy. The unit of ethical concern in dialogical ethics is thus centered on the large web of interdependence in which individual entities both participate, a web that is symbolized in the Other, the largest totality. All moral concerns, including the common good of subordinate wholes are relative to this ultimate good. This means that the good of individuals, as well as the “common good” of cultures and societies, are subordinated to this whole. Gustafson himself notes the danger and indeed impossibility of understanding the good of this totality fully. The good of the whole, that is the totality of the web of interdependence in which human life and actions both participates and conditions, as well as is acted upon and conditioned by, is “beyond human ken.”⁹ Ethical reflection, according to Gustafson, is limited to justifying particular actions and relationships in relations to more particular totalities.¹⁰

Though the great totality of the Other is beyond human ken, the starting point of dialogical ethics with an emphasis on the largest totality is ethically significant. It stands in contrast to views of the good in which individual interests are prioritized, whether this be the

⁹ Gustafson, *Vol 2.*, 17

¹⁰ *Ibid.*, 18.

individual interests of persons or the interests of individual groups. The dialogical view situates all entities within a web of interdependence. The individual human experience of powers bearing down upon them conditioning and to some extent determining the self, as well as the corporate analog of this in terms of the interactional model of society which views cultural identity not as *causa sui*, but informed by interactions with others, demonstrates and justifies this theological construal of reality. To view the interests of any particular entity as inviolable delimits ethical considerations that consign significant aspects of the interdependent whole which affect and are, in turn, affected by human action to unwarranted inconsideration. Within a dialogical ethical framework, one values even individual physical life, and by extension community existence, not in and of itself, but because, as Gustafson terms it, life is “the indispensable condition for the person to realize any proper self-fulfillment and to participate in the human community.”¹¹

Beginning with the largest whole, i.e., the web of interdependence symbolized in the Other, pushes the consideration of common good as an enterprise of finding the good and the points of interdependence of ever larger, albeit still particular totalities. Under the conditions of human finitude, this goal is asymptotic, but it nevertheless remains the goal. Enlargement of one’s perspective and considerations, or in Gustafson’s language, an enlargement of soul is called for by the moral experience of the Other, even if one may never be able to fully conceptualize the common good in its total form. Reference to the Other as starting point therefore pushes the bounds of what constitutes a relevant whole or relevant particular totality ever outward, both geospatially, culturally, and even temporally—responding to the inheritance we have from prior generations and forecasting our responsibilities to future ones.¹²

¹¹ Ibid., 244-245.

¹² Ibid., 15.

I want to make clear that dialogical ethics does not specify which specific types of rights are to be prioritized or whether the rights of specific communities should be prioritized over others. However, it does explicitly deny both the claim that anything that violates an individual's "basic human right" should be considered absolutely immoral, and conversely that anything that violates a culture's right to self-determination is immoral. Rights exist relative to goods, and specifically the common good of a particular whole. Thus, both sets of rights exist and can be justified only in light of a larger whole and must be measured against their ability to contribute to the common good of the web of interdependence in which both individuals and cultures are situated and, as forces which bear down upon them, condition them and contribute to the formation of their moral concepts and values.

Drawing a larger whole does not point to a specific course of action. In the context of AHI, it does not specifically advocate for, or against AHI. The use of coercive measures, as AHI surely is, to promote a common good is not resolved by appealing to a common good. Indeed, generally what acts and relationships promote a good, what level of "common" should be selected, even when the need to push toward ever-expanding understandings of interdependence is acknowledged, is sometimes elusive. Gustafson makes clear that his theological assertions do not "yield precise inferences about all other matters of valuation or (in itself) about precise ends of human activity and principles of conduct."¹³ Nevertheless, beginning with the centrality of the Other and looking to conform to its purposes suggests some considerations when understanding what an objective standard might look like. It does not require an objective set of criteria decided upon in advance and that may be consistently applied across all situations of AHI and the

¹³ Ibid., 17.

circumstances that occasion AHI. A static ethics, i.e., one that conforms to a fixed moral order or vision of good, is precluded by a dialogical perspective.

An ad hoc and circumstantially responsive objective standard is required because the Other that is the social order is dynamic. Even historical “facts,” that is particular events, are subject to interpretation and reinterpretation from the perspective of particular societies and eras. This suggests that we must perhaps limit ourselves to the understanding that AHI as a phenomenon may not be measured against some moral law or principle that serves as a predetermined standard. Rather the moral standards and considerations used to judge and justify specific cases of AHI must be relative to the circumstances of each case and the circumstances which drive societies to entertain it as a national endeavor.

However, the emphasis of AHI on the purposes of the Other lend weight to norms protecting those human interests captured by the idiom of rights. This is not because individual rights are always paramount, but because very often protecting certain rights contributes to the health of the whole and is an appropriate response to the purposes of the Other. I turn to the statements of Dr. Martin Luther King, Jr. to clarify this. Consider King’s famous statement in his “Letter from a Birmingham City Jail,” with which I began this chapter. King says: “Injustice anywhere is a threat to justice everywhere.” King justifies this moral position via a description of human experience that echoes in different words the construal of dialogical ethics that interdependence is fundamental and that the moral life is one of responsiveness to circumstances. He writes, “[w]e are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly. Never again can we afford to live with the narrow, provincial, “outside agitator idea.”¹⁴ King uses this construal to argue that

¹⁴ King, *Letter from Birmingham City Jail*, 503.

perceptions of injustice compel persons to “respond to calls for aid” and carry their “thus saith the Lord” (a euphemism for moral commitments) “far beyond their hometowns.”

King appeals to the fundamental “dignity and worth of human personality” elsewhere in the text, demonstrating his affinity with the notion of fundamental human rights.¹⁵ However, in his specific claim that “injustice anywhere, is a threat to justice everywhere” King ties the protection of those rights to the protection of the common good. He appeals to the fact of interdependence, as well as a conception social order as demonstrative of God’s, and, in the language of dialogical ethics, the Other’s purposes. Dialogical ethics shares this moral attention to the common good and to the human experience of interdependence and mutuality King symbolizes with his image of a “single garment of destiny.”

Dialogical ethics differs from King, however, in that it does not assume that mutuality always calls for intervention, although it does acknowledge threat to social order as something of paramount concern. This difference is critical for the consideration of AHI. If one is to respond to the good of the Other as a whole, one cannot privilege or assume that the rights of individuals take precedence over the rights of cultures, nor the converse. Nor can one assume that a particular action like AHI is always right given the presence of certain injustices or threats. One must attend to the good of the whole and respond not only to human interests or human will, but also social forces like history, geopolitical situations, as well as abstract ideas that may hold powerful sway like democracy or justice. The discernment process demanded by dialogical ethics responds to specific circumstances in each case.

This does offer an alternative understanding of a particular dilemma of AHI, namely concerns over the selective deployment of AHI in relatively equal situations of human harm. Iain

¹⁵ Ibid., 508.

Atack observes that justification of humanitarian intervention based on the GHRR and its “emphasis on the universality and indivisibility of human rights” necessarily entails, “strong moral requirements on the international community.” Atack writes that these moral requirements demonstrate that the “protection, fulfilment and promotion of human rights involve moral claims that transcend national or state boundaries precisely because of the supposed universality,” and thus, “implies that states have duties to all human beings, at least in the realm of fundamental rights, and not merely to their own citizens.”¹⁶ Atack’s summary of this moral position that places individual rights and individual well-being as the center of moral concern makes AHI a requirement whenever rights are violated and implies that selectivity is immoral. The violations determine the response. If rights violations were the sole consideration of “common good,” the demand would be ethically reasonable. Dialogical ethics, however, requires that attention be paid to specific circumstances and take into account a myriad of social forces as well as individual and community considerations.

These social forces certainly include the force of the human rights idiom as a philosophical ideal, but it also accounts for other social forces, e.g., geopolitical pressures, military might, and financial resources. These have always been considerations for so called, “selective intervention.” Henry S. Bienen, former Dean of the Woodrow Wilson School for International Affairs, and prominent scholar of ethnic conflict, notes that “military intervention...to save lives in places of civil strife will always stem from a perception of...strategic interests, the feasibility of action, political support for the intervention and, yes, humanitarian concerns.” Although Bienen’s article is titled “the Morality of Selective Intervention,” the moral thrust of his argument is only to say that “It is wrong to argue that if we

¹⁶ Iain Atack, “Ethical Objections to Humanitarian Intervention,” *Security Dialogue*. 33 no. 3 (September 2002), 280-281.

cannot help all people we should help none, because to choose is morally repugnant.” He argues that political and logistical factors are critical considerations for the feasibility of AHI, even if “We should value human lives equally.”¹⁷

Looking at AHI from within a dialogical ethical framework allows one to go a step further than Bienen. One may not only contend that the fact of inconsistent application is a morally specious argument against AHI, but also that attention to the specific circumstances and geopolitical and logistical concerns are not only practical issues for AHI, they are morally relevant concerns. Dialogical ethics requires response to and discernment according to social forces. Hard power considerations for instance may make it morally permissible and even required for actors to intervene in Rwanda during the Hutu Power genocide, whereas rescue of the Uighurs in China, given China’s geopolitical clout and the space it occupies in the interdependent web of international society, may make intervention morally unacceptable given the destabilization of the common good that such an act may cause.

It also implies, however, that powerful societies, whether that power be military, economic, or cultural, that hold the GHRR in high regard are a force that must needs be responded to. This is not to say power considerations are the only considerations. This would be to acknowledge that might in the conventional sense does, in fact, make right. Power and geopolitical position are only a few considerations of dialogical ethics, albeit critical ones. The force of culture, of abstract ideas, of notions like justice, rights, definitions of sovereignty, as well as the idiom of human rights themselves are all considerations that demand a response within a dialogical ethical frame. Thus, dialogical ethics is an objective standard that can prioritize between different concerns of rights and goods, but it is a standard that is highly

¹⁷ Henry S. Bienen. “The Morality of Selective Intervention: Foreign policy: We should act only where we can assist a positive outcome--in Bosnia, say, but not in Rwanda.” *Los Angeles Times*. June 22, 1994.

qualified and highly circumstantially driven. While this may be theoretically frustrating, devoid as it is of the parsimony of the traditional position, I argue it nonetheless hews closer to the interdependent and dialogical nature of human moral experience and better accounts for the ordering of the Other that human experience suggests is a necessary and primary ethical reference point.

Social forces like history, tradition, and culture exist that need to be responded too, so too do geopolitical orders, as well as the objective desire for cooperation within the web of interconnected humanity for the common good of the stability of the social order. AHI must not be morally evaluated in general, nor should criteria for AHI be decided in advanced and applied. Moral judgment of AHI must take place on an ad hoc basis and pay attention to the particular circumstances that occasion a specific act of AHI and the specific motives, acts, perceptions, and interests of the stakeholders involved. Nevertheless, there is a common object that makes dialogical ethics objective. The common object is the purposes of the Other and the testability of social success according to the patterns of order determined by the Other.

Establishing this objective standard grounds the rest of the requirements I put forth as necessary for an alternative framework. It provides the warrants for coercion in general. Additionally, it forms the basis of AHI's specific forms of coercion like the extended involvement of intervening powers in the affairs of a society, which may take the form of deployment of military forces longer than it simply takes to stop a slaughter, as well as security and state-building efforts that may directly violate the self-determinative will of certain groups in order to ensure the long-term well-being of others.

Extended Involvement

The second consideration is related to the first. Extended involvement by intervening powers is often a practically necessary for successful AHI that intends to safeguard the well-being of vulnerable populations who are in danger due to widespread cultural bigotry. However, extended involvement is often viewed as morally dubious. This is true not only of positions where cultural sovereignty and particularity are ethically emphasized above all, but also within the traditional position for AHI I described in general terms above. In much of the moral discourse surrounding AHI there is a presumption against extended involvement by intervening powers, especially if that involvement entails long term military deployment, occupation, or regime change because the right to self-determination is a paramount principle of the GHRR.¹⁸ Questions of both the legitimacy and efficacy of extended involvement become pertinent in such considerations, the general wisdom being that extended involvement is a moral bridge too far that carries AHI beyond justifiable humanitarian purposes. As Michael Walzer puts it, the aim of intervention is never “to alter power relations on the ground, but only to ameliorate their consequences.”¹⁹

However, safeguarding the well-being, especially the long-term well-being of vulnerable populations who have been or are currently at risk for things like massacre, enslavement, and other human right violations may require alteration of power relations on the ground and perhaps even coercive interference into the self-determinative exercises of certain groups. This last factor

¹⁸ See for instance: Michael Walzer, *Arguing About War* (New Haven: Yale University Press, 2004), 70; Alex J. Bellamy, “The responsibility to protect and the problem of regime change,” in Don E. Scheid (ed.) *Ethics of Armed Humanitarian Intervention* (Cambridge: Cambridge University Press, 2014), 166-186; Gareth Evans et al., *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Center, 2001), 39-46; Müge Kinacioglu, “Forcing Democracy: Is Military Intervention for Regime Change Permissible?” *All Azimuth* Vol. 1, No. 1, 28-48. January 2012.

¹⁹ Walzer. *Arguing About War*, 67.

is novel from the standpoint of a moral framework, though its importance has been noted in literature on the practice and implementation of just settlements after human rights violations have occurred. Frameworks for AHI often acknowledge the practical necessity of these measures, but not their moral significance or the extent to which a commitment to engage must be a moral demand. Dialogical ethics provides warrant for extended involvement internal to its moral framework. As I discussed above, emphasis on the good means relativizing even the right of self-determination according to the common good of relevant wholes.

One contributing factor to the tendency to minimize the moral obligation of intervening forces to commit to a military presence beyond the stopping of slaughter is undoubtedly an emphasis on the right to self-determination for populations who are intervened upon. Walzer notes that, ideally, cases of AHI should “reflect a commitment that intervention be as much like non-intervention as possible...the goal...is rescue.”²⁰ This requires that military measures be minimally invasive and that military forces withdraw as quickly as possible. For Walzer, this “in and out test,” that entails the rapid withdrawal of military forces after a humanitarian mission has succeeded in putting a stop to human rights violations, is a test of the genuineness of humanitarian motives. An intervening force does not “stay put for reasons of their own,”²¹ that is, to allow an intervening state to “claim political prerogatives for itself.”²²

Walzer acknowledges, however, that the in and out test is difficult to apply in cases of human rights violations when “the trouble is internal, the inhumanity locally and widely rooted, a matter of political culture, social structures, historical memories, ethnic fear, resentment, and

²⁰ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 5th Edition (New York: Basic Books, 2015), 104.

