The Holocaust and Mass Atrocity: The Continuing Challenge for Decision

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Introduction

In a recent speech President Obama stated that the prospect or imminence of mass atrocity constituted an important US National interest which might require the US to act.\(^1\) In Obama’s words: “As President, I refused to wait for the images of slaughter and mass graves before taking action”.\(^2\) The particular prospective atrocity he had in mind was the possible fall of the city of Benghazi to the Libyan dictator Gaddafi. Gaddafi had indicated that he intended to order severe retribution on the inhabitants of that city with the implication of mass murder.\(^3\) This was an important clarification of the importance of national interest to events implicating and compromising the most fundamental values relating to human dignity and humanitarian concerns. In particular it affirms the idea that certain fundamental global interests are also basic national interest priorities. This idea seems at least implicit after 1948 when the international community adopted the first Human Rights Treaty which targeted genocide as a practice of universal criminal importance.\(^4\) Here the implication was that every sovereign state that joined the international community under the UN Charter was implicitly undertaking the obligation that the resistance to and prevention of genocide and mass murder was also an obligation that shaped the nature of sovereign interests in the world community. However, for a number of reasons there has been a tendency to weaken the resolve to a stridently police global atrocities, and take affirmative action to ensure that it is prevented.

I. The Albright-Cohen Report and its Critics

The persistence of genocide and mass atrocity suggests an important challenge for global public order. One of the central problems of genocide is that although it is criminalized, in general criminal sanctions will only kick in after the damage has been done. And the criminal sanction may be hopelessly disproportionate to the magnitude of the crime. These concerns, and others, have had an important national institution, The United States Institute of Peace, generate an important study led by two high level former administration officials, Secretary of State Madeline Albright and Secretary of Defense William Cohen, on the issue of genocide and mass atrocity, the implications of prevention, and appropriate policy responses. Their Report was in part influenced by the Obama National Security Strategy Paper of May 2010. The Report stresses that if prevention fails, “the United States will work both, multilateral and bilaterally, to mobilized diplomatic, humanitarian, financial and – in certain instances – military means, to prevent and respond to genocide and mass atrocities”. The Albright-Cohen Report notes the following: “The world agrees that genocide is unacceptable and yet genocide and mass killings continue. We have a duty to find the answer before the vow of ‘never again’ is once

\(^1\) Statement by the President on the 15th anniversary of the genocide at Srebrenica, The White House Office of the Press Secretary (July 11, 2010)

\(^2\) Obama, B. – Speaking in a televised address about his decision to commit U.S. troops to the U.N. -approved military operations in Libya in order to stop a potential “massacre”. TIME Magazine Vol. 177, No. 14 (2011)

\(^3\) Benghazi to the Libyan dictator Gaddafi, Reporting by Souhail Karam, writing by Tom Heneghan, Editing by Elizabeth Fullerton (March 17, 2011)

again betrayed⁵. The Report is important because it brings the focus of influential figures, in a major power, to the global problem of genocide and atrocity and what that great powers responsibility is to contribute to the prevention of genocide and atrocity. The Report has generated its critics in influential scholarly circles. The Report in fact has received trenchant criticism from some scholars. A representative critic is that of Hirsh⁶; he identifies five major problems in the Report. These are as follows:

1. It is poorly written and filled with bureaucratic jargon.

2. It is historically inaccurate and in some discussions almost revisionist. He argues that because of this weak analysis of the recent history of genocide the report cannot offer a foundation for adequate policy.

3. The report is written and edited by individuals who participated in past policy failures as their attempts to prevent genocide either failed or were not undertaken. This is part, he notes, of a “recycling” process in the capital whereby policy makers never achieve a new perspective because former members of previous administrations are recalled when a new administration enters office. Therefore, it is difficult for new and/or different views to be represented.

4. Reports by commissions often do not change policy. Sometimes they do not even influence policy. Often in government the presence of a report is pointed to as the equivalent of policy. This is a form of cooptation since in the place of action policy makers’ focus on the report.

5. He notes that the “clashing cultures” of the academy and the policy makers may contribute to different perspectives with academics taking a more analytic and critical view and policy makers arguing they are more “practical.” In any case, Hirsch argues these are critical weaknesses which must be addressed if this report is to influence policy.⁷

A representative view from Latin America is indicated in the comments of Daniel Feierstein from Argentina.⁸ Feierstein insists on a more critical appraisal of US foreign policy and the negative consequences of some of its interventions in the global community. He therefore insists that there are two separate issues: first, what United States can and should do to prevent genocide and second, what it should stop doing. Professor Jacques Sémelin (Paris) has seen the Report in a more constructive way and believes it will stand “as a first and promising step”.⁹ An important but excessively harsh appraisal of

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⁸ Feierstein, D. Getting Things into Perspective at Genocide Studies and Prevention - Volume 4, Number 2, Summer 2009, pp. 155-160 (Article)

the Report is given by David Rieff. Rieff notes that the prevention of genocide is a challenge for the institutional structures, strategies, and partnerships according to the Report. He also approves of the strategies recommended which require informational, early warnings, processes as well as early prevention via preventive diplomacy and when all else fails the possibility of the military option. He therefore sees value in either creating or strengthening the institutional structures of the US Government as well as the United Nations System. In this latter regard there is a clear connection between the UN’s enunciated “responsibility to protect doctrine adopted by the World Summit in 2005”. Rieff starts with a concern that civil society activism may be flawed and thus provide an incentive that may be consummated as bad policy. In short, he draws attention to the complexity of foreign social conflict and the importance of an understanding the predicate to the question of intervention. He draws attention to the fact that the Save Darfur Movement crystallized long after the bulk of the killings had ended. He concludes:

“If you want to be a prophet, you have to get it right. And if Save Darfur was wrong in its analysis of the facts relevant to their call for an international military intervention to stop genocide, either because there had in reality been no genocide (as, again, the un and many mainstream NGOs on the ground insisted) or because the genocide had ended before they began to campaign for intervention, then Save Darfur’s activism can just as reasonably be described in negative terms as in the positive ones of the task force report. Yes, Save Darfur had (and has) good intentions and the attacks on them from de facto apologists for the government of Sudan like Mahmood Mamdani are not worth taking seriously. But good intentions should never be enough.”