²¹ Walzer, *Arguing About War*, 71.

²² Walzer, *Just and Unjust Wars*, 104.

hatred...”²³ A longer and more intensive commitment is required in such cases or one runs the risk that historical and culturally embedded patterns of hatred and violence may easily resurge. Such a commitment is acknowledged as necessary under some frameworks for AHI, including the R2P framework set forth by the ICISS.²⁴ However, the emphasis continues to be on military minimalism and devolving responsibility and authority back to local actors as quickly as possible. The ICISS notes that this emphasis is, “essential to maintaining the legitimacy of intervention itself.” It is critical that “[i]ntervening to protect human beings must not be tainted by any suspicion that is a form of neo-colonial imperialism.”²⁵ Nevertheless, concerns over the possible resurgence of violence in specific societies suggests the need to account for facets of culture, including those that result in bigotry, bias, and violence, that are unique to each society.

The ad hoc nature of the objective standard I proposed in the section above, as well as its attention to the particular circumstances of each case of AHI, provides a distinct advantage then in justifying extended involvement over the traditional position. First, the objective standard proposed by dialogical ethics, i.e., the purposes of the Other, is necessarily attentive to cultural particularity and circumstance rather than predicated on moral principles that transcend or look to denude cultures of their historical and cultural contexts--including the reality of developed bigotry and biases. A dialogical ethical framework also looks first to the health of the relevant whole and relativizes the respect of the particular rights of individuals or communities to self-determination according to their merit for achieving this health. Dialogical ethics turns on the fact of communication and interdependence as a facet of human experience. This means that exigencies on the ground and existing cultural values of states that are intervened upon are

²³ Walzer, *Arguing About War*, 70.

²⁴ Evans et al., *Responsibility to Protect*, 39.

²⁵ *Ibid.*, 45.

considered together with the values and concerns of intervening societies, and the values and concerns of those upon whose behalf intervention is being carried out. Thus, even while appealing to the health of the whole, dialogical ethics includes social forces as an aspect of the Other and thus provides both constraints and guidance for the conduct of AHI according to the exigencies of culture.

I noted above that circumstances may limit who may engage in AHI given both the realities of both hard power and soft power and the manner in which different means of intervention and different interveners may make a difference in the success of an instance of AHI defined as the health of the whole. Gustafson notes the salience of on-the-ground exigencies, as well as considerations of history and culture to social ethics. He says:

In matters of social morality and policy, we are not privileged to begin *de novo*... . Social ethics is a matter of addressing existing institutions and policies, which have various degrees of intransigence or pliability, so that the events that they affect take a morally approvable course. Social moral action directs powers that already exist, or it seeks powers in the name of some social and moral ends in order to affect future events now dominated by others. Even utopian thought, if it is to be more than a literary exercise[,] must evoke the sentiments and powers of persons in order affect social change. And when it does so, it is injected into an already existing course of events with the suppressions and injustices that occur in present arrangements. If it is of a revolutionary sort, it appeals to the sentiments and unrest that are present in portions of a given population. To be sure, prophets and utopians can make us conscious of the evils of the world, but even that is to reshape existing social forces and desires.²⁶

It is critical, then, that existing institutions and policies be attended to and that the task of AHI is not simply to repeal and replace cultural attitudes that give rise to human rights violations, but rather, as Gustafson argues, to “reshape” (and I add, redirect) existing social forces and desires.” But attention to the health of the whole informed by the values

²⁶ Gustafson, *Vol. 2*, 9.

of interveners, the intervened upon, and those on whose behalf intervention is being conducted may also provide warrant for measures that override self-determination and even ingrained facets of culture. The example of post-war Japan shows that extended involvement when geared toward the health of the whole is warranted. The case defies the expectations of the traditional position. Japan was able to reintegrate into international society as a peaceful and prosperous member, despite after its martial culture and aggressive adventures in the lead up and conduct of World War II. In any case, what is stressed is that the health of the whole is paramount and that the exigencies of the circumstances in which rights violations occur must be accounted for more than any pre-ordained principle regarding the appropriate timeline for withdrawal or level of involvement.

An examination of American reconstruction in post-World War II Japan presents a case that highlights the importance of the responsiveness that I argue is warranted in AHI by a dialogical ethical framework and provides an example of the types of cultural and institutional considerations that may be relevant as well as a roadmap for how humanitarian warfare may be successfully (politically and morally) conducted. Consider the following details.

The United States' imposition of an Unconditional Surrender on the Japanese nation is often credited as a necessary component of the successful reconstruction of Japanese society after World War II. After the war, the United States engaged in a successful campaign of reconstruction in Japan similar to the Marshal Plan in Germany. U.S. efforts allowed Japan to emerge economically and socially strong. More importantly, the strong militaristic and expansionist tendencies operant in Japan prior and

during the war were suppressed and little resistance was offered to policies implemented by the victors. The popular narrative explains that the Japanese acceptance of unconditional surrender gave American political planners and military administrators the ability to command compliance. These men benevolently, but backed with military force, started Japan on a path to prosperity and lasting peace.

A careful historical analysis of the political postures taken and policy pursued by both the United States and Japanese leaders during the lead up to the end of the war complicate the view that American military strength and its ability to impose unconditional surrender on Japan was the proximate cause of the success of Japan's reconstruction. Though not formally guaranteed in any negotiation, the preservation of the monarchy and the reorganization and repurposing of cultural institutions toward democracy rather than their outright dissolution was essential. These institutions provided incentives for Japanese leaders to accept peace and support the stable civil-political order that allowed for the reconstruction of Japan's society and economy after the war. Unconditional surrender and the military dominance it signaled to the Japanese is thus viewed as the mechanism that gave the United States a free hand to root out and eliminate the more militaristic and aggressive of Japan's cultural institutions without significant resistance. Perhaps more importantly, it is viewed as having prevented subsequent resentment and the resurgence of imperial ideology among the Japanese population. John Foster Dulles is an exemplar of the popular view that Japan's complete capitulation and unconditional surrender paved the way for the freehand that American leaders had in post-war Japan. In glowing terms, he states:

Because of what was accomplished during that [six years of American] occupation under the wise leadership of General Douglas MacArthur, it was possible to conclude a peace which showed no trace of angry passion, a peace of reconciliation,

not of vengeance...Japan's war-making power was destroyed and the influence of those who committed her to armed conquest eliminated.²⁷

Despite being a fierce critic of the use of atomic power so often viewed as crucial to ending the war, Dulles is nevertheless adamant that American leadership and the surrender that made it possible were essential to the successful reconstruction and prosperity of Japanese society after the Second World War. Dulles's assertion that "the influence of those who committed [Japan] to armed conquest" was eliminated is a seeming reference to the suppression of the military and governmental institutions that led Japan during its period as an expansionist belligerent. It is to America's and specifically MacArthur's credit that the peace was one of reconciliation. MacArthur neither allowed American drives for a victor's revenge nor Japanese resentment and resistance threaten the stability of the post war order. Rather he fostered a climate of cooperation and stability. Dulles credits this specifically to MacArthur's suppression of the centers of influence and culture that led Japan during the wartime period. Dulles paints a picture of peace and a restoration of order as thoroughly American as a Norman Rockwell scene.

Even John W. Dower, whose *Embracing Defeat* is a nuanced account of Japanese responses in the immediate aftermath of the Second World War, often does not escape the narrative of holding up unconditional surrender and the shattering of Japanese national consciousness as a necessary foundation for successful reconstruction. Dower is critical of those who, like Dulles, perhaps oversimplify Japanese responses in the wake of World War II, especially those who emphasize the narrative of the surrender and postwar occupation as merely "an imposition of America's will on an alien land."²⁸ Dower argues that such narratives too

²⁷ John Foster Dulles, "Foreword." In Van Aduard, Baron E.J. Lewe, *Japan: From Surrender to Peace* (Dordrecht: Springer, 1953). xi.

²⁸ John W. Dower, *Embracing Defeat: Japan in the Wake of World War II*. (New York: Norton, 1999), 24.

casually, “give the [American] occupiers pride of place” and depict Japanese society in the post-bellum period only in terms of “a vision of that moment which was distinctly American.”²⁹

Dower’s work focuses on internal Japanese responses to the situation in which the nation found itself at the conflict’s end. He writes:

No one on either side [American or Japanese], however, predicted how diverse and spirited would be the [Japanese] responses to defeat--and from war and wartime regimentation.³⁰

Dower emphasizes Japanese agency in the response of the population to the period of post war reconstruction rather than placing the laurels of credit squarely on American shoulders.

However, despite the fact that Dower points towards the necessity of a more nuanced narrative of Japanese responses to the ending of World War II, he nevertheless perpetuates the picture of a devastated and prostrate Japan as the foundation for post-war progress and reconstruction.

Indeed, for Dower, the radical rethinking and re-imagination of Japanese society after the war was possible only because defeat was so nationally shattering. The ability to impose an unconditional surrender is thus often viewed as that which allowed the United States a means of creating a Japanese state in its own liberal democratic image and to situate that state in a post-war liberal international order as “a responsible and peaceful member of the family of nations.”³¹

In contrast to the descriptions of Dulles and Dower, there is ample evidence that Japanese leaders were not pummeled into unconditional submission, but rather navigated a calculated and strategic surrender that secured Japanese long-term interests even under American occupation.

Moreover, rather than impose American will on a subdued population, American planners

²⁹ Ibid.

³⁰ Ibid, 25.

³¹ Joint Chiefs of Staff, “Basic Initial Post Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan (JCS1380/15).” November 3, 1945.
<https://www.ndl.go.jp/constitution/e/shiryō/01/036/036tx.html>

seemed to recognize that the stability and the success of post-war reconstruction was based on pursuing mutual interest. The United States, responsive to the cultural exigencies present in post-war Japan, aimed to preserve and protect the institution of the monarchy, which Japanese leaders held as the essence of and essential to the survival of their national culture.

Emperor Hirohito made the choice to capitulate to the Allied demands. His address to the Japanese nation demonstrates his rationale:

Should we continue to fight, it would not only result in an ultimate collapse and obliteration of the Japanese nation, but also it would lead to the total extinction of human civilization. Such being the case, how are we to save the millions of our subjects, or to atone ourselves before the hallowed spirits of our imperial ancestors? This is the reason why we have ordered the acceptance of the provisions of the joint declaration of the powers.³²

Hirohito saw it as a sacred and familial duty to preserve the Japanese nation and its spirit. Part of this preservation, however, was the provision that the Imperial house would continue to rule over Japan, a concession which the U.S. accepted. Hirohito's surrender address made it clear to the Japanese population that the war had most certainly been militarily lost. Beyond the acknowledgment of military defeat, however, Hirohito's address firmly placed the monarchy in the position as a stabilizing force for cooperation with the allies.

Hirohito positioned the continued presence and the continued rule of the Imperial House as a force of stability by mobilizing the same loyalty and focusing it on reconstruction.

Hirohito's surrender address urged his subjects to:

Beware most strictly of any outbursts of emotion that may engender needless complications, of any fraternal contention and strife that may create confusion.³³

³² Hirohito, "Accepting the Potsdam Declaration," Radio Broadcast. August 14, 1945.
<https://www.mtholyoke.edu/acad/intrel/hirohito.htm>

³³ Ibid.

With this admonition, Hirohito prevented any faction from distancing itself from the terms of surrender with his words against “fraternal contention” from within the ranks of Japanese society, and essentially forbade resistance against the occupation for fear it may cause “needless complications.” U.S. policy makers and thought leaders had, prior to 1945, stressed Hirohito’s removal as necessary due to his complicity in Japan’s aggression. However, after 1945, U.S. public opinion shifted and acknowledged Hirohito’s positioning of himself as a supporter of stability and cooperation as essential for Japanese acceptance of the post-war occupation and program of social reconditioning that Allied victors had set upon for Japan.³⁴

It was the Emperor’s personal intervention in the surrender decision that allowed for the success of Allied efforts to secure peace and begin the process of reconstruction.

Though formal negotiations did not take place, the Japanese communiqués between the Japanese Government and the American Government provide a record of informal signaling that the most crucial Japanese concession, namely the preservation of the Emperor, would be granted. On August 10, five days before the official surrender, the Japanese Government sent word to Secretary of State James Byrnes through the American Charge d’ Affaires in Switzerland that they would acquiesce to the demand of unconditional surrender if the life of the Emperor and the continuation of the Imperial institution was guaranteed.³⁵

Byrnes’s response was ambiguous.

From the moment of surrender the authority of the Emperor and the Japanese Government to rule the state shall be subject to the Supreme Commander of the Allied powers who will take such steps as he deems proper to effectuate the surrender terms....The Emperor will be required to authorize and ensure the signature by the Government of Japan and the Japanese Imperial General

³⁴ Hal Brands, “Rhetoric, Public Opinion, and Policy in the American Debate over the Japanese Emperor during World War II.” *Rhetoric and Public Affairs* Vol. 8, No. 3 (Fall 2005), 432.

³⁵ James F. Byrnes, “Secretary of State Byrnes’s Reply to Japanese Surrender Offer,” *Department of State Bulletin*, Vol. XIII, no. 320, Aug. 12, 1945.

Headquarters of the surrender terms necessary to carry out the provisions of the Potsdam Declaration, and shall issue his commands to all the Japanese military, naval and air authorities and to all the forces under their control wherever located to cease active operations and to surrender their arms, and to issue such other orders as the Supreme Commander may require to give effect to the surrender terms.³⁶

From a domestic policy standpoint Byrnes's reply could be interpreted as a rejection of any terms and a refusal to guarantee any concessions regarding the Imperial House. However, in Japan Hirohito chose to interpret it as an acquiescence to the demand that the Imperial House be maintained, though with the caveat that Imperial Rule would nevertheless be subject to the will of the Allied Supreme Commander and would be modified so as to accommodate democracy.³⁷ Byrnes had technically made no guarantees and placed the "will of the people" as a caveat to the retention of the Imperial House. However, Hirohito felt secure enough that the tone of the note showed Allied willingness to retain his person and title that he acquiesced to nominal unconditional surrender.