Rieff is right. It is critically important for both concerned INGO’S as well as Governments and UN Agencies, get the facts and the timing of proposed intervention right. However important this criticism, we should keep in mind that there is inherent complexity about not simply generalized social conflict, but the form of conflict which discloses one of the least transparent aspects of governmental decision making, the idea that it may generate a conspiracy to destroy a group in whole or in part as well as the complexity of executing it within the context and complexity of ongoing conflict.

Rieff is particularly concerned about the tendency of the Report to formulate its important arguments at too abstract a level of generalization. It quotes the following passage to illustrate the point:

Grievances over inequitable distribution of power and resources appear to be a fundamental motivating factor in the commission of mass violence against ethnic, sectarian, or political groups. That same inequality may also provide the means for atrocities to be committed. For example, control of a highly centralized state apparatus and the access to economic and military power that comes with it makes competition for power an all-or-nothing proposition and

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10 Rieff, D. The Persistence of Genocide; “Never Again,” again and again... Policy Review No. 165, Pages 1-9, Distributed by the Hoover Institution Stanford University (February 1, 2011)
creates incentives to eliminate competitors. This dynamic was evident in Rwanda and Burundi and is serious cause for concern in Burma today.

Rieff is correct in that the generalization of factors which generate internal tensions and conflicts is not a precise enough analysis with which to enhance an early warning prediction that from a particular set of social conflicts and tensions, a genocidal outcome is probable. In my view I think Albright and Cohen are right to see genocide in the context of some primary sources of social conflict, but there are indeed deeper factors which touch on the ubiquity of human identity and how in normal practices we construct the idea of a “we” and correspondingly limit the scope of the “we” and thereby define the “non-self other”. This is the necessary although not sufficient condition of genocide. We explore this later in this article.

Expanding on his concern for the excesses of generality, Rieff actually says that the Albright-Cohen approach may generate a serious limitation on critical analytical thought skills that are crucial for a much clearer picture of genocide and responsibilities in intervention. I suspect that Rieff is being hypercritical of the Report here. It seems to me that the Report makes an important contribution in gravitating from the generalization of social conflict to the specific role of decision making as the critical variable in initiating the conspiracy to commit genocide and actually executing the conspiracy in practice. We again quote the passages Rieff uses to justify he’s harsh criticism:

“It is equally important to focus on the motivations of specific leaders and the tools at their disposal. There is no genocidal destiny. Many countries with ethnic or religious discrimination, armed conflicts, autocratic governments, or crushing poverty have not experienced genocide while others have. The difference comes down to leadership. Mass atrocities are organized by powerful elites who believe they stand to gain from these crimes and who have the necessary resources at their disposal. The heinous crimes committed in Nazi-occupied Europe, Cambodia, and Rwanda, for example, were all perpetrated with significant planning, organization, and access to state resources, including weapons, budgets, detention facilities, and broadcast media.

There are also key triggers that can tip a high-risk environment into crisis. These include unstable, unfair, or unduly postponed elections; high-profile assassinations; battlefield victories; and environmental conditions (for example, drought) that may cause an eruption of violence or heighten the perception of an existential threat to a government or armed group. Sometimes potential triggers are known well in advance and preparations can be made to address the risk of mass atrocities that may follow. Poorly planned elections in deeply divided societies are a commonly cited example, but deadlines for significant policy action, legal judgments, and anniversaries of highly traumatic and disputed historical events are also potential triggers that can be foreseen.”

Of course every case of genocide is often situation specific in terms of the nature of the context of conflict and the role of decision as the critical triggering mechanism. Here there is a crucial epistemological problem. In general there is an antipathy to commitments to intervene in what are
usually labeled **ethnic conflicts**. The Conventional wisdom is that such conflicts are inexplicable and irrational and therefore intervention into something that is not understood is hard to justify. We shall revisit this matter as well. Although an important contribution to the epistemological issue here is the judgment of Nuremberg. Here we have an ethnic conflict writ large. The Court penetrates the veil of anonymity by the identification of the Human Agents behind State decision making and holding them responsible.

In my view the Albright-Cohen Report does not complete the story of genocide and intervention but its smoothes the intellectual track to facilitate us getting there. The central point, which is implicit in Rieff’s comments, is that the intellectual tools used to drive the Report’s analysis are not up to the task that may marry intellectual strategies with responsible policy making. Drawing from ideas in policy analysis we shall specify the discrete but interrelated intellectual strategies which may improve the clarity and relevance of ideas in the report. We commence this approach by taking a fresh look at the Holocaust to determine whether there are some insights from that experience which may be relevant to the work of the Albright-Cohen Report.

**II. Ubiquity of Genocide and Mass Murder**

The primary victims of the worst illustration of genocide in historical memory are the ones of the Holocaust. And the survivors of that tragedy have promoted the importance of the global value we attach to the symbols “never again.” Scholars maintain that the origin of the phrase “Never Again” made its first appearance in hand made signs created by the survivors of the Buchenwald death/concentration Camp. Since Jews were the primary victims of the Holocaust the terms may have included a narrower ethnic meaning. That meaning could imply that Jews were **never again** to be victims of mass murder by the Nazis in Germany. In this sense the terms **never again** are restricted to Jewish victims and now extinct victimizers. Since World War II there’s no obvious example of genocidal behavior targeting the Jews as such. However, the post-war period has witnessed the persistence of genocide and atrocity on a global basis. The symbols **never again** have been given memorial status in several countries that had experienced mass atrocity. For example: Countries like Chile, Rwanda and Argentina. The Argentinean truth report is in fact titled “Nunca Más.”