Hirohito framed this cooperation not as a diminishment of the Imperial House, but as an extension of its duty, a view the U.S. promoted. His intervention spun surrender as simply a new democratic era for Japan, but where cooperation, democratization, and even Americanization were looked on as achievements of the Imperial House. In his acceptance of the Potsdam Declaration, he instructed his listeners in this way:

Unite your total strength to be devoted to the construction for the future. Cultivate the ways of rectitude, nobility of spirit, and work with resolution so that you may enhance the innate glory of the Imperial State and keep pace with the progress of the world.³⁸

³⁶ Ibid.

³⁷ Tsuyoshi Hasegawa, *Racing the Enemy: Stalin, Truman, and the Surrender of Japan* (Cambridge, MA: Belknap Press, 2005), 240.

³⁸ Hirohito, "Accepting the Potsdam Declaration," Radio Broadcast, August 14, 1945. <https://www.mtholyoke.edu/acad/intrel/hirohito.htm>.

The reshaping of the Japanese Monarchy into a symbol of cooperation and the redirection of its cultural power to bolster the legitimacy of post-war reconstruction efforts transformed the success of the stable post-war order as something intrinsically and necessarily Japanese, part and parcel of service to the Emperor. Resistance to this new occupying regime and the failure of this system put the honor (and the survival) of the Imperial Institution in jeopardy. In the end, for the Japanese people and especially the military that may have proved to be the main source of resistance to American occupation, the war's end was not so much that unconditional surrender had been foisted upon them by a military so devastatingly powerful that they could not resist. Rather, they ended the war with the understanding that the Emperor was, as his house had always done, charting the course of their nation. Hirohito proclaimed in his second rescript regarding surrender that while, "the fighting spirit of the Imperial Navy and Army is still vigorous, *I am going to make peace* with the United States, Britain, the Soviet Union, and Chungking, in order to preserve our glorious *kokutai*."³⁹

A second factor contributing to the tendency to minimize the moral obligation of intervening forces to commit to extended involvement has less to do with the self-determination of those populations intervened upon, than with the political determinations of the domestic polity of the intervening power. This is implicitly supported the *Responsibility to Protect* report produced by the ICISS. In that report, the ICISS calls the domestic determinations of intervening powers a "negative feature" that limits the commitment to occupation and the general restoration of order after an AHI conflict. Though it is not formally an instance of AHI, the U.S. war in Afghanistan demonstrates how the war weariness of domestic populations might have significant

³⁹ Japanese: The national essence of Japan, embodied by the emperor. Translated in Hasegawa, *Racing the Enemy*, 250.

effects on the willingness of powerful states to undertake the burden of conducting stability operations and even state building that are similarly required after AHI. Consider these features of that conflict.

The U.S. operations in Afghanistan have over the last two decades been largely geared toward humanitarian efforts. In May of 2003, Secretary of State Rumsfeld declared that major combat operations in the country had “concluded,” and that the United States had, “moved from major combat activity to a period of stability and stabilization and reconstruction and activities.”⁴⁰ More than a year before Rumsfeld’s announcement of the end of major combat operations, President Bush noted that the turn to reconstruction was a centerpiece of U.S. policy toward Afghanistan. Invoking George Marshall’s European Recovery Program in a speech at the Virginia Military Institute, Marshall’s alma mater, Bush outlined an agenda for Afghan operations filled with humanitarian promises like stable government, improved medical care, economic development, the elimination of hunger, as well as reference to the human rights violations committed by the Taliban against Afghanistan’s Hazara ethno-religious minority. For Bush, this was not only a political commitment, it was a necessarily moral enterprise. Once again invoking George Marshall the President noted:

By helping to build an Afghanistan that is free from this evil and is a better place in which to live, we are working in the best traditions of George Marshall. Marshall knew that our military victory against enemies in World War II had to be followed by a moral victory that resulted in better lives for individual human beings.⁴¹

⁴⁰ Council on Foreign Relations. “Timeline: The U.S. War in Afghanistan 1999-2021” <https://www.cfr.org/timeline/us-war-afghanistan>.

⁴¹ George W. Bush. “Remarks by the President to the George C. Marshall ROTC Award Seminar on National Security.” Speech, Cameron Hall, Virginia Military Institute, Lexington, VA. April 17, 2002. <https://georgewbush-whitehouse.archives.gov/news/releases/2002/04/20020417-1.html>

Despite President Bush’s moral commitments, two decades on it is clear that the U.S. faces a war weary domestic population. According to a Pew Research survey conducted in 2021, a majority of Americans felt that withdrawal from Afghanistan was the right decision despite the Taliban takeover of the country.⁴² President Biden honored the withdrawal agreement made by his predecessor, President Trump, and stressed withdrawal as a necessary measure. President Biden was clear that he would not preside over a “forever war,” and that the sacrifice of American blood and treasure in Afghanistan for continued stability and humanitarian purposes was not conducive to the national interest of the United States.⁴³ Since the U.S. withdrawal, the humanitarian situation in Afghanistan once described with optimism in the early days of the reconstruction phase of operations has unquestionably deteriorated. Secretary of State Anthony Blinken declared at the release of the State Department’s *2021 Country Reports on Human Rights Practices* that:

the Taliban’s takeover precipitated a humanitarian crisis, and has resulted in serious erosion of human rights, from arbitrary detentions of women, protesters, and journalists, to reprisals against security forces for the former government, to growing restrictions on where women and girls can study or work.⁴⁴

The traditional position for AHI makes note of the abovementioned two contributing factors for minimizing the moral obligation of intervening powers to commit resources toward stopping

⁴² Ted Van Green and Carrol Doherty, “Majority of U.S. public favors Afghanistan troop withdrawal; Biden criticized for his handling” (N.P.: Pew Research Center). <https://www.pewresearch.org/fact-tank/2021/08/31/majority-of-u-s-public-favors-afghanistan-troop-withdrawal-biden-criticized-for-his-handling-of-situation/>.

⁴³ Joseph R. Biden, “Remarks on the End of the War in Afghanistan.” State Dining Room, The White House, Washington, D.C. August 31, 2021. <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/31/remarks-by-president-biden-on-the-end-of-the-war-in-afghanistan/>

⁴⁴ Anthony J. Blinken, “Remarks on the Release of the 2021 Country Reports on Human Rights Practices.” Speech, Washington, D.C. April 12, 2022. <https://www.state.gov/secretary-antony-j-blinken-on-the-release-of-the-2021-country-reports-on-human-rights-practices/>

slaughter as well as establishing wider and longer lasting protections for vulnerable groups. However, because of its principled commitment to self-determination as a fundamental right, it provides little in the way of guidance in how to navigate the issue. It proposes no procedures or considerations beyond test of rapid withdrawal to evaluate or judge the efficacy and moral legitimacy of extended involvement by intervening parties. However, rapid withdrawal is an often inapplicable test when culturally rooted atrocities are at issue because rapid withdrawal might ameliorate immediate human rights violations, but leave in place the root causes that will eventually erupt into renewed atrocities. The universalistic perspectives of Morsink and Little discussed in chapter 2 also fail to provide such guidance. Neither do any of the perspectives I have previously discussed provide moral guidance for the extent to which the domestic society of an intervening power must be compelled to commit resources, both human and material, to the cause of initial intervention, but also to the corollary causes of rebuilding, reconciling, and securing the well-being of intervened upon societies. For instance, the ICISS report notes only that “[t]he balance to be struck between the long-term interests of the people and country where the intervention takes place and those of the interveners themselves can end up being a fine one.”⁴⁵

Dialogical ethics, in contrast, gives some insight on how this balance may be morally struck. Though Gustafson never provides a treatment of AHI specifically in *Ethics from a Theocentric Perspective*, in Volume II he does discuss the problem of population and nutrition on a global level which is a problem similar in scope and in terms of the obvious wholes that are relevant to a consideration as AHI.⁴⁶ Gustafson notes that, for the issue of population and nutrition, “variables are virtually countless when one considers the specific conditions of each of

⁴⁵ Evans et al., *Responsibility to Protect*, 45.

⁴⁶ See chapter 7 of Gustafson, *Vol. 2*, 219-252, for his full discussion of global population and nutrition issues.

the countries on our planet, and the ways which [factors like]...simple human greed...can affect the course of events.” Gustafson frames population and nutrition as “an intractable problem that will not go away.” Despite this intractability, he argues that given the mass suffering that certain populations experiencing widespread starvation face, that “one needs no sophisticated argument to sustain some sense of obligation to persons and communities that are in such dire straits.”⁴⁷ I will follow some of Gustafson’s logic and his theocentric approach to the issue of population and nutrition, specifically the question he poses as most central for determining the level of obligation that one society has to another to relieve its suffering. Gustafson asks, “what standard of living is judged [by a society] to be necessary to sustain its own survival or well-being[?]” Mutatis mutandis, the question may be applied conceptually to the obligation to engage not only in AHI, but to commit human and material resources that could be used to prosper one’s own society to extended involvement measures like occupation, peacekeeping, and/or state-building in order to safeguard the well-being of another society.

Gustafson does not give a specific answer for population and nutrition that one might then apply to forms of extended involvement. Rather, he points simply to the central notion of interdependence and the experientially warranted push to view oneself and one’s community as a participant in the context of larger wholes. Gustafson says thereto that: “to be a participant is to be a steward.” Consequently, to be a steward is

to see and feel subjectively the responsibility not only for individual persons and families but also for larger human communities and for the natural world. It is to recognize the critical significance of personal and policy choices for other existing persons, for future generations of human beings, and for the life of the world. To see and feel oneself as a steward, and to grasp the consequences of possible courses of action through the patterns and processes of interdependence, is to accept

⁴⁷ Gustafson, *Vol. 2.*, 219.

responsibility for larger wholes than the immediate interests of [one's] family, [one's] community, or [one's] nation.⁴⁸

Viewing oneself as a steward is not optional in terms of dialogical ethics. Stewardship is a subjective recognition of the objective fact of interdependence and indicates a form of consent to the Other that is part and parcel of the moral life. Stewardship prizes the health of the whole above self-interest. If AHI contributes to the health of the whole, then responsibility to expend human and material resources in humanitarian adventures that require extended involvement is morally demanded. It is demanded up to and, importantly, until such expenditure becomes so great that the health of the whole is harmed. This too is a hard balance to strike, but it is a balance in which the health of an intervening society is not the primary concern. The health of an intervening society is relativized to the good of the whole and may require certain sacrifices from societies in order to meet the moral obligations of safeguarding populations from the violations of human rights.

Perspectivalism

I turn now to the issue of perspectivalism. By “perspectivalism,” I refer to the inescapability of relying on local or particular perspective in moral interpretation—the impossibility of adopting a “view from nowhere.” Recall that above I noted the advantage that, in terms of theoretical consistency, having objective standard of a circumstantially defined “common good” and an ultimate objective reference to the health of the whole and purposes of the other for adjudicating between and prioritize the rights claims and values of different persons

⁴⁸ Ibid., 249.

and groups. Useful as this is, and warranted as it may be by a dialogical construal of human experience, dialogical ethics is clear that the interpretation of this objective standard is complicated by perspectivalism.

Dialogical ethics looks to account for perspectivalism and builds it in as a natural and necessary part of ethical thinking. Admitting the limitations of perspective in moral calculation and beginning with it as a postulate changes the objective of the ethical discussion. If one dismisses the limitations of perspective as irrelevant or transcendable, the ethical task is to search for a common foundation for cultural moral systems in order to justify universalistic conceptions of ethics. If one begins with the limitations, the ethical task becomes a process of error reduction. Through error reduction, one aims to better one's interpretation of the objective, but not fully knowable facts of the Other and the purposes of the Other that direct moral action and ethical reflection. Such a process cannot provide certainty, but only "certitude."⁴⁹ In general, Gustafson submits that the basic "substance" or "content" of morality from a theocentric perspective must be derived from our most adequate perception of and conception of the relations that are appropriate for ourselves and for other things to the ultimate power and orderer of life.⁵⁰

For dialogical ethics, this requires the widest possible description of a relevant whole. However, even determination of what wholes are relevant and an evaluation of the specific circumstances in which moral acts take place are conditioned by perspectivalism. Gustafson is clear that no ethical reflection, even within the dialogical frame that considers larger and larger

⁴⁹ The concept of "certitude," as Gustafson uses it, indicates surety that is a matter of degree and that is never fully established. This may be contrasted with the manner in which Gustafson deploys the notion of "certainty" which he uses to indicate an "objective" and fully established surety without degrees. Gustafson does not provide a fully formed discussion of the distinction between certitude and certainty. However, the distinct way he uses and contrasts these concepts may be seen in several places throughout his work. See for instance: Gustafson, Vol. 1, 36 in which Gustafson speaks of a "relatively high degree of certitude," and on 56 where he notes that "one can come to "certitude, but not objective certainty about [one's moral choice]."

⁵⁰ Gustafson, *Vol. 2*, 2.

wholes, can avoid questions of “why an individual person has certain preferences of value,” nor can ethical reflection “avoid taking into account not only the biological drives of that individual but also the social and cultural milieus” in which that person lives.⁵¹ Perspective is inescapable. The inescapability of perspective is one of the strongest claims against AHI leveled by the particularist challengers against the traditional position which justifies AHI on the basis of a GHRR asserted to be universally applicable.

In chapter 1 I noted that the religiously informed work of Talal Asad provided an articulation of the particularist challenge that remained critical of AHI, but that, in contrast to the work of Hardt and Negri, it provided a model of societal value formation and cultural authenticity that did not beg the question of whether or not AHI could be a moral act. Asad even acknowledges the importance of human rights norms and their function in global society. He argues their origin is from a Euro-American perspective, but that many people “outside of Euro-America have welcomed them despite that origin.”⁵² Nevertheless Asad remained critical of the GHRR, let alone AHI, and its pretensions toward universality. Asad points out the problem of perspectivalism for AHI, even if some notion of rights and the protections captured by the GHRR are acknowledged to be operant in moral experience. The traditional position, I noted above, is to dismiss Asad’s critique and perspectivalism in general. Dismissing perspectivalism is necessary in order to argue that objective and universal experiences lead to universally deducible moral interpretations of those experiences and thus also a universal ethics. Dialogical ethics differs substantially from this position.

Thinking along Gustafsonian lines, one might dismiss the traditional position’s dismissal of perspective as a futile and arrogant attempt to “see and evaluate things from God’s point of

⁵¹ Ibid., 14.