**Never Again** has been used to memorialize after the fact of genocide and mass atrocity. Elie Wiesel, a Holocaust survivor has lamented that if the world had learned anything “there would be no Cambodia, and no Rwanda, and no Darfur, and no Bosnia.”

Notwithstanding the lesson of the Holocaust and the further lessons of criminalizing the worst elements of atrocity, the international community has experienced numerous examples of genocide and

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13 Foxman, A.H. *Never Again?* – For decades Jewish leaders and others of good will had repeated the litany “Never Again!” It has been a rallying cry and an expression of our determination that the horror of genocide will be repeated. Now I find myself forced – to my shock and dismay – to add a question mark to the phrase: “Never Again?”
mass murder in the aftermath of these events. This suggests that perhaps it is worthwhile taking a fresh look at the conditions and consequences that led to the Holocaust from the perspective that it is representative of a significant global problem. Perhaps the insights that we can draw from such reexamination that may give us the outlines of intellectual and policy strategies that may better permit the approximation of the desired goal or objective of “never again.”

From this perspective we want to sharpen our understanding of the conditions that facilitated the Nazi plan for the wholesale of extermination of the Jewish people. There seem to be two issues here. First, when we look at genocide or mass murder historically we find that it is more ubiquitous than has been generally acknowledged. Although the growth of norms and rules of restraint have in general seemed to accept such conduct particularly in times of intense social conflict, as being a normal part of the extension of that conflict to all members of the defeated other or enemy. In this sense we have inherited a history which in general had an element of collective amnesia. However, Rummel’s work demonstrates that in the twentieth century murder by government and quasi-governmental entities reached the staggering statistics of hundred and seventy million plus. In short, the modern state with advanced technologies of administration and science could radically become a lethal instrument of human destruction.

III. Lessons from the Holocaust

However, this record, tragic as it is, is quite different to the trends and the conditions that resulted in the tragedy of the Holocaust. There are states that have killed more people over time than the Nazis but the Nazis have killed more people than anyone else in a short period of time. The critical question is; is there in the historic trend and historic memory something that preserves powerful symbols that in European culture, secure a symbolic as well as political depreciation and marginalization of the Jewish community as a whole? Much has been written on the legacy and the endurance of anti-Semitism. However, we are less confident about why it has endured over time with such virulence. This means that it is possible that political conditions may not be as critical to the survival and endurance of the anti-Semitic myth. The possible explanation is the psycho-social frequency and transmission of the critical symbols that feed the negative sentiment encapsulated in the collective personality of the persons prone to anti-Semitic perspectives.

The strength of the symbol certainly reinforced the boundaries of otherness. This may be a necessary but not a sufficient condition for a tragedy of the scope of the Holocaust. However, it remains a critically important question to know why it is that such a large number of Europeans could have internalized the negative values of anti-Semitism and repression. It is possible that the conditions in Europe—conditions of scarcity and deprivation that tended to generate a competitive conflict prone culture—were factors that influenced the way in which European children were acculturated to

15 Rummel, R.J. Death by government (1997)
deprivations; and these experiences tended to produce personality types prone to the awareness of
otherness and threats posed by the other. In general, European society is distinguished historically by
the identification of ethnicity with national identity. These processes were unusually strong in Europe.
There are contemporary lingering effects which have been seen in the war of the former Yugoslavia as
well as the national question which has endured into the post Soviet era. Still, this is not a complete
explanation. The integration of the idea of anti-Semitism into an aspect of Christian religious identity
may account for the endurance of an anti-Semitism legitimated by the power of religion.\textsuperscript{17} Thus, anti-
Semitism could be seen as morally right behavior.

Religion could fuel and strengthen this negative symbol by the myths of blood libel and the
ascription of multi-generational guilt for the murder of God (the Christian God). Modern science has
shown that in situations where there is conflict between ethnic groups what is critical to initiating and
sustaining this form of conflict is the power of the symbol that legitimates or validates it.\textsuperscript{18} It is only
recently that his Holiness Pope Benedict XVI repudiated the idea of Jewish collective responsibility for
the death of Jesus. He explains in his latest book that in the Gospel of John, “the Jews” who instigated
Christ’s death should not be interpreted as “racist” or as a blanket condemnation of the people of Israel.
He also noted that “John himself was ethnically a Jew, as were Jesus and all his followers,” and that “the
entire early Christian community was made up of Jews”. The Pope argues from a close scholarly reading
that passages speaking of Jesus’ “blood” being upon the Jewish people and their children (Matt. 27:25)
must be “read in an entirely new light from the perspective of faith.” He wrote: “The Christian will
remember that Jesus’ blood speaks a different language from the blood of Abel (Heb. 12:24): it does not
cry out for vengeance and punishment; it brings reconciliation”. “It is not poured out against anyone; it
is poured out for many, for all. ... Read in the light of faith ... these words are not a curse, but rather
redemption, salvation.”\textsuperscript{19} This is an effective repudiation of the idea that some Christian morality
provided the justification for anti-Semitism. We should note that this apology had some two thousand
years of incubation before it was publicly expressed.