⁵² Talal Asad, "What Do Human Rights Do? An Anthropological Enquiry," *Theory & Event* 4, no. 4 (2000), 27.

view.”⁵³ The concern over perspectivalism is well taken in light of an interculturally coercive act like AHI. This dovetails with the particularist challenge, especially as put forth by Asad. Rather than dismissing it, a dialogical framework for AHI looks to account for perspective and describe a process of how unique and culturally formed moral perspectives may gain wider ethical significance. This is a defining feature of Gustafsonian thought and is particularly applicable to the consideration of AHI.

The concern over emphasizing a web of interdependence that brings attention to human situations in larger wholes suggests that the ethical justifications and interpretations of circumstances we use to decide what moral acts and relationships are required of us in any given situation be as responsive as possible to perspectives outside our own. This is especially salient in international issues like AHI. Situating oneself in light of a web of interdependence, highlights “the implications of our embodiment as moral agents, our bearing of a particular culture, our location and involvement in society, and our interdependence in the ordering of the natural [and for dialogical ethics I emphasize also social] world.”⁵⁴ I hasten to note, however, that the fact of embodiment does not imply for Gustafson a retreat into “total immersion in the immediacy of events and of one’s self-involvement so that one feels one’s way through judgments and choices.” The theocentric construal of the world proposes that one interpret human moral experience, on the one hand, at “some distance” from one’s “immediate events and desires.” On the other hand, one cannot “rule out the significance of affectivity, of feelings,” for ourselves as individual or collective agents or those upon who we morally act upon and within the web of interdependence.⁵⁵ Given this anthropological account and its epistemological ramifications, the

⁵³ Gustafson, *Vol. 2*, 146.

⁵⁴ *Ibid.*, 146.

⁵⁵ *Ibid.*, 147.

process of discernment comes to the fore as the critical process by which engaging in an instance of AHI is conceived of, justified, and judged.

In my discussion above of the pattern of ethics that follows from a theocentric construal of reality, I noted that Gustafson describes discernment as a means not of establishing absolute moral principles, but rather as a process of imagining ways that one might properly relate to a moral order and ethically defend one's choices. Gustafson acknowledges that the fact of interdependence means that the "notion of the mind, the human spirit, as a tabula rasa certainly is not true, and has long been discarded." However, rather than move to an acceptance of cultural authenticity, or even individual subjectivity as an appropriate ethical norm (which would descend into total moral relativism and make ethics impossible), Gustafson argues that the emphasis of ethics must be to "minimize distortions" in the interpretation of the purposes of the Other which is the ultimate ethical reference point for his theocentric and my own dialogical ethics.⁵⁶ Indeed, for Gustafson discernment is explicitly "not the conclusion of a formally logical argument, a strict deduction from a single moral principle, or an absolutely certain result from the exercise of human reason alone."⁵⁷ This is a drastically different means of justification for AHI than is pursued by my interlocutors in the second and third chapters who rely on singular principles: for Morsink the inherent dignity of the human being, for Little the universal rationality surrounding the logic of pain, for Walzer a common morality, and for the proponents of R2P a revisionist though supposedly historically warranted principle of sovereignty.

Within a dialogical framework, perspective, while inescapable, is properly chastened rather than triumphalist. Particular perspectives cannot claim sovereignty or absoluteness as they

⁵⁶ Ibid., 3.

⁵⁷ Gustafson, *Vol. 1*, 338.

do, for instance, in Hardt and Negri's conception of cultural singularities. All moral perspectives must be responsive and also subordinate to the Other and the purposes of the Other. The purposes of the Other are not rigid and fixed in a dialogical ethical framework, thus dialogical ethics thus does not allow for absolutes, nor for certainty. The fact of interdependence and the experience of the Other that is universal to all perspectives and which any perspective on morality must interpret implies that A mutually corrective process occurs in ordinary experience that is not different from what occurs in the development of a modern science. Beliefs, metaphors, and theories presumed to be adequate to explain or interpret the meaning of what is experienced prove to be inadequate, and must be revised."⁵⁸ They are revised in dialogue with the objective facts of the Other, as well as with interpretations of the moral demands of the Other from other perspectives that may be more congruent with what is observed about the purposes of the Other. This is the process of discernment integral to dialogical ethics.

Discernment under the dialogical ethical framework pushes ethical evaluation in the direction of a process of error reduction. Error reduction is achieved in two primary ways in a dialogical ethical frame. The first way is through a process of individual ethical reflection. Individual reflection is not, however, simply a conversation and rationalization of one's actions with oneself. It includes the submission of one's subjectively influenced moral conclusions for public discussion in the invitation of expanded frames of consideration regarding the moral merits of certain acts and relationships in relation to the circumstances in which they arise. Second, moral error reduction is achieved through a process of testing the adequacy of one's moral imagination and actions against the purposes of the Other and attention to the effects on the health of the whole that they produce.

⁵⁸ Ibid., 3.

Gustafson argues that though perspective is an inescapable aspect of human experience and moral calculation, “[i]ndividual reflection and public discussion are necessary to determine which values and principles have priority, not only in general but in the constraining circumstances in which choices have to be made.”⁵⁹ The reflection entailed by moral discernment is not a philosophical reflection on the adequacy of concepts in the abstract. Rather, Gustafson conceives of reflection as a check on inescapable perspective. The object of reflection is “on one’s own motives and desires.”⁶⁰ Following the eighth distinctive feature of theocentric ethics, there is a strong emphasis on moral humility, self-denial, and self-sacrifice to ensure that motives and desires are not self-serving, but rather geared toward the health of the whole as is appropriate when the Other is the primary object of one’s moral concern.

In keeping with this eighth distinctive of theocentric ethics, part of this reflection on one’s own motives and desires requires the individual (and by extension societies and cultures who make moral claims) to submit their reasons to public comment and discussion. “Persons and communities,” says Gustafson, “ought to be able to give good reasons for the choices they make, and they ought to be able to give good reasons for the values and substantive moral principles that decisively determine their choices.”⁶¹ A dialogical ethics holds public discourse and public debate to be critical, though the opinions of others are also not conceived of as absolute. Rather, public discussion must be viewed as part and parcel of attending to moral acts and relationships in the context of larger wholes.

The notion of testing is an equally, if not more important aspect of the process of discernment. The theological construal of reality that informs Gustafson’s theocentric ethics and

⁵⁹ *Ibid.*, 337.

⁶⁰ *Ibid.*, 338.

⁶¹ Gustafson, *Vol. 2*, 338.

my corresponding dialogical ethics implies that the sovereignty of the divine governance “demands” some conformity to it. Gustafson notes that failure to consent to these demands is perilous both to human well-being and to “nature.” The “content” of what we are to be and to do is grounded in part in requisites of the divine governance.⁶² This is, for Gustafson a theological commitment and statement about the nature of ethics in a theocentric and, I argue, dialogical vein. This may perhaps conjure images of supernatural divine punishments: the plagues visited upon Pharaoh for the hardening of his heart towards the command of YHWH voiced through Moses to release the Israelites from bondage, or perhaps the raining down of fire and brimstone upon Sodom and Gomorrah, not for denying a specific command from the deity, but for the unspecified and general moral corruption of their society as a whole. This supernatural type of punishment is obviously not what Gustafson has in mind. Neither, however, does Gustafson spell out directly what this peril might be. One finds, however, a parallel insight from modern international relations theory that may thicken the description of what Gustafson might mean and the form that peril to human well-being might take in a dialogical ethical frame. For that line of thought I wish to turn to the ideas of political theorist Kenneth Waltz.

The structural realism advocated by Kenneth Waltz in his *Theory of International Politics* differs greatly in its emphases from dialogical ethics. Waltz’s theory is not moral, but rather scientific. It purports to make no normative claims about the behavior of states or societies. This is to say that Waltz’s theory purports only to describe, explain, and predict state behavior as it is empirically observed in the international system. Moreover, Waltz describes the international realm in terms far less interdependent than does dialogical ethics. He says that “in the international system, [states] work to maintain a measure of independence and may even strive

⁶² Ibid., 1.

for autarchy.”⁶³ The international arena is not primarily a cooperative realm, but rather a competitive one.⁶⁴

For Waltz, the anarchic structure of the contemporary international system bears down on the individual states the comprise it to “encourage certain behaviors and penalize those who do not respond to the encouragement.”⁶⁵ In his mind, what is required in relation to the competitive anarchic order is to behave in a manner consistent with putting oneself “in a position to be able to care of [oneself] since no one else can be counted on to do so.” Not doing so compromises the security of states and opens them to exploitation, domination, and in extreme cases extermination; for Waltz the nature of the international system encourages states to “seek security” as the highest end and highest measure of conformity to the system’s requirements. Security demarcates success for state within the international system because “only if survival is assured” can states seek other, more intermediate goals such as tranquility, prosperity, or even moral leadership, however a society might conceive it.⁶⁶

Despite the different emphases between Waltz’s project and dialogical ethics, the two share the observation that social structures provide rewards and punishments for certain behaviors. Where Waltz discusses specifically the anarchic structure of the international system to describe the international politics of states, dialogical ethics takes a wider view of the relevant social structure, i.e., the Other and the totality of social, cultural, historical, and other forces it represents. Given this wider structure and the moral focus of dialogical ethics, it cannot be as specific regarding the measurable outcomes that demonstrate either penalization as Waltz terms it, or punishment as Gustafson does, nor of the rewards to conformity in a way as specific as

⁶³ Kenneth N. Waltz, *Theory of International Politics* (Boston: McGraw-Hill, 1979), 104.

⁶⁴ *Ibid.*, 127

⁶⁵ *Ibid.*, 106.

⁶⁶ *Ibid.*, 126.

“survival.” Dialogical ethics limits us to a vaguer understanding of what constitutes the health of the relevant whole designated for particular circumstances. Gustafson says only that forms of punishment that demonstrate movement away from the purposes of the Other may come in the form of adverse “economic restraints, political activities within and between nations, by legislation and regulation, and by the alternations of the natural resources that are available for [human] use.”⁶⁷ Measuring the moral adequacy of specific cases of AHI through a process of discernment may in some ways be less ethically satisfying in a way than the efforts of my interlocutors to establish universal principles. It is certainly a more qualified and uncertain effort, but this too is theoretically accounted for by Gustafson in the seventh feature of the profile of theocentric ethics that stresses the fact of moral ambiguity and the sometimes irresolvability of moral dilemmas by rational means.

We may not always be able to choose a lesser evil. One may not always be able to rationally resolve, even with the benefit of a subjectively informed objective moral standard, what moral choice to make. Perspective is inescapable and, while not so ideal as a definitive moral principle by which to judge all AHI, it is nevertheless what can be warranted given the theological construal Gustafson offers and the justification of that perspective as a valid interpretation of human moral experience. The particularist challenge points out the limitations on perspective that are too often dismissed by other efforts to justify AHI in general, as well as specific episodes of its occurrence, in order to present a cleaner, though I argue reductionist, ethical analysis of the morality of AHI. Nor does a successful and moral satisfying occurrence of AHI need to proceed along the route of justification by universal principle. What follows in the next section is a discussion of one of the more successful, and I argue ethically satisfying,

⁶⁷ Gustafson, *Vol. 2*, 307.

episodes humanitarian warfare provided by history, namely the American Civil War. I look specifically to the example of Abraham Lincoln and his navigation of and justification of the issue of perspective. I argue that Lincoln treats the issue of perspectivalism in a way that parallels dialogical ethics, and deals with the humanitarian aims of the war amidst his acknowledgement of different moral perspectives in Northern and Southern societies in a manner that closely parallels the discernment process and its emphasis on error reduction of dialogical ethics.

I began chapter 1 with a quote from Abraham Lincoln. Speaking regarding the political and moral divide between North and South over the issue of slavery, Lincoln says:

All they ask, we could readily grant, if we thought slavery right; all we ask, they could as readily grant, if they thought it wrong. Their thinking it right, and our thinking it wrong, is the precise fact upon which depends the whole controversy.

The Lincoln of the Cooper's Union speech was not yet the President who, by virtue of his office and his understanding of his national role, would write to Horace Greeley, "I could save the Union without freeing any slave I would do it, and if I could save it by freeing all the slaves I would do it; and if I could save it by freeing some and leaving others alone, I would also do that." Lincoln would make clear later in the same letter that his statement regarding the salvation of the Union was a matter of his "view of official duty," whereas his personal sentiments regarding slavery was the "wish that all men everywhere could be free."⁶⁸

Whatever Lincoln saw as the divide between the personal and the presidential, he seems to admit in the Cooper's Union speech that those states that would eventually split along the geographic and ideological divide of the Mason-Dixon line were separate societies. Though it is

⁶⁸ Abraham Lincoln. "Letter to Horace Greeley, August 22, 1862." Abraham Lincoln papers: Series 2. General Correspondence. 1858-1864. Library of Congress. <https://www.loc.gov/resource/mal.4233400/?st=pdf&pdfPage=1>.

a historical simplification of ante-bellum America's attitudes towards race and the institution of slavery, Lincoln's "Us" versus "Them" rhetoric seems to indicate that the North and South were separate societies whose definitions of humanity and the moral prescriptions and prohibitions surrounding the very basic right of human freedom were hopelessly at odds.

The American Civil War demonstrates the power that perspective and interpretation brings to ethical considerations of the morals of disparate societies and the process of reflection and interrogation of one's own perspective that is required for such acts. Lincoln's quote at the Cooper Union in New York acknowledges the moral impasse and the speech as a whole expresses the gravity of both the enslavement of human beings, the contradictory exercise of a full right to self-determination of the enslaved and their slavers, and the violence that was inevitable to press one right over the other. Lincoln's quote is notable too because it acknowledges the epistemological impasse between societies with different moral systems that share bonds of foundational history, kinship, governance, and even a predominant religious tradition. The American Civil War is notable because it was directed both de jure toward the political end of stopping Southern secession, and also to de facto impose a moral vision on Southern society. In a sermon preached on Sept. 11, 1864 at the Broadway Tabernacle in New York City and published a week later for mass consumption by the New York Times, the Rev. Dr. Joseph D. Campbell said of slavery ~~argued~~ that despite rebellion being the "cause and animus" of the war, ~~that~~ its fundamental issue was not legal, but moral. Campbell declared that the war was:

a question of fundamental ethics affecting the rights of man, made in God's image. It was for Slavery that they [the Confederate States] conspired; for Slavery they

rebelled; for Slavery they organized their Government, and in every declaration they make the rights of Slavery the condition of reunion and peace.”⁶⁹

In contrast to both the Southern states’ demand for slavery and the presidential Lincoln’s prioritization of national union, Campbell argued that “[v]ictory compelling "the abandonment of Slavery" can alone give peace.”

It is ideologically difficult to separate slavery from the *causus belli* of the American Civil War, despite the fact that secession, rebellion, and the aggression against Fort Sumter and not slavery were the official causes of war. But while slavery may be abhorrent to the modern mind, Lincoln’s position in the Cooper’s Union speech acknowledges that North and South did not have a shared understanding of the morality of slavery. Even in the North, despite Lincoln’s personal, and widely shared, understanding that the institution of slavery as a grave evil, the ending of slavery did not rise to the level of concern of rebellion. The institution of slavery was not for Lincoln, “outside the (moral) world of bargaining and accommodation.”

And yet, the moral reformation and upheaval of Southern society was a consequence and, for Rev. Dr. Campbell, even a condition of true victory. Even after Lincoln’s death the victorious United States Government looked specifically toward a plan of reconstruction that shook Southern society to its core, forcing it to admit that its very basic understanding of what it means to be human was grossly distorted. This leaves the question of how, and more basically, *if* the elimination of slavery and the coercive reworking of Southern society to recognize the humanity of those they abused can be morally justified. The obvious answer to the question of “if” war to end slavery was justified is, “of course.”

⁶⁹ Joseph P. Thompson. “Peace Through Victory; A Thanksgiving Sermon, Preached in the Broadway Tabernacle Church, New-York, on Sabbath, Sept. 11.” *New York Times*, September 19, 1864.
<https://www.nytimes.com/1864/09/19/archives/peace-through-victory-a-thanksgiving-sermon-preached-in-the.html>.

Without the need for a deep moral interrogation, the American Civil War is an instance that points us to the fact that it is sometimes necessary to use force to stop injustice AND to use force to change a society to protect vulnerable populations. It functions as what John Rawls terms a “fixed point” that serves a metaethical purpose of confirming in the marrow of our bones the moral principles reasoned out by our minds.⁷⁰ Sometimes the will of a people and their collective right to self-determination must be circumvented for the moral good. The 13th, 14th, and 15th amendments to the Constitution and the program of reconstruction that the United States engaged in post-bellum demonstrate this. Indeed, the rise of Jim Crow and the continued threats to Black Civil Rights that, while not strictly confined to the former Confederate States, are at least seen more flagrantly and acutely in those places, demonstrates that, even with a program of reconstruction, wide-spread and popular bigotry (overt or subtle) makes tenuous the security and well-being of those discriminated against.

The question of “how” violence to facilitate societal reconstruction may be ethically justified is a much more difficult question. In his Cooper Union speech, Lincoln acknowledges the difficulty of ethically justifying this use of violence the interpretation of moral norms by separate societies diverge. Yet, in some ways, the American Civil War is a much simpler case than many. North and South, though separate societies with diverging moral interpretations of the issue of slavery, had much in common—including ties of politics, language, founding narrative, national mythos, and a close connection to the faith tradition of Christianity.

The problem is made much more difficult if one takes seriously the pluralism that is a fact of the international realm in which AHI takes place and, as Asad points out, the particular genealogies of the moral traditions of the societies that inhabit that world. While acknowledging

⁷⁰ John Rawls, *A Theory of Justice: Revised Edition* (Cambridge: Harvard University Press, 2009), 181.

the incongruencies between a case like the American Civil War and modern cases of AHI, Lincoln's appeal may still be instructive for highlighting important features of the ethics of using violence to enforce one's own moral values on a foreign population whose values may diverge from one's own. Moreover, it provides insight into the benefit and means of justification of using prolonged presence and imposed order to protect the long-term well-being of vulnerable populations in situations where epistemic divides and interpretations of grave moral issues diverge.

We may juxtapose Lincoln's approach to the issue of slavery and the resultant need for war (and later occupation, though I will not discuss this here) to reform and reconstruct the moral order of a foreign society with the justifications for AHI considered in Chapters 2 and 3. Whereas Morsink, Little, Walzer, and the ICISS all look toward shared universal principles in order to justify violence, Lincoln is careful to justify his most sweeping action regarding slavery according to the laws of his own society. Lincoln's language in the *Emancipation Proclamation* warrants close examination.

The *Emancipation Proclamation*, while not a writ of freedom to every person held in bondage in the Confederate States, was nevertheless a seminal statement about the North's commitment to end slavery. The *Proclamation's* limited scope and the difficulty of its enforceability ensured that it was, as a legal document and military order, rather weak. Nevertheless, *The Emancipation Proclamation* is notable for its moral and symbolic significance rather than its operational or legal import. Lincoln seemed to understand its contribution to moral (rather than military) victory in the conflict. He is reported to have said after signing the

document, “I never in my life, felt more certain that I was doing right than I do in signing this paper. . . . If my name ever goes into history it will be for this act, and my whole soul is in it.”⁷¹

Lincoln knew the moral import of the document and thus, he chose his words and justifications carefully. Lincoln very much abhorred the institution of slavery and thought it to be not simply a matter of politics, but a wrong defined by universal principles. He makes this clear in a letter to Albert Hodges dated April 4, 1864. Lincoln writes, “I am naturally anti-slavery. If slavery is not wrong, nothing is wrong. I cannot remember when I did not so think, and feel.”⁷² Despite Lincoln’s personal feelings, however, he does not justify the limited emancipation offered by the *Emancipation Proclamation* according to a universal moral principle. His language is measured

Lincoln justifies the act of emancipation delineated in the *Emancipation Proclamation* (and its enforcement by the U.S. Army by coercive means) as warranted by the operational considerations of the specific war being waged, as well as his role as executive according to the specific laws of his own society. Lincoln makes this point twice throughout the order. In the fourth paragraph he states that the order is justified by “virtue of the power in me vested as Commander-in-Chief, of the Army and Navy of the United States in time of actual armed rebellion against the authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion.” In the closing substantive paragraph of the order he reiterates that the mandate comes from the specificity of the role and perspective of the United States in the prosecution of the war.

⁷¹ The National Archives. “Special Topics: Emancipation Proclamation.” December 28, 2021.

<https://www.archives.gov/news/topics/emancipation-proclamation#:~:text=When%20President%20Abraham%20Lincoln%20signed,whole%20soul%20is%20in%20it.%E2%80%9D>.

⁷² Abraham Lincoln. “Letter to Albert Hodges, Monday, April 04, 1864.” Abraham Lincoln papers: Series 1. General Correspondence. 1833-1916. Library of Congress. <https://www.loc.gov/item/mal3207700/>

Lincoln does not appeal to emancipation as an indisputably moral act that stems from incontrovertible moral principles. His language is both humble and firm. Lincoln instead speaks of his “sincere belief” that emancipation is “an act of justice,” specifically “warranted by the Constitution, upon military necessity.” It is only after this acknowledgment of the limited moral and legal perspective that Lincoln looks to “invoke the considerate judgment of mankind, and the gracious favor of Almighty God.” This last clause of the *Emancipation Proclamation* is no mere rhetorical flourish. It gives insight into a possible ethical procedure for considering the morality of coercive violence and the imposition of a particular moral order on a society that may, in fact, disagree with one’s particular moral perspective as was the case between Northern and Southern societies over the issue of slavery.

It is important that the invocation of the wider judgment of human beings and the favor of Almighty God are not, in fact, the basis for Lincoln’s action. Their placement after Lincoln’s discussion of justification as warranted by the acts’ consistency with the United States’ own principles is salient. Lincoln does not say the *Emancipation Proclamation* nor the wider war of which it is a part are justified on the basis of a universal moral prohibition against slavery. This is to say, even if the vocabulary of universal human rights were available to Lincoln, he likely would not have chosen to appeal directly to these rights to justify emancipation because he did not use the universalistic language that was available to him. His appeal was to the United States and the necessities of his army and his present struggle.

The judgment of humankind and the blessing of Almighty God seem to function for Lincoln, not as a basis for the act, but as an ex-post facto and continuing test of the ethical merit of the act. Lincoln’s move in looking to the judgment of humankind and the blessing of God is not unlike the scientific offering of a new theory and its submission for falsification. The appeal

to humankind and the Almighty is not an act of deduction where God and Humanity offer principles through which an undisputable pretext for emancipation may be derived. Rather, humanity acts as criteria and adjudicators for judging whether the act of emancipation, justified and motivated by the particular perspective and moral norms of a specific society, may stand up to the test of critique. But Lincoln also invokes the divine. Interestingly, it is not to divine law that he points, nor even to divine justice, but rather to “gracious favor of Almighty God.” The “gracious favor of Almighty God” is observed *ex-post facto*. It functions in Lincoln’s thought as a test beyond the judgments of human beings and one that is seemingly objective. The test implies that a standard for moral conduct exists beyond human judgment, that is the objective standard of God. Proper adherence to this standard is necessary for continuity, stability, and prosperity, though it does not guarantee these things. Gustafson is clear that “interdependence requires that certain conditions be met for the sake of our participation [in the world],” and that “we fail to meet them at peril to our being.” Thus, the favor of Almighty God is a test whose results observable and public. This “favor” operates as an indicator of compliance with the purpose of the Other, though it should never be considered absolutely definitive. For Lincoln, like Gustafson, the “gracious favor of Almighty God”⁷³ serves as confirmation of the adequacy of moral perspective and resultant behaviors. One does not need to believe in special providence or a deity with a personal and preferential will to test moral principles according to the “favor of God.” Rather, for dialogical ethics, and I argue for Lincoln, the favor of God is commensurate with those “necessary conditions that have to be met for the realization of human purposes.”⁷⁴

The American Civil War provides us with some insight into the way forward in ethical thinking about AHI, regarding the incorporation of perspective into ethical frameworks for it. It

⁷³ Gustafson, Vol. 2, 296.

⁷⁴ *Ibid.*

is, however, limited as an analogy for modern AHI due to the similarities between Northern and Southern societies though I argued above significant enough differences existed to treat the two societies separately and as distinct. Additionally, despite the Civil War's humanitarian valences, more traditional notions of just cause for war such as self-defense against the Southern attack on the Union garrison at Fort Sumter, as well as an established government's right to suppress rebellion and secession, existed. These points are well taken, and I limit my use of the case for its illustrative power regarding the specific problem of perspective that the particularist challenge brings to the forefront of ethical considerations of AHI.

Indeed, I acknowledge the limits of my use of the cases and the analogies I have used to explain Gustafson's theocentric ethics, and dialogical ethics, as well as their applications to the consideration of AHI. This chapter does not claim to resolve every possible practical, political, or theoretical issue that plagues AHI. Instead I focused on addressing three specific issues plaguing AHI that are apparent from the interlocutors I engaged with in Chapters 1-3. There are certainly more theoretical and practical tensions surrounding AHI than the ones I have named above, perhaps even more pertinent ones. However, my discussion demonstrates that dialogical ethical can, if not fully resolve these issues, put one on a more robust ethical footing concerning the issues of adjudication, extended involvement, and perspectivalism that I have discussed above.

In terms of adjudicating between conflicting claims of rights, I demonstrated that the traditional position of AHI, supported by my discussion in chapters 2 and 3, fail to provide a moral standard capable of prioritizing and adjudicating between rights held to be "fundamental" as well as between persons who hold equal, but conflicting, claims to rights. Dialogical ethics' prioritization of the good and the definition of that good as the good specifically of the Other

allows one to prioritize both particular rights and particular persons and groups. It can do this because the Other and the Other's purposes as an objective standard provide an objective standard. This objective standard may be supportive of AHI in defense of those norms captured by the GHRR. However, this is highly qualified. Attention to the common good/ good of relevant wholes may demand refraining from AHI. While inconsistency in the implementation of AHI has been a major critique of the traditional position, dialogical ethics and its emphasis on attending to specific circumstances as well as social forces like geopolitics, history, and even hard power as moral considerations among many others relevant for determining the purposes of the Other ethically allows for inconsistency in the deployment of AHI.

In my discussion, I also noted that the notion of the good of the Other and dialogical ethics' prioritization of intermediate "common goods" may be subject to abuse and even perhaps used to justify acts that qualify as human rights abuses under the current GHRR. However, I argued that the interdependence and focus on the Other as ethical reference point rather than the good of any individual or community places limits on this that favor the protection of persons as integral to the health of an interdependent whole.

In terms of the issue of extended involvement, dialogical ethics gives a better ethical accounting for extended involvements, including occupation and regime change, than the traditional position. Because of the traditional position's emphasis on self-determination as a fundamental right, extended involvement is viewed as morally suspect, even if it is deemed practically necessary to secure certain other fundamental rights. In contrast, dialogical ethics can readily authorize extended involvement because it subordinates rights to goods and community interests to the interests of larger wholes. Extended involvement is justified if it contributes to the stability, for instance, of the larger whole of the international system. Viewing AHI within a

dialogical frame allows one to make the argument that that the protection of vulnerable minorities via extended involvement may contribute more to the whole of the international system than the respect of the right of self-determination of any single culture.

Dialogical ethics also gives guidance into how the issue of extended involvement should be undertaken, namely, that it should involve the redirection of extant social forces toward proper moral ends. Dialogical ethics emphasizes the redirection of existing social forces as the task of ethics. Responsibility to the Other, which includes these social forces that condition, limit, and guide what is proper action, means that the moral agent must look to redirect existing social forces rather than look to transcend them.

Lastly, dialogical ethics deals better with the issue of perspectivalism in AHI than does the traditional position. The traditional position looks to transcend the particularity of perspective, dismissing the particularist challenge outright in order to make the case that one may impose the tenets of a universal morality because it logically supersedes cultural interpretations of morality. In this chapter, as well as in preceding chapters that dealt with specific figures that informed my definition of the traditional position, I noted that such efforts are futile. Dialogical ethics takes perspective into account. Dialogical ethics assumes that moral interpretation necessarily takes place within a cultural milieu and that moral drives, including the drive to rescue and the drive to respect are interpreted within a perspective and applied therefrom. Dialogical ethics thus emphasizes discernment as a process of error reduction and communication between cultures about the adequacy of interpretations relative to the objective standard of the purposes of the Other. It offers the stability, prosperity, and successful cooperation within the pattern of international interdependence as a benchmark for understanding whether one is properly attuned to the purposes of the Other and provides a

reference by which to check the adequacy of specific moral acts one undertakes based on the process of discernment and the adequacy of one's discernment itself.