So far we have looked at anti-Semitism largely from a perspective of the victimizer. From the
perspective of the victim there is another quality that conspires to enhance the possibility of
victimization. The Jews of the Diaspora were a community without a state. The miracle is that this
community could survive, and often thrive in a relatively hostile Diaspora.\textsuperscript{20} Thus, survival, intellectual,
scientific, cultural, jurisprudential, and in business skills generate the idea that disapproval from the
majority only reinforces the competitive desire for excellence in all things of cultural and scientific
importance. And Jewish historic excellence also created the cognitive dissonance that discrimination and
repression only resulted in perceived success at survival skills. What is clear is the remarkable endurance
of anti-Semitism and the equally remarkable ability of the Jewish community to preserve the best of its

\textsuperscript{17} Williams. S.S. *The Origins of Christian Anti-Semitism*, Judaic Studies Program University of Central Florida (1993)
\textsuperscript{18} Rupesinghe, K. & Tishkov, V.A. *Ethnic conflicts in the context of social science theories*, in Ethnicity and power in
the contemporary world, The United Nations University (1996)
\textsuperscript{19} Pope Benedict XVI *Jesus of Nazareth; Holy Week: From the Entrance Into Jerusalem To The Resurrection*, Ignatus
Press (2011)
\textsuperscript{20} Ehrlich, M.A. *Encyclopedia of the Jewish Diaspora: origins, experiences, and culture: Volume 1* (2009)
cultural distinctiveness and survive; At least until the tragedy of the Holocaust. We must therefore more carefully appraise what was distinctive about the Nazi tactics and strategies which lead to their desire for a final solution.

Germany after World War I was in a period of social dislocation and deprivation. These conditions of political and social instability created conditions for opportunistic leaders to gravitate to power by the exploitation and demonization of out groups within the body politic. This represented the opportunity to significantly advance the agenda of anti-Semitism. Anti-Semitism was well rooted in Germany as was the cultural and scientific successes of the Jewish community. In this sense they were a perfect scapegoat for Hitler’s mobilization of the crudest and most ruthless elements in the chauvinistic aspect of German social process. Scapegoating the Jews was a partial means to power. However, the Jews had allies and some of those allies were also potential rivals to Hitler. Hitler simply eliminated his obvious possible rivals by murder. Indeed, the policy of exterminating the Jews could only have occurred if one could exterminate or silence all one’s political opponents. This would ensure that one could effectively control and manipulate the rest of the society. In this the Nazis were very successful and systematic. They rounded up every political opponent they could find and had them a confined to the concentration camps.

For the rest of society, they developed a powerful institution for monitoring the attitudes, and weaknesses, of all Germans. The most important activity here was the role of the confidential informer, under the authority of the Gestapo. The Nazi intelligence literally was able to establish a system of confidential informers in every city, street, and precinct in Germany. The candidate informer was usually someone who had a personal secret to hide. In return for not disclosing personal secrets one had to serve as an informant. The informer functions in the home, on the streets, in the churches, and in every community organization. The confidential informer would supply the intelligence about who had anti-patriotic thoughts, who opposed the racial policies, who was friendly to Jewish interests, and who embraced liberal or left oriented ideological perspectives. This intelligence process was so ubiquitous that it probably represented one of the most complete forms of social control and repression in history. It was an unprecedented process of repression. It was an effective means of silencing and intimidating major portions of German population. This permitted the Nazi elite to have a free hand to dispose of the unpopular Jewish minority as they saw fit. With such total control and no restraint in their repression of Jews and others deemed undesirable, the Nazis were free to act out the pathological racial fantasies which they could displace on a completely helpless community. The technique used by the Nazis for
social control using the confidential informer continued to flourish in East Germany where the Stasi\textsuperscript{21} were able to accumulate a staggering volume of files on virtually every East German.\textsuperscript{22}

There is in-clarity about the specific order to launch the final solution. However, circumstantial evidence suggests that it was delivered as a \textit{Führerbefehl}. This order was an oral order from the Führer having the highest status of Law.\textsuperscript{23} The policies and practices set in motion which led to the creation of death camps and industrialized murder clearly required anti-Semitism as a necessary condition for the identification of the target victim. However, anti-Semitism was not a sufficient condition for the Holocaust. More was required. And this meant a decision system of organized repression, and intimidation of unprecedented scale that permitted the institutions facilitating the Holocaust to take effect. In short, the Nazis created a powerful decision apparatus whose objective was mass murder on an industrial scale. The critical question is this: If this is an accurate representation of how the Holocaust happened, what lessons can we learn to ensure that it is not repeated? In addition and apart from the uniqueness of Jewish victimization we have witnessed many episodes of genocide and mass murder during the post War period. Thus, the Holocaust experience provides us with the tools to better understand what creates the impulse to commit Genocide and the decision processes which generated the practical application of this impulse. And this generates the challenge: What strategic initiatives may be developed to eliminate to constrain the genocidal impulse, and what strategies and tactics must be developed at all levels of social organization to prevent it from happening again?

\textbf{IV. The Intellectual and Policy Challenges of the Lessons}

This background provides many scholastic and intellectual challenges, including the idea that the development of insights into these challenges should also be reflected in a concern for the social consequences and policy implications of the generation of such knowledge. From this perspective genocide, including the version represented in the Holocaust, constitutes a problem of global magnitude. Moreover, one of the most critical legal developments in that the global response to genocide has been the Convention that seeks to globally outlaw genocide. The problem with the Convention, in part, is that its identifiable protected groups leave out a large segment of the human community who experience mass murder in which the symbols of identity which are a necessary

\begin{footnotesize}
\begin{itemize}
\item Betts, P. \textit{Within Walls: Private Life in the German Democratic Republic} (2010); Koehler, J.O. \textit{Stasi: the untold story of the East German secret police} (2000) - Following reunification, Gauck was appointed by the Bonn government as its special representative for safeguarding and maintaining the Stasi archives. "We must at least establish a legal basis for finding the culprits in our files," Gauck told me. "But it will not be easy. If you stood the millions of files upright in one line, they would stretch for 202 kilometers [about 121 miles]. In those files you can find an unbelievable number of Stasi victims and their tormentors."
\item Longerich, P. \textit{The unwritten order: Hitler's role in the final solution}, (2006) - The Holocaust differs from other genocides in recent history for one main reason—there is no other example in which a minority was annihilated so systematically on the orders of a head of state and through the apparatus of government. Through the recent discovery of documents, the central role that Hitler played in the persecution and murder of the European Jews can be proved much more conclusively than was possible just a few years ago.
\end{itemize}
\end{footnotesize}
predicate for mass murder are not accounted for. In any event, the central insight of the Genocide Convention is that its definition of the protected class is dependent upon some interior symbol of identity which is a necessary but not sufficient condition of genocide or mass murder. It is for this reason that scholars such as Rummel proposed the concept of *democide* to fill the gap left by the Genocide Convention.24