Conclusion: The Rhetoric of Kofi Annan and the Challenge of 21st Century AHI

Today's real borders are not between nations, but between powerful and powerless, free and fettered, privileged and humiliated. Today, no walls can separate humanitarian or human rights crises in one part of the world from national security crises in another.¹

-Kofi Annan

Human Rights at the Turn of the Millennium

The subjective turn has contributed to an erosion of confidence in the global human rights regime and the proper enforcement mechanism of AHI. The erosion of confidence in the GHRR is a matter of grave concern in international affairs both morally and politically, especially for populations at risk of facing genocide and other gross human rights violations. Former Secretary General Kofi Annan put the matter powerfully in his address at the opening session of the 54th U.N. General Assembly. Speaking in light of what was at the time recent episodes of massive human rights violations rooted in cultural bigotry in Rwanda and Kosovo and the failure of international consensus (at least via the U.N. Body) to address them, Annan said:

While the genocide in Rwanda will define for our generation the consequences of inaction in the face of mass murder, the more recent conflict in Kosovo has prompted important questions about the consequences of action in the absence of complete unity on the part of the international community.

It has cast in stark relief the dilemma of what has been called humanitarian intervention: on one side, the question of the legitimacy of an action taken by a regional organization without a United Nations mandate; on the other, the universally recognized imperative of effectively halting gross and systematic violations of human rights with grave humanitarian consequences.

¹ Kofi Annan, "Nobel Lecture" (speech, Oslo, December 10, 2001). United Nations office of the Secretary General. <https://www.un.org/sg/en/content/sg/speeches/2001-12-10/nobel-lecture-delivered-kofi-annan#:~:text=Today's%20real%20borders%20are%20not,national%20security%20crises%20in%20another>.

The inability of the international community in the case of Kosovo to reconcile these two equally compelling interests -- universal legitimacy and effectiveness in defence of human rights -- can only be viewed as a tragedy.²

Annan goes on to declare that, despite concerns over sovereignty and the difficulty of building consensus through the United Nations as a bureaucratic body, the preeminent challenge facing the international community in the 21st Century is, “to forge unity behind the principle that massive and systematic violations of human rights -- wherever they may take place -- should not be allowed to stand,” and that a way must be found to apply the principles of human rights to the new era in which Annan says that “peoples everywhere” are aspiring to “attain their fundamental freedoms” and for which “traditional notions of sovereignty”³ can no longer capture or do justice.

Annan’s rhetoric regarding fundamental freedoms and the failure of traditional sovereignty to function as a guide for an ethics of humanitarian intervention can be read in two ways. The first is that the failure to address humanitarian crises demonstrates that the Westphalian notion of sovereignty is too often a block to necessary international action to defend human rights and the assistance of vulnerable communities toward the end of allowing the full enjoyment of their “fundamental freedoms.” The second reading indexes both the subjective turn

² Kofi Annan, “Annual Report to the General Assembly” (speech, New York, NY, September 20, 1999). <https://www.un.org/sg/en/content/sg/speeches/1999-09-20/secretary-general-presents-his-annual-report-general-assembly>

³ Annan is referring to what is termed in international relations literature “Westphalian sovereignty.” The concept of Westphalian sovereignty takes its name from the Peace of Westphalia that ended the Thirty Years War and laid the foundation for the modern state system. According to Bauder and Mueller the concept of Westphalian sovereignty, “conveys a particular geopolitical arrangement that ties the sovereignty to act independently to territorial statehood. It permits the state – which can be represented by a king or queen, a dictator, or a democratically elected government – to claim control over the affairs within its territorial boundaries without the interference by other states.” This presumption against intervention into the domestic affairs of states is a cornerstone of international order that has regulated the relations of states for centuries. See: Harald Bauder and Rebecca Mueller. “Westphalian Sovereignty versus Indigenous Sovereignty: Challenging Colonial Territorial Governance.” *Geopolitics* (May 2021), 1-3.

and the drive toward cultural authenticity and the sovereignty of cultural values, as well as the idea that oppressed societies whose self-determination is being curbed by oppression carried out by other societies (including, I argue, international society) must also be allowed to exercise their capacity to generate flourishing for themselves.⁴

My interlocutors in Chapters 2 and 3 are all examples of figures working to find ways to navigate or amend the concept of Westphalian sovereignty in order to allow for interference for human rights purposes. I have noted that their efforts proceed along a similar path that leads to what I termed is a traditional position regarding AHI in Chapter 5. This traditional position looks to establish universal ground that transcends particularity in order to provide theoretical confidence along with moral justification for AHI to protect fundamental human rights and prevent the humanitarian crises over which Annan concerns himself. The traditional approach follows from this first reading of Annan's remarks regarding traditional sovereignty, as well as Annan's further rhetoric in his 1999 address to the General Assembly.

Annan posits that it is critical that faith in the GHRR and the notion of humanitarian intervention—both armed and unarmed humanitarian intervention—gain the support of the “world's peoples.” To gain this support, Annan requires that principles of humanitarian intervention, “must be -- and must be seen to be -- fairly and consistently applied, irrespective of region or nation,” and that AHI, “must be intervention must be based on legitimate and universal principles if it is to enjoy the sustained support of the world's peoples.” Annan is hopeful that this is possible, noting that in his eyes, “Humanity, after all, is indivisible.”

In his work, *Morality and War: Can War be Just in the 21st Century*, David Fisher echoes Annan's rhetoric regarding a path for restoring confidence in the principles that undergird and

⁴ Annan, “Annual Report (1999).”

authorize AHI. However, he goes beyond Annan and puts forward another requirement that he finds necessary for the restoration of confidence in AHI, namely: an emphasis on agreeing in advance what criteria define a just intervention. Fisher says:

If the international community is to recover its confidence in humanitarian intervention, it is...essential that the criteria for a just intervention should be clearly defined and agreed in advance and rigorously and consistently applied in practice. An ethical foreign policy needs to be underpinned by robust and soundly based ethical reasoning.⁵

Fisher is clear that he seeks to establish a blanket right to AHI even without the consent of the society intervened upon, a right that upon confirmation of its existence and definition of its contours may then be applied to justify launching an AHI. His insistence on advanced agreement to the right may not come through any treaty mechanism or explicit universal agreement regarding a right to AHI, but rather to the underlying rights that imply the necessity of AHI for enforcement.

Fisher's requirement that AHI criteria be defined and agreed upon in advance implies the need for a universal ground for human rights norms and enforcement mechanism for them like AHI. This is precisely what leads to the significant effort of those figures like Morsink, Little, Walzer and the ICISS to establish the type of violations that occasion AHI, and first principles from which human rights might be prioritized over other rights. My arguments in the previous three chapters cast doubt on the feasibility of these efforts to meet the criteria for resurgent confidence in the GHRR and the norm of intervention. Allow me to elaborate.

The Contribution of Dialogical Ethics to the Challenges of 21st Century AHI

⁵ David Fisher, *Morality and War: Can War be Just in the 21st Century* (Oxford: Oxford University Press, 2011), 233.

In Chapter 2 I noted that even if there exist common experiences like an experience of human dignity or the reaction to avoid pain, the moral implications of such experiences are subject to interpretation through subjective lenses. In chapter 3 I explored the notion of societal fracture and noted that the discourse of human rights and responsibilities to protect certain rights butt up against the problem of conflicting claims of rights, societally defined responsibilities for certain persons over others, and the general inability to prioritize some rights claims over others both in terms of whose rights should have priority and what rights have priority, e.g. weighing the right of security for certain populations against the right of self-determination for another. These doubts demonstrate that Annan's rhetoric concerning the indivisibility of humanity, and the trite notion that there are events that universally "shock the conscience of humankind" into justified action, may not be empirically borne out or philosophically warranted.

There may simply be no common morality or universal principle like rationality or metaphysical dignity that 1) has sufficient epistemological pedigree to demand a universal (even if begrudging) agreement by all of the "world's peoples." Nor is a shift in definitions of sovereignty sufficient to justify stripping the right of self-determination from a society for acting on widely held prejudices when that society believes itself to be acting in the best interest of its "in group." Why should ties of kinship, ethnicity, tribe, religion, or ideology give way to the arbitrarily defined interest of the collective people of a state circumscribed as one political unit by an international system whose understanding of sovereignty and political unity rose out of the German Kingdom of Westphalia?

These questions also follow from the rhetoric of Kofi Annan through the second reading I noted above. Thus, even while highlighting the necessity of finding theoretical avenues and build consensus around measures to address human rights violations, one can read Annan's statement

that “strictly traditional notions of sovereignty can no longer do justice to the aspirations of peoples everywhere to attain their fundamental freedoms” as an acknowledgment that subjectivity and cultural identity have become important values in international affairs and a powerful grassroots expression of a people’s will. The particularist challenge gives voice to an aspect of this aspiration. Annan’s words in 1999 were indicative of the growing movement toward cultural respect, authenticity, and self-determination, even if those values conflict with supposed international norms and rules of comity that currently plague efforts to legitimize AHI as a tool of for the safeguard of populations placed at risk and a basis for the morally sound exercise of state power.

Despite these difficulties, Annan is firm in his commitment to humanitarian intervention, arguing that the authorization of AHI is, “despite its limitations and imperfections...testimony to a humanity that cares more, not less, for the suffering in its midst, and a humanity that will do more, and not less, to end it.” I contend that Annan’s vision for AHI should certainly be part of an aspiration of any realistic notion of world order. But the particularist challenge and the myriad failures to address it adequately that I have discussed suggest that seeking pre-existing common ground or universal principles presumed to justify AHI may be an ethical snipe hunt.

I will not go so far as to say definitively that there are no universal principles by which AHI may be justified and measured, or that the discourse of rights is irrelevant as a guidepost for how human beings should treat one another. I wish to say only that perhaps that the GHRR and the notion of basic and fundamental human rights are not specifically necessary for AHI to be, as Fisher requires, “underpinned by robust and soundly based ethical reasoning.” Beyond its theoretical inconsistencies and failures to address critical concerns of AHI, this search for a universal concept by which to justify AHI fails in a more fundamental way. It fails to account for

the particularity and the grassroots desire to exercise fundamental freedoms in culturally defined ways that Annan hails as an important aspect of 21st Century international relations as I noted in the second inference I drew from his remarks above.

To be sure, one may swing too far toward this reading of Annan. The position of Hardt and Negri, as well as the position of Asad I discussed in chapter 1, represent an extreme way of reading of Annan's rhetoric. To protect these emerging forms of cultural sovereignty that are nascent, but growing in importance in international relations and international relations theory, one becomes willing to sacrifice the well-being (and the fundamental freedoms) of many of the most vulnerable populations in international society. One may not hesitate to remove a tyrant abusing their own people in this view, but it gives moral pause to any society that might potentially intervene in situations where atrocities are culturally rooted. History and our current period provide too many examples of this, several of which I have dealt with in this dissertation.

The main contribution this dissertation has sought to make to the ethical literature is to demonstrate that dialogical ethics offers a third angle of approach to the problem of AHI that neither dismisses particularity in favor of universality, nor surrenders all ethical ground to subjectivity so as to preclude AHI out of hand. Instead I have argued that the particularist challenge invites us to think of alternative means of justifying the protections afforded by what are thought of as basic human rights and the AHI that is a tool to secure those protections. The discourse of rights and the search for some universal principle from which proper morality may be deduced and measured against that has dominated political and legal scholarship. Chapters 2 and 3 looked to demonstrate the difficulty of finding a universal principle by which to justify human rights, let alone their enforcement by AHI.

It is the search for an alternative framework that motivates my work to articulate a dialogical ethics that draws on the theological and ethical insights of James Gustafson's *Ethics from a Theocentric Perspective*. Through this exploration I aim to have provided plausible warrant for AHI into situations where violence is culturally rooted without resorting to the appeal that human rights are part and parcel of some universal, or at least widely common, morality. Gustafson's theocentric construal of the world affirms and gives evidence for understanding both particularity and interdependence as core aspects of individual and collective moral experience. In this way I may address and account for both readings of Annan's critique of traditional notions of sovereignty.

My arguments admittedly may not "forge unity behind the principle" of AHI as Annan hoped above in a sure and unassailable way. Dialogical ethics are by nature much more qualified and responsive to particular circumstances to provide so wide ranging a conclusion. At the very least, however, I argue that religious patterns of thinking, both the dialogical view of cultural formation presented by Asad (rooted in the work al Ghazali) and the interactional model of society that rises from Gustafson's theocentric construal of the world, as well as the dialogical ethics I extrapolated from Gustafson's theocentric model removes some of theoretical inconsistencies that rights-based arguments for AHI face. This makes for a more robust moral theory of AHI. Viewing AHI within the framework of dialogical ethics may not meet Fisher's criteria that a just intervention should be clearly defined and agreed in advance and rigorously and consistently applied in practice. However, it demonstrates that respect for particularity and warrant for AHI may exist within a framework based on robust and soundly based ethical reasoning even without meeting Fisher's other criteria.

Suggestions for Further Research

A second contribution this dissertation sought to make was to demonstrate the value of turning to religious materials as a resource for reframing and resolving some of the moral dilemmas presented by the problem of human rights and AHI. Gustafson's *Ethics from a Theocentric Perspective* is just one perspective whose resources may be mined to explore the ethics of AHI. Early in chapter 1 I discussed the origin of the concept of modern AHI in the writings of the Dominican priest Francisco de Vitoria. However, in chapter 4 I noted reasons that contemporary scholars view religious resources skeptically when it comes to their suitability for informing the ethics of AHI. My work with Gustafson and the insights it brings to the problem of AHI aimed to show that this worry about religious sources leads to categorical rejection of such resources and, with that, the need to reconsider of the impact of such neglect on the scholarship on the issue.

One avenue of particular relevance here may be to explore Danielle S. Allen's understanding of the concept of "sacrifice" within democratic polities and its ramifications for coercive acts within a society. For Allen, "sacrifice" is-primarily a religious concept, although it has a long history of appropriation within political theory.⁶ She turns to concept of sacrifice in democratic societies in order to highlight the psychological ramifications of losing out on one's personal interests in order to sustain a common good within the context of democratic society.⁷

I believe that such a discussion would be beneficial for the consideration of AHI. I noted that while coercive measures to achieve the good of the whole are warranted by theocentric and

⁶ Danielle S. Allen, *Talking to Strangers: Anxieties of Citizenship Since Brown V. Board of Education* (Chicago: University of Chicago Press, 2004), 37-38

⁷ *Ibid.*, 41.

dialogical ethics, it is nonetheless an area of Gustafsonian thought that is underdeveloped. My own examination of AHI within a dialogical ethical frame demonstrated how coercion (via AHI) may be justified in light of seeking a common good, discernment regarding appropriateness moral actions, and the testing of those discerned measures in light of the purposes of the Other. However, my account of coercion with a dialogical ethical framework is limited in terms of the attendant issues of moral psychology, moral motivation, and the incentivization of intervened upon societies to support and sustain post-AHI reconstruction.

Allen's understanding of sacrifice, which she draws from religious narratives may help to better address the moral psychological dimension of coercion for the ethics of AHI. One may raise the question here prior to an analysis of Allen's concept of sacrifice whether her analysis of democratic society can be applied to the very different conditions of international relations. Allen develops her ideas within democratic societies and the requirements of democratic citizenship in the United States. Clearly the international and domestic realms operate at different scales and thus have different features, different social forces that condition and limit moral possibilities. However, they are not in every way disparate and analogical thinking between them in this case is justified.

My turn to Allen's thought may be justified because her analysis and appropriation of the concept of sacrifice is predicated on a specific experiential tension of democratic citizenship and aimed toward addressing that tension. Allen describes democracy as a form of civic life that "puts its citizens under a strange form of psychological pressure by building them up as sovereigns and then regularly undermining each citizen's experience of sovereignty."⁸ Nominally, democratic government rests on the consent of the governed, yet the reality of

⁸ Ibid., 27.

democratic society is that governments often require citizens to follow laws and policies to which they do not willingly consent. International society differs from domestic democratic society structurally in significant ways, but intervened upon states and societies in the international system share this experience of possessing de jure sovereignty only to have that sovereignty violated de facto with the democratic societies that are the object of Allen's concern. I will limit my use of Allen to this specific democratic tension in order to comment and analyze coercion in the international system.

Allen elucidates further on the experience of this tension, noting that “[d]emocracies are supposed to rest on consent an open access for their citizens. In a democracy...[ideally,] every citizen consents to every policy with glad enthusiasm. No one ever leaves the public arena at odds with the communal choice; no one must accept political loss or suffer the imposition of laws to which she has not consented.” This ideal description of democracy, which Allen draws from Rousseau, does not describe democracy in practice. Instead, Allen notes that “collective democratic action must begin by acknowledging that communal decisions inevitably benefit some citizens at the expense of others, even when the whole community generally benefits...those people who benefit less than others from particular political decisions, but nonetheless accede to those decisions, preserve the stability of political institutions.”⁹ For Allen “sacrifice [of those who benefit less]” makes collective action possible and thus also makes the seeking of a societal common good possible.¹⁰

Allen acknowledges the necessity of democratic sacrifice and that sacrifice for the collective good may be reasonably justified. However, she points out that continued cooperation in democratic society, given the reality of loss requires attention to more than the reasonability of

⁹ Ibid., 29.

¹⁰ Ibid., 28.

sacrifice. The concept of sacrifice entails not only reason giving, but also attention to “emotions that remain after the criteria of reasonableness have done their work.”¹¹ Allen notes that these may be feelings of disappointment, despair, resentment, or even anger. These negative emotions that are present, even when a given experience of loss is “reasonably requested,” demonstrates that sacrifice, even within a democratic polity, is not a concept limited to only voluntary acceptance of losses for the common good. One might be made to sacrifice, i.e. coerced, in order to secure the common good.¹²

Allen notes that there is “a general absence from democratic practice of a language to comprehend sacrifice, or the losses and disappointments people accept for the sake of maintaining the communal arrangements that constitute legality.”¹³ International politics also lacks sufficient language and conceptual resources to process the necessity of sacrifice, losses, and disappointment. Political and legal theories about equal justice and equality within democracy fail here. They are appeals to reason rather than emotion. They do not address the disconnect between one’s understanding that one’s sacrifice is necessary for the common good and the feelings of resentment and personal harm that nevertheless accompany coerced sacrifice. Similarly, these same issues are neglected in international society and in discussions of coercion through AHI and other means.

Allen argues that rather than continued appeals to reason, democratic societies must develop “practices” that can diffuse the psychological tension that arises from the experience of nominal sovereignty, and actual powerlessness.¹⁴ What these “practices” might be for the specific address of negative emotions that arise in societies in AHI is a question that deserves

¹¹ Ibid., 46.

¹² Ibid., 45-46.

¹³ Ibid., 34.

¹⁴ Ibid., 46.

further exploration. For now, however, I will point out that Allen's understanding of sacrifice as having a dimension beyond reason suggests that such practices should go beyond explanations of how and why an AHI contributes to the common good of a larger whole. It should go beyond also doing one's best to ensure that the material interests of all societies involved¹⁵ in an instance of AHI are addressed or that equitable institutions for the sharing of political power post-conflict are established. Non-political actors should perhaps be involved, as well as the consideration of civic and non-civic rituals that address the psychological dimensions of sacrifice that Allen points out, as well as perhaps the spiritual and religious considerations and practices that may be neglected by state actors.

With these in mind, Allen's work suggests important psychological, practical, and methodological issues for the ethics of dialogical ethics of AHI to take up in the future. I now turn to explore how my application of dialogical ethics to AHI may, in turn, address a lacuna in another area of relevant ethical thought, namely Just War Theory's undertheorization about how a state's domestic politics affect the justice of its wars. Dialogical ethics' emphases on the interdependence of different wholes and their role in contributing to the health of the human whole, as well as its interactional bend in which the values and critiques of external societies inform the formation of a society's internal values, may provide a different view of both how domestic and international concerns may be morally linked. This viewpoint invites greater attention to ethical considerations regarding how a potential intervening power's own domestic acts of oppression limit its moral viability of its undertaking of AHI. This is the idea of moral hypocrisy. Moral hypocrisy is not an issue that stems from particularism and so not dealt with in the main body of this dissertation. However, hypocrisy is certainly a matter of concern in for the

¹⁵ That, is: interveners, those intervened upon, and those on behalf the intervention takes place.

conduct of AHI, despite being an undertheorized one. The specific emphasis of dialogical ethics on the interdependence of larger wholes highlights the importance of domestic hypocrisy in ethical considerations of AHI. This emphasis suggests that addressing this concern should be a focus of further research into the ethics of AHI. It may also suggest that a new set of considerations I term the “jus ultra bellum” that deals with the right moral conduct of domestic affairs and its connection to the morality of warfare be developed. The jus ultra bellum may be added to the jus ad bellum, jus in bello, and just post bellum criteria that are common considerations in the justice or injustice of conflicts including, but not limited to, AHI. By this I mean to call attention to the following considerations.

Hypocrisy in policies of potential intervening states is an undertheorized aspect of the politics of human rights and the moral consideration of AHI. Hypocrisy in this context has two dimensions, one dealing with the external foreign policy of potential interveners, and the second with domestic and internal issues. From a foreign policy standpoint, hypocrisy is often pointed out in terms of one state’s (especially a geopolitically powerful state) inconsistent address of human rights violations in various other states. It seems hypocritical, for instance, that the United States chose to intervene in Bosnia but not Rwanda in the great human rights crises of the 1990s. I will not deal with this matter in depth here. Selective intervention is a highly theorized topic, and I dealt briefly with it when I noted that dialogical ethics may add something to these discussions in terms of its emphasis on analyzing the specific circumstances of morally salient events before judging moral responses.

Here I want to focus on the undertheorized aspect of human rights hypocrisy manifest in the domestic realm. Dialogical ethics may have a greater impact on the analysis of this type of hypocrisy and the question of whether a society’s treatment of its own population has bearing on

the morality of its ability to conduct AHI. Additionally, the linking of domestic and international issues that I argue dialogical ethics brings into moral focus suggests the necessity of a new set of Just War considerations, a *jus ultra bellum*, that deals with the acts and attitudes of potential combatants that are not directly tied to the conduct of war or its immediate aftermath, but that may have bearing on the morality of warfare nonetheless.

From a domestic politics standpoint, one may charge that the human rights principles a state promoted abroad might be violated by its internal acts towards its minority populations. China's critique of U.S. handling of police brutality, mass incarceration, and acts of racially motivated violence provides a prominent example of how potential intervening states may be charged with hypocrisy. I argue that this critique significantly effects the credibility of the U.S. to undertake AHI as a potential intervening power and the legitimacy of any interventions it engages in. In 2021, the State Council Information Office of the People's Republic of China released a report entitled, "Report on Human Rights Violations in the United States in 2020." An English version of the report was released by Xinhua news agency, China's official state media and press organization.

The report began powerfully with the epigraph "I can't breathe!" attributed to George Floyd, an African American murdered by police officer Derek Chauvin during Chauvin's arrest of Floyd after Floyd was accused by a store clerk of passing a counterfeit \$20 bill. China's report detailed what it alleged were systemic U.S. human rights violations against minority populations including the mass incarceration of persons of color. While mass incarceration of persons of color was noted as a general aspect of the U.S. criminal justice system, the report highlighted the U.S.'s treatment of specifically minors of color who accounted for two thirds of imprisoned minors, but less than one third of the total U.S. minor population.

The report also highlighted the aggressive suppression of demonstrations against police brutality sparked by the George Floyd murder, as well as the murder of Floyd itself, as representative of violent discrimination against minority groups and the protection of police powers to abuse persons of color. Chauvin was fired by the Minneapolis police department shortly after Floyd's murder and arrested shortly after that. He would be convicted of 2nd degree murder and other charges a month after the release of the report. Nevertheless, the report also records multiple incidents of what it called "unchecked police violence"¹⁶ against African Americans and cites Tendayi Achiume, the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and their belief that "for black people in the United States, the domestic legal system has utterly failed to acknowledge and confront the racial injustice and discrimination that are so deeply entrenched in law enforcement."¹⁷

Beyond the particular abuses against African Americans, the report notes that racism and racial violence against ethnic minorities including Native Americans is a phenomenon that "exists in a comprehensive, systematic and continuous manner."¹⁸ The Foreword to the document concludes with the accusation that, the "U.S. government, instead of introspecting on its own terrible human rights record, [continues to make] irresponsible remarks on the human rights situation in other countries, exposing its double standards and hypocrisy on human rights." The document admonishes U.S. policy makers and expresses China's hope "that the U.S. side will show humility and compassion for the suffering of its own people, drop hypocrisy, bullying,

¹⁶ The State Council Information Office of the People's Republic of China. "The Report on Human Rights Violations in the United States in 2020." *Xinhua*. March 24, 2021, 10. http://www.xinhuanet.com/english/2021-03/24/c_139832301.htm.

¹⁷ Ibid.

¹⁸ Ibid.

“Big Stick” and double standards, and work with the international community to build a community with a shared future for humanity.”¹⁹

There is a strong case to be that the Chinese report is an effort to deflect from China’s own human rights abuses. Consider Ken Moritsugu’s widely distributed wire service on the 2020 version of the Chinese report for the Associated Press. Before going into the specific claims of China’s report, Moritsugu provides a summary assessment of the motives of China’s allegations right below the article’s headline. He says, “China took the U.S. to task Wednesday over racism, financial inequality and the federal government’s response to the coronavirus in an annual report *that seeks to counter U.S. accusations of human rights abuses by China’s ruling Communist Party.*”²⁰ Even if the Chinese report is an attempt at deflection, its condemnation of “hypocrisy,” “bullying” and American use of “Big Stick” diplomacy, i.e., the threat of American military might to promote and enforce human rights norms, is representative of a position that argues for consistency at home regarding human rights before a society might deign to intervene upon the abuses of another. Such a position is not uncommon in ethical literature and is exemplified in the famous biblical admonition that one should “first take the log out of your own eye, and then you will see clearly to take the speck out of your neighbor’s eye.”²¹

Despite the ubiquity of log/speck admonitions in ethical thinking, the manner in which the domestic treatment of minorities and vulnerable populations within a potential intervening state bears on the moral validity of its ability to conduct AHI is often theoretically neglected. There are myriad reasons for this. If one is most cynical, the humanitarian claims of AHI may

¹⁹ Ibid.

²⁰ Ken Moritsugu. “China bashes US over racism, inequality, pandemic response.” *The Associated Press*. March 24, 2021. <https://apnews.com/article/pandemics-race-and-ethnicity-health-disparities-beijing-health-0aff37842b094560cb043c0800796e21>.

²¹ Matthew 7:5. New Revised Standard Version.

simply be a cover for political dominance and self-interest by an intervening state. However, there may be perhaps be non-cynical reasons for the undertheorization of charges of domestic hypocrisy when states and societies look to potentially undertake AHI. I want to briefly explore two explanations here: the first deals with the traditional development of international political and moral theory and its concerns; the second with the emphases of the liberal tradition and its focus on “cruelty.”

Traditionally, domestic politics have often been treated as theoretically separate from international concerns, both by the field of international relations and in moral analyses by the Just War Tradition where warfare generally and AHI specifically is often debated. IR theory’s neglect of the domestic was influenced in large part by the commitments of structural realism (discussed in the last chapter, which was the dominant theoretical perspective at the time of its development as a distinct field of political science). Recall that the theory of structural realism turns on the anarchic social organization of the international system. International anarchy stands juxtaposed to the hierarchic social organization of domestic politics. This had a partitioning effect in the field between considerations of domestic politics and international politics. Brian Schmidt notes:

Within the field of IR, the presumed differences demarcating domestic and international politics gradually became cemented first under Kenneth Waltz’s levels of analysis schema introduced in the 1950s, and then in terms of his distinction between reductionist and systemic theories that have informed the field ever since the publication of *Theory of International Politics* in 1979....[A] gradual division arose between those studying domestic politics on the one hand, and international politics on the other.²²

²² Brian Schmidt. “On the History and Historiography of International Relations.” In *Handbook of International Relations*, ed. by Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (New York: Sage Publications, 2002), 25.