The first line of inquiry therefore must be the ubiquity with which human beings generate the culturally acknowledged and received symbols of identity. We generally consider this to be a natural process. The “I” is born into a family, or analogous micro-social unit, and soon the identification of the “I” broadens to include the “we”. But how inclusive or exclusive is the “we”? We realize that the expansion of the “we” is not unlimited and the boundaries of the “we” invariably demarcate those groups that constitute the “non-we” that is to say the group or class of “non-self others”. This is an ordinary process that happens in all human communities. We therefore generally do not see this as inherently dangerous or inappropriate. However, the boundaries between the “we” and the “non-we” are a necessary but not sufficient condition for the emergence of symbols in the culture that may depreciate the “non-we” or “non-self others”. In this sense the symbology of anti-Semitism is a critical consequence of a community boundary sustained by negative symbols and negative sentiment. Moreover, it may be that anti-Semitism is simply an especially potent form of racial discrimination and prejudice.

International Law also proscribes racial discrimination.25 Racial discrimination cannot happen without the boundaries of the “non-we”, and the symbols of supporting negative sentiment. However, anti-Semitism and racial prejudice are simply more potent versions of the targeting of the victims with the symbols and practices of negative sentiment. International Law has also sought to make apartheid a crime against humanity.26 Apartheid functioned explicitly on the demarcation of human communities according to the symbols of race and ethnicity. It therefore, had much in common with anti-Semitism and racial discrimination. What distinguished apartheid was that apart from the symbolic and legislative identification for the ascription of human group identity, it sought to impose, as a consequence of these classifications, a system of indefinite domination and subjugation. In this sense apartheid in theory and practice was one of the most virile and aggressive forms of racism.

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24 Rummel, R.J. *STATISTICS OF DEMOCIDE: Genocide and Mass Murder Since 1900*, Charlottesville, Virginia: Center for National Security Law, School of Law, University of Virginia 1997; and Transaction Publishers, Rutgers University ((January 13, 1999)


V. The Relevance of the Psycho-Social Markers of Identity

Since the foundations that connect the human person to the sense of the “I”, the “we” and correspondingly the “other” is one of our important considerations for minimizing the occasion of the predisposition to genocide, it is important to consider many of our innocuous practices within family structures that might inadvertently reproduce the personality type whose lingering insecurities from childhood rearing and the family practices predispose the person to the development of a more closed or authoritarian frame of reference for the essential pattern of identity. This suggests that there needs to be a greater degree of community involvement in educating families, and especially mothers, about relatively innocuous patterns of child nurturing and rearing, in the hope that the society will diminish the reproduction of closed personality types and perhaps maximize the reproduction of open, democratically inclined personality types. For example, children have a completely different sense of time from the adult, and imposition of an adult’s sense of time might constitute a deprivation with lasting effects on the development of the child’s personality.27

VI. Understanding Emotion as a Driver of Human Value

It may also be that in general societies take for granted the importance of emotion and sentiment in the construction of future generations. Here intellectually the idea of affect or positive emotional sentiment may need to be more explicitly recognized as an important cultural and policy preference. In short, emotion and sentiment permeate all human behavior. Emotion and sentiment may be the driving force about what is right concerning the human prospect and what is required to avoid was wrong with it. Modern scholarship has drawn attention to the importance of the emotions encapsulated in positive and negative emotion.28 We provide a provisional overview of positive and negative sentiment. Indeed what we suggest is that genocide is impossible when culture, law, and politics give due deference to the principles of positive sentiment or affect and heightens the prospect of genocide and atrocity when the negative symbols of emotionalized hate are dominant. Perhaps the important insight here is that positive sentiment is a critical foundation for the culture of human rights. Negative sentiment is critical for the denial of the cultural of human rights.

The diagram below is an illustration of modern psychological science connecting emotion to the ideas of positive and negative sentiment. The diagram does not quite explain that positive sentiment as affect is an identifiable social process.

VII. The Social Process of Positive Sentiment

The tables below outline the structures and the processes of positive sentiment or affect and negative sentiment of hate.

### Table 1: The Social Process of Positive Sentiment (Affection): The Relevant Analytical Markers

<table>
<thead>
<tr>
<th>Formal Myth System</th>
<th>The formal myth of love and affection may be concealed (or otherwise appear informal), but it is nonetheless a real myth reinforcing the symbology of togetherness of the target of love and affection and those within the “in-group” of the community context.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Symbol-Myth System</td>
<td>The symbol-myth system of solidarity and affection a crucial component of the perspectives of the community or its elite, or its traditional and opinion leaders.</td>
</tr>
<tr>
<td>Subjectivities / Perspectives</td>
<td>These subjectivities or perspectives of positive sentiment are outcomes of complex behavior patterns, which are characterized by affective sentiments and strong portrayals of the target of affect as appropriate for the displacement of positive inference and meaning in terms of shared affect.</td>
</tr>
<tr>
<td>Emergent Patterns</td>
<td>Indications of emergent patterns that consolidate the collaborative behaviors of the “we” or the “in-group,” vesting that group with the idealization of appropriate community acceptance as positive sentiment and love and the foundation for the licit family form which is also culturally preferred and valued.</td>
</tr>
<tr>
<td>Propaganda</td>
<td>There are further emergent, often graduated, behaviors in the primary group, which consolidate and sustain the image of community solidarity through patterns of collaboratively conditioned behavior conditioned by positive sentiment. These include the communication of discrete signs, symbols, operational codes, myths, narratives, and reified stereotypes, which symbolize the institutionalization of the ideals of love and a positive sense of shared affect in the community.</td>
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<tr>
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<tr>
<td>Denotation and Isolation</td>
<td>The process of affection also involves the manipulation of signs, symbols, codes, mythos, narratives and stories between members of the “in-group” and between members of the “in” or “out-group.” Positive sentiment may be used in a way that also isolates those not included in this universe of affect and solidarity.</td>
</tr>
<tr>
<td>Alliance and Allegiance</td>
<td>The system of generalized affective behaviors, thus, involves distinctive, and often, discrete patterns of communication of relevant signs and symbols of the “in-group” loyalty and solidarity, as well as signs and symbols that identify, disparage, or threaten members of the “out-group.” The patterns of communication are sustained or enhanced by collaborative operations in the exercise of public or private power. This may mean repression and exploitation for some and the power to exploit positive sentiment for base motives on the other. Thus, solidarity and patriotism may be promoted in such a way that it underlines by implication the vulnerability and validity of victimizing others such as the social pariahs, outcasts, those who are indifferent to the situation of all others.</td>
</tr>
<tr>
<td>Nurtured Predispositions</td>
<td>Human beings conditioned to generate positive sentiment (affection) as an ordinary aspect of personal identity are obviously desired from a human rights perspective. The predispositions of the personality included to positive sentiment, invariably creates environments in which micro-social relations reflect the normative priority given to the reproduction of positive sentiment or affect. Thus, innocent child rearing and nurturing in which love and affection is practiced generates personality types better suited to reproduce personality types partial to democratic political culture. On the other hand, a person may be raised in a climate of negative sentiment where repression, deprivation and fear wittingly or unwittingly reproduce insecurity and intolerance of others in the self-system. Thus, the practices of negative sentiment in family or affection units may be a dangerous social inheritance. When such personality types mature, they exhibit the partiality to anti-democratic perspectives such as authoritarianism and domination. They reproduce the cycle of negative sentiment.</td>
</tr>
</tbody>
</table>
Reproducing the cycle of positive sentiment is critical to the culture of human rights and its sustainability on a global basis. Thus, the micro-social units (affection units) ostensibly specialized to positive sentiment or love and affection are critical for a healthy and normal society that does not institutionalize compulsive, neurotic or psycho-pathological outcomes. In short, a psycho-political culture of positive sentiment reproduces in effect the social and political foundations of the culture of human rights. Perhaps even more than that, it is giving to those committed to the love of God, the religious redemption of the love ideal through human rights.

### VIII. The Social Process of Negative Sentiment

**Table 2: The Social Process of Negative Sentiment (Hate): The Relevant Analytical Markers**

<table>
<thead>
<tr>
<th>Formal Myth System</th>
<th>The formal myth of love and affection may be concealed (or otherwise appear informal), but it is nonetheless obscures a real myth reinforcing the symbology of otherness of the target “out-group.”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Symbol-Myth System</td>
<td>A symbol-myth system of prejudice, fear and hate is a crucial component of the perspectives of the dominant group or its elite and opinion leaders.</td>
</tr>
<tr>
<td>Subjectivities / Perspectives</td>
<td>These subjectivities or perspectives are outcomes of complex behavior patterns, which are characterized by negative sentiments and negative portrayals of the “other,” such that the symbolic “other” is reinforced as a target for negative inference and meaning.</td>
</tr>
<tr>
<td>Emergent Patterns</td>
<td>There are emergent patterns that consolidate the collaborative behaviors of the “we” or the “in-group,” vesting that group with a sense of superiority, or “herrenvolkism,” paternalism, and further, seeking to enhance the value position of that group at the expense of the “out-group.”</td>
</tr>
<tr>
<td>Propaganda</td>
<td>There are further emergent, often graduated, behaviors in the dominant group, which consolidate and sustain the image of the victim group through patterns of conflict-conditioned behavior. These include the communication of discrete signs, symbols, operational codes, myths, narratives, and reified stereotypes that such issues as racism, anti-Semitism and more.</td>
</tr>
<tr>
<td>Denotation and Isolation</td>
<td>The process of group deprivations also involves the manipulation of signs, symbols, codes, myths, narratives and stories between members of the “in-group” and also between members of the “in” and “out-group.”</td>
</tr>
</tbody>
</table>
### Alliance and Allegiance

The system of generalized group deprivations, thus, involves distinctive, and often, discrete pattern of communication of relevant signs and symbols of the “in-group” loyalty and solidarity, as well as signs and symbols that identify, disparage, or threaten members of the “out-group.” The patterns of communication are sustained or enhanced by collaborative operations in the exercise of public or private power that move beyond discrimination, anti-Semitism, prejudice or hate to the possibilities of wholesale extinction of cultures and masses of human beings.

### Nurtured Predispositions

Human beings conditioned to generate negative sentiment as a normal aspect of the predisposition of personality invariably create environments in which micro-social relations reflect the normative priority given to the reproduction of negative sentiment. Thus, innocent child rearing and nurturing practices although covered in an ostensible mantle of love may be in fact impact on personality development so that the person that emerges is ill suited to a democratic political culture. On the contrary, the person that emerges is ill suited to a democratic political culture. On the contrary, the person may be raised in a climate in which repression and fear unwittingly reproduce insecurity and intolerance of others. As such personality types mature, they exhibit the partiality to authoritarianism and domination. They reproduce the cycle of negative sentiment. Therefore, the micro-social units ostensibly specialized to positive sentiment or love and affection may actually be specialized to doing the opposite. In short, such psychopathological political culture may be reproducing the “Anti-Christ of human rights.”

### Halting the Cycle of Social Reinforcement by Derailing Negative Feedback Mechanisms

Breaking the cycle of negative sentiment is critical to the culture of human rights and its sustainability on a global basis.

The above tables which provide a systematic contextual description of the emotive foundations which may drive genocidal outcomes or which may be a crucial restraint on such events is a partial response to the assertions of Rieff that there is excessive generalization in the Albright-Cohen Report. Rieff does not provide us with better indicators that might guide inquiry that is scholastically sound and that may provide an informed contextual predicate for the consideration of genocide preventive strategies. The above tables would seem to us to be an essential contextual background for understanding some of the great tragedies of world order. From the perspective of contemporary conceptions of world order, the concerns for group rights, discriminations, deprivations, and repression of groups and individuals based on “group” labels of identity remain central problems for the maintenance of international peace and security, as well as conditions that inhibit the progressive
developmental agenda envisioned in the higher purposes and objectives of the Charter system. Discrimination against “minorities” is a critical concern. Although the regime of unvarnished dominance known as Apartheid has now been dismantled, the problems of cultural dominance are still a major international concern and have once more evolved into even more brutal measures of political reaction.

In a survey map provided by the Associated Press, mass killings, which are essentially the outcomes of the problems of “otherness,” cultural dominance, and conflict in the 20th Century, provide a staggering specter of genocide. As far back as 1904 and 1907, German colonial conquests of Southwest Africa resulted in the killings of 100,000 Hereros. Similarly in 1972, 80,000 people out of the approximately 130,000 people that were killed in Burundi were Hutus. In Ethiopia between 1983 and 1984, one million people perished. In Iraq during 1915 and 1918, 1.5 million Armenians were killed. Between 1939 and 1945, the Nazis killed approximately 11 million people which include 6 million victims of the Holocaust. In 1992, it is estimated that one million Muslims were killed in Bosnia. In 1965 and 1966, between 500,000 and one million people were killed in Indonesia. It is estimated that between 60 million and 100 million people died under Communist rule in China, beginning in 1949. In Latin America between 1980 and 1984, in the state of Guatemala, at least 100,000 people were killed.

The critical question is what intellectual tools are available to policy makers and intellectuals to drive both, intellectual discourse and strategies of policy in the direction of maximizing the importance of positive sentiment and affect as a global asset and avoiding negative sentiment and hate as a global threat. We provide a brief summary of the intellectual tools that may be more fully develop to provide a framework that more consciously approximates the never again ideal. In this part of our paper we identify the five crucial intellectual tasks in policy oriented legal theory as tools which if properly deployed, respond to the harsh generalizations of Rieff’s criticism of the Albright-Cohen Report.

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29 Levinson, A. *For This Century’s Homicide Regimes, Genocide is a Snap*, The Gainesville Sun (from the Associated Press), 1G, 4G (September 24, 1995), especially the map (Mass Killings of the 20th Century).
IX. The Relevant Intellectual Tasks for Guiding Policy Interventions for Preventing Genocide

A. The Intellectual Tools for Clarifying the Goal Values and Moral Experience for realizing “Never Again”

We now know that human institutions and practices can be destructive if not subjected to the importance of the guidance of preferred values and preferred moral standards. The fundamental values usually coalesce around the idea of universal human dignity. And we found this principle largely on the basis of universal respect. However, respect itself needs considerable reinforcement socially, emotionally, and psychologically. In short, we must also cultivate the emotional foundations of respect. This means we should more explicitly embrace the idea that our public order at every level, from the micro-social to the global, should be attentive to the importance of the shaping and the sharing, in an optimal sense of affection/positive sentiment. Central to this perspective is that it enhances an inclusive identity that is positive with all of human kind. Perhaps in the past this was seen as an excessive idealism. However, without deference to this value on global level, the survival of our species will be in question. There are important insights and challenges in the work stressing the Anthropocene impact on the earth space community. In short our goals should not only be “never again”, it should be that the very idea of such a social political outcome as the Holocaust is not even conceptually possible. The central value of effectively deploying the critical tools of normative goal values is that human activity is generally purposive. It is important to supplement purpose with the guidance of clearly identified objectives. In the contemporary era the fundamental global goal values largely agreed upon are the values of universal dignity. In this sense direction to purpose is given by the clarification and specification of the object of human purposes.

The most obvious symbol representing the goal values that oppose genocide and mass murder are in the phrase “Never Again”. As earlier indicated these words were first used by the inmates of Buchenwald Camp as it was being liberated. It rapidly came to be become the symbolic memorial to the memory of the “Shoah”. Its immediate target audience were the Jewish survivors of the tragedy. The symbol gave urgency to the creation of a Jewish State as a kind of guarantor of the Never Again goal. In this sense the term had a special meaning and resonance and therefore importance for the people of Israel and the evolution of Israeli nationalism. Its meaning was to percolate beyond the limits of Jewish national culture and Israel. The terms Never Again were also used to memorialize the Chilean victims of Pinochet’s murderous regime. The memorial is in the Chilean city of Paine. Never Again is also memorialized in the genocide museum in Kigali Museum in Rwanda. The highly publicized Argentine Truth Commission Report is titled “Nunca Más”. However, it should be noted that these Never Again

40 Rummel, R.J. Never again: ending war, democide, & famine through democratic freedom (2005)
memorials came to public consciousness after the tragedy and therefore did not have a preventive effect to constrain it from happening or to generate collective action to intervene. It is possible that for Jews living in the Diaspora and for Israeli nationals Never Again has a narrow mean which is confined to persons of Jew heritance only or at least their understanding of its global salience is perhaps ambiguous. One of the authors recalls helping to organize a conference in Sarajevo during the Balkans’ War. He approached some Jewish Organizations, but their sense of the importance of a Jewish voice in the Balkans in the context of the genocide there was not acute. However a liberal Jewish leader and his daughter made the trip with him, and his presence was indeed powerful and moving. The goal of Never Again as a value of global salience has not apparently captured a coherent universality. The terms themselves perhaps imply not only goals but strategies and tactics of prevention. In this sense we generate further complexity about the prospect and the limits of preventive politics inside the sovereign State and as a part of global governance. This is complex. Moreover, the terms may not fully clarify the idea that Never Again refers to the extinction of human respect on a scale of enormous magnitude.

A central quality of contemporary human rights and humanitarianism is the central idea of respect for the “other”. Hence, Never Again implicates the global idea of universal respect and deference for the individual self system. This too requires clarification in terms of how respect is understood globally and how understanding it may be deepened with normative values and made a normal part of human social processes from the micro-social, to the national, to the global. The challenge of how to secure Never Again and universal respect lies at the center of the processes of the globalization of culture, law, human rights and humanitarian concern. Genocide and mass murder are the exact antithesis to these values. The basic problem since 1945 is that practice has ignored what challenged the normative priority given to these values. Our contemporary challenge is how we can improve on this record. Clearly the idea of Never Again means that only the Nazis are called to account and the protective class is exclusively ethnically Jewish is a message confined to the time and space limits of the Holocaust itself. Genocide, mass murder and human atrocity are too ubiquitous for that to happen. As Wiesel has reminded us if Never Again is globally understood “they would be no Cambodia, no Rwanda, and no Darfur, and no Bosnia”.

B. The Intellectual Tools of Trends in History and Practice

The importance of understanding the historic trend in genocide, mass murder and the distinctiveness of the experience of the Holocaust are an important memorial of global salience to the challenges we must meet and how to overcome them. Trend thinking is important because as a Holocaust survivor once put it, man has a capacity to have amnesia about unpleasant memories. Moreover, the historic trend gives us an important insight into the nature of mass murder. Mass murder depends on more than the four categories in the Genocide Convention. Any culturally important symbol of identity can serve as a marker for the purpose of identifying the victim group. Thus, a necessary condition of genocide or mass murder is established. The trend in history which marks the occasion of Genocide and mass murder must also account for the effort to respond to the problem from an

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42 Wiesel, E. (Find It)
international law and practice point of view. Prior to the development of the UN Charter International Law had developed a framework justified under the principles of humanitarian intervention. In the nineteenth century states practiced humanitarian intervention to prevent large scale massacres of human beings.43

After the Second World War, the newly founded United Nations generated the first modern human rights treaty, the Convention that outlaws and criminalizes Genocide.44 This was a milestone in International Law and the development of a common moral understanding about why genocide is intolerable, and should be punished by international criminal law enforceable on a universal basis. After the Second World War the International Community also experienced the trials of the Nazi war criminals in Nuremberg. Among the crimes were the crimes against humanity, perpetrated by Nazis. The Nazi leaders were tried, convicted, some were executed, and others sent to terms of imprisonment.45 Additionally the newly founded Israeli State sought to exercise a form of universal jurisdiction when it kidnapped Adolf Eichmann, from Argentina and secreted him to Israel where he was put on trial for inter alia, crimes against humanity and war crimes. He was convicted and executed in Israel in 1962.46 The next major development in the effort to effectively criminalize genocide is reflected in the practice of two tribunals created by the Security Council: The International Criminal Tribunal for the Former Yugoslavia (ICTY)47 and the International Criminal Tribunal for Rwanda (UNICTR)48. The practices of these Courts also stimulated the adoption of the Rome Statute which created a permanent International Criminal Court (ICC or ICCT).49 The Rome Statute became a binding treaty on 11 April 2002, when the number of countries that had ratified it reached sixty and it legally came into force on 1 July 2002.50

It should also be noted that the International Court of Justice has provided pronouncements on various aspects of Genocide. The Cambodian Tribunal was established pursuant to a request in 1997 for assistance to the Secretary General of the UN.51 The Special Court for Sierra Leone was created on the

48 The International Criminal Tribunal for Rwanda (ICTR), or the Tribunal pénal international pour le Rwanda (TPIR), Adopted by the UN Security Council on 8 November 1994. SC Res. 955, UN SCOR, 49th Sess., 3453rd mtg., at 15, UN Doc. S/RES/955 (1994); reprinted in 2 Weston & Carlsson II.E.12
49 Permanent Secretariat of the Assembly of States Parties to the Rome Statute Resolution ICC-ASP/2/Res.3
51 The Extraordinary Chambers in the Courts of Cambodia (Khmer Rouge Tribunal) A/RES/57/228B 2003-05-022
initiative of the President of Sierra Leone in a letter to the Secretary General of the UN requesting UN assistance in the establishment of a Tribunal to try those responsible for crimes during the Sierra Leone conflict. In 14 August 2000, the United Nations Security Council adopted Resolution 1315 which requested the Secretary General to start negotiations for the purposes of creating a Tribunal for Sierra Leone which was later created on 16 January 2002 pursuant to a special agreement between Sierra Leone and the UN.\textsuperscript{52} Thus, there has been juridical activism targeting genocide at the international level. However, the trend in the context of state action to intervene to stop genocide has been more anemic. The degree of intervention in the former Yugoslavia was delayed and generally weak, although intervention did help to secure a peace settlement. In the context of Rwanda states were largely in denial as the mass slaughter of the Tutsi took place.\textsuperscript{53} Indeed President Clinton publicly apologized for not authorizing intervention.\textsuperscript{54} The intervention in Darfur has been largely symbolic.\textsuperscript{55} This suggests that the intelligence predicate which might forecast a genocidal outcome must be greatly strengthened to enhance timely intervention.

To some extent the criminalization of genocide has left decision makers with a comfort sense that this kind of social invention is a satisfactory response to the problem posed by genocide and mass murder. It is only a partial response. By criminalizing the conduct humanity has taken a giant step forward. By making the crime universal it has also indicated progress. However, the criminal standard for proving genocide for the purpose of the ascription of responsibility is very high. In particular the establishment of the specific intent to destroy a group in whole or in part may in some circumstances be a prosecutor’s nightmare. The exacting requirements of the mental element constituting genocide are explained by the International Court