Juliet Kaarbo notes that the border between domestic and international politics may be softening in international relations. Kaarbo describes a greater effort to connect domestic concerns to theoretical considerations of international politics over the course of the last three decades. Nevertheless, a bias toward partitioning the domestic and the international remains.²³

A second and perhaps more morally directed critique has to do with the nature of human rights violations and the relative moral weight the drive to stem them holds in ethical thinking, especially in the liberal political tradition that pervades many of the powerful states that are potential undertakers of AHI in the contemporary world. The political theorist Judith N. Shklar writes that within the liberal tradition, the elimination of cruelty must be a “first principle.” This is a matter both of intuition and tradition for Shklar. “[L]iberal and humane people... would, if they were asked to rank the vices, put cruelty first. Intuitively we would choose cruelty as the worst thing we do.” Beyond intuition, Shklar notes that the priority of cruelty over other vices comes from the historical development of liberalism in the work of Montaigne and Montesquieu and their movement away from a hierarchy of vices defied by religious authority.²⁴

Shklar defines cruelty in the context of liberal thought as “the deliberate infliction of physical, and secondarily, emotional pain [including fear] upon a weaker person or group by stronger ones in order to achieve some end, tangible or intangible of the latter,” that is done through “arbitrary, unexpected, unnecessary, and unlicensed acts of force.”²⁵ Cruelty is, for Shklar, the “*summum malum*” to which, within liberalism, all other evils and wrongs are subordinate.²⁶

²³ For a fuller discussion see. Judith Kaarbo, “A Foreign Policy Analysis Perspective on the Domestic Politics Turn in IR Theory,” *International Studies Review* (2015) 17, 189–216.

²⁴ Judith N. Shklar, “Putting Cruelty First.” *Daedalus* Vol. 111, No. 3, Representations and Realities (Summer, 1982), pp. 17-27

²⁵ Judith N. Shklar, “The Liberalism of Fear.” In Judith N. Shklar *Political Thought & Political Thinkers* ed. By Stanley Hoffman (Chicago: University of Chicago Press, 1998), 11.

²⁶ *Ibid.*

Given Shklar's definition, it is easy to see how domestic hypocrisy may be glossed over by governments on their way to justifications of AHI. I have noted that rights violations against one's domestic populations, even those most heinous and most arbitrary to the outside viewer, are almost always justified by governments as part of common good thinking. The dialogical ethical frame I proposed in chapters 4 and 5 gave resources to navigate this claim. However, from the perspective of an intervening power, especially a liberally inclined power, moral frameworks for AHI may sidestep questions of domestic hypocrisy since the acts and attitudes AHI looks to stem are forms of, and catalysts for, cruelty. Domestic hypocrisy is simply lower on the list of evils than the stemming of what may be viewed as arbitrary acts of cruelty abroad. Daryl Glazer puts the point succinctly:

Hypocrisy cannot, in itself, be a reason for challenging [AHI]. People are not required (say) to starve, or to accept enslavement or ethnic cleansing, just so that the rather abstract and sometimes luxurious virtue of consistency can be given its full due. Realization of democracy and human rights matters more than the moral consistency and honesty (or otherwise) of those who enforce them. Hypocrisy grates, but it is not in itself an intolerable evil.²⁷

Dialogical ethics does not entrench such a hierarchy. Nor does it make so hard a distinction between domestic considerations and international ones in ethical judgment. It may allow concerns about cruelty to trump worries about consistency.

While dialogical ethics does maintain that there is a hierarchy of goods and evils relative to the health of the whole and proper relations to the Other, I noted in the last chapters that these relations and this hierarchy is not a static one. That is to say, one cannot say definitively from a dialogical perspective that in every circumstance whether cruelty or hypocrisy is of paramount consideration. Rather, moral priority is predicated on ethical reflection upon the specific set of

²⁷ Daryl Glaser. "Does Hypocrisy Matter? The case of U.S. Foreign Policy." *Review of International Studies*, Apr., 2006, Vol. 32, No. 2 (Apr., 2006), 262.

circumstances, networks of interdependence, and relevant wholes that are in play within a given moral dilemma. Dialogical ethics does emphasize the interdependence of larger wholes with smaller ones, noting that any “whole that is designated to be relevant is interrelated with others, and ultimately could have some relationship to the planetary whole.”²⁸ It also prioritizes the health of larger wholes and more inclusive visions of common goods. It eschews the contraction of the human spirit and the notion that one should look first to issues at home while the world burns around it. Dialogical ethics may then come to a conclusion regarding the relative weight of stemming cruelty versus hypocrisy similar to traditional accounts that allow for AHI even amidst hypocrisy. However, an examination of dialogical ethics’ emphasis on recognizing patterns of interdependence, living self-sacrificially for the common good, and here too the emphasis on the good of the whole in the context of AHI, can never fully decouple domestic hypocrisy from interventions abroad. It may in fact point to the need for greater attention to the issue.

Drawing on Gustafson in the last chapter, I mentioned that even individual goods like human physical life are valued as a means to self-fulfillment and the ability to participate in the human community and promote the health of the whole.²⁹ In his discussion of population and nutrition, he notes that attention to the health of the “common good of humanity [as] a proper moral whole” requires attention to the fact that “responsibilities are mutual, and that within their capacities all nations have obligations to increase their own self-sufficiency” in order to contribute to bolster their capacity to contribute to the health of the whole.³⁰ For the problem of population and nutrition this pointed, for Gustafson, to the necessity of each nation to encourage food production and encourage methods of birth control so as to be less taxing on global resource

²⁸ Gustafson, *Vol. 2*, 214.

²⁹ *Ibid.*, 245.

³⁰ *Ibid.*, 244.

needs. To be sure, transposing this set of ideas regarding food production to the context of domestic hypocrisy in AHI shifts the focus from the management and distribution of resources to issues of justifying and providing parameters to the use force. However, the domestic connection to international affairs is evident in both contexts.

Dialogical ethical thinking invites greater exploration of the specifics of how the domestic is connected to the international in terms of the undertaking of AHI and in terms of conflict in general. The emphasis on capacity development suggests that there may be some merit to the notion that there exists a moral necessity of reducing hypocrisy in order to gain credibility and provide greater probability of the acceptance of the legitimacy of AHI and related reconstructive activities. Suzanne Dovi, in direct engagement with the thought of Judith Shklar, makes this point. Dovi explores the detrimental effect that U.S. hypocrisy had specifically on the success of the NATO AHI in the former Yugoslavia as well as its detrimental effects on the legitimacy of international law, which, she argued, affected the stability and well-being of the larger whole of the international system.³¹ However, dialogical ethics' emphasis on tragedy and toward promoting the health of larger wholes may also make it possible to justify lesser cruelties in order to prevent greater ones, again both domestically and abroad. In either case, the link between the domestic morality and international morality is affirmed.

This affirmation has ramifications not just on the consideration of AHI, but on the wider Just War Tradition under which the morality of particular conflicts and conflict in general is often ethically considered. The modern Just War Tradition also fails to deal with domestic politics when considering AHI. The contemporary Just War Tradition arises at a similar temporal moment as structural realism through Michael Walzer's publication his *Just and Unjust Wars*.

³¹ Suzanne Dovi, "Making the world safe for hypocrisy," *Polity* Vol. 34, No. 1 (Autumn, 2001), pp. 3-30.

However, I turn not to Walzer, but David Fisher's treatment of AHI and his work to connect it to the principles of the Just War Tradition in his *Morality and War: Can War be Just in the Twenty-first Century* as an updating of both the Just War Tradition and its consideration of AHI as a case in point.

The moral validity of a state's resort to war is connected to domestic politics in some obvious ways in the criteria of "right authority" and "right intention." Right authority (or "competent authority" in Fisher's language) implies that a government that wages war be a legitimate representative of the society it governs.³² Fisher never mentions domestic legitimacy as a consideration for right authority and it does not figure into his application of the Just War Tradition to AHI. Rather, he turns to recognition by other international entities (certainly also a measure of government legitimacy along with domestic approval), as well as UN authorization of a state's AHI as a "sufficient to establish competent authority." His discussion of Right intention in AHI refers only to guarding against imperial adventures that would ostensibly be undertaken for the good of one's domestic society or, at least, elements of it. Moving to the *Jus in Bello*, Fisher's discussion is limited to dealing with conduct toward the domestic population, whether they be soldiers or citizens, of the state upon which an intervener intervenes. Fisher does not deal with an intervening state's treatment of its own citizens. Even the relatively novel category of *jus post-bellum* included by Fisher which deals with the justice in the aftermath of war and by which reconstruction and safeguarding efforts that are part of modern AHI may be justified and judged, similarly does not deal with the notion of human rights violations existing

³² Aquinas discussion of Right Authority references this notion of domestic legitimacy. No non-sovereign, that is a private person, may wage war. Only a sovereign who serves the public interest may do this. In reference to the sovereign who has right authority to wage war, Aquinas notes that the sovereign cares for the domestic realm and derives their legitimacy from the domestic exercise of power: "the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom or province subject to them." Aquinas, *Summa Theologiae* II-II, Q. 40. <https://www.newadvent.org/summa/3040.htm>.

in the intervening nation. The *jus post bellum* deals only with the building of domestic institutions and human rights safeguards in the nation that has been intervened upon.

None of these categories include domestic hypocrisy as a consideration of the justice of war. Dialogical ethics, in contrast, brings domestic hypocrisy and its connection to the justice of AHI into focus. Hypocrisy may reduce the probability that AHI will be successful, as Dovi notes in her example of the former Yugoslavia. It may hamper system-wide efforts to bolster confidence in both GHRR and AHI that Annan holds to be the challenge of the 21st Century, as evidenced by Dovi's note of the harm American hypocrisy did to confidence in the international legal system. Also, at the international level, hypocrisy may hamper the ability to gain of consensus and affirmation from the international community (which Fisher himself holds as morally salient for AHI). Indeed, hypocrisy may be directly exploited to undermine AHI efforts as the Chinese report on U.S. human rights abuses demonstrates, and reduce in ethically significant ways a society's ability to fulfill its obligation to contribute to the health of human whole. The inadequacy of Just War categories to account for this morally salient feature of conflict may thus point to the necessity of developing an additional set of Just War Criteria beyond the *jus ad bellum*, *jus in bello*, and *jus post-bellum*. A "*jus ultra bellum*" category may be warranted dealing with the disposition and domestic conduct of societies that must needs be ethically considered before they engage in conflict. These issues are ethically important outside of their contribution or direct connection warfare. They may already be explored in the context of civic virtue or domestic theories of political justice. However, dialogical ethics demonstrates that they cannot be morally divorced from war and invites greater theorization regarding this connection.

Like the thought of Allen and her use of the concept of sacrifice noted above, religious thought beyond dialogical ethics may play a role in making this connection. Insights and images for analyzing the connection between societally internal foci on moral consistency and purity, as well as for analyzing the externally focused act of waging war, may be drawn from the religious purification rituals that societies and their warriors undertook before battle that are a facet of numerous cultures around the globe. These rituals demonstrate that domestic conduct were not, in the minds of certain societies, divorced from the morality of waging war. Rather, right moral conduct in other areas of life beyond war was a relevant consideration for the moral suitability of a person or society to undertake war. For example, Michael H. Jameson records that prose sources that discuss ancient Greek pre-battle rituals “largely offer [a] social view of the rites of warfare; [these prose sources] show the relationship of the community and the army, as a community, to its gods.” Jameson contends that through its pre-battle rites and sacrifices, “the society embarking on war ensures its good relations with the city’s gods and conformity to their wishes.”³³

The ritual of bathing and vigil before the ceremony of knighthood in medieval Christianity provides another example on the individual level. In this “Ordination of Knighthood” William Morris explains that the first step in the ceremony of knighthood is a ritual bath to signify purity and the washing away of sin. Morris goes on to say, however, that the bath is symbolic not only of the washing of sin, but that the prospective knight “should bathe thee still” in kindness, goodwill, honesty, and courtesy in order that the knight may “grow beloved of all the earth.” Morris explains the significance of the ritual bath in such a way that demonstrates that the ceremony of knighthood symbolically enjoined prospective knights not only to honor in

³³ Michael H. Jameson, “Sacrifice Before Battle” in *Hoplites* ed. Victor Davis Hanson (London: Routledge, 1993), 199.

battle, but in all their affairs. In this way Morris connects correct conduct outside of war to the readiness of the knight to “beginne this fight well of worth” that was the medieval martial life.³⁴

Both of the suggestions I have made for further research into the issue of AHI turn to religious thought in order to identify and navigate issues and challenges relevant to 21st Century AHI. The turn to religious thinking and exploration of religious ritual and symbolism that I have explored in this conclusion through the work of Allen and the pre-battle religious rituals of warriors, as well as the theocentric ethics that are the basis of my own dialogical ethics in preceding chapters is, of course, only one direction that ethical inquiry into the problem of 21st Century AHI that Annan articulates may take. It is, however, an important one because it opens the possibility of answering this challenge in ways beyond the finding of “legitimate and universal principles” that Annan puts forward as a means of answering his own challenge. Annan’s own rhetoric indicates his belief that the answer to the challenge of 21st Century AHI is to articulate a moral framework for AHI that can confidently bring “complete unity on the part of the international community,” something Annan noted was absent at the turn of the millennium and continues to be absent. Annan looks to find a monological, universal, and incontrovertible ground for AHI that can be the final moral word in debates surrounding AHI. Annan is motivated by a noble intention, which is to lend immediate and incontrovertible legitimacy to efforts that halt “gross and systematic human rights violations” whenever and wherever they occur. In contrast, attention to the moral psychology of sacrifice and the issue of domestic

³⁴ William Morris, “The Ordination of Knighthood,” *William Morris Archive*.
<https://morrisarchive.lib.uiowa.edu/items/show/2563>.

hypocrisy are issues that are a part of a moral framework that looks to answer the challenge of AHI in a more limited and qualified manner.

The human experience of finitude, limitation, interdependence, that dialogical ethics emphasizes that there can never be a final moral word for AHI. Consideration of AHI under these conditions requires dialogue between interdependent parties, and discernment based on the consideration of dynamic circumstances. One works to expand the considerations of what is a relevant whole and common good, distribute those goods in more expansive ways, and as best one can, reduce the tragic consequences and losses that moral action, even under the best of circumstances and with the most rigorous ethical deliberation, may inevitably entail. Attending to the psychological needs of those parties in an intervention whose interests are sacrificed for the common good is one manner that this interparty communication, recognition of interdependence, and reduction of tragic consequences may be pursued, as are efforts to ensure that a society's domestic respect of the rights of its own citizens is commensurate with the human rights ideals it pursues abroad.

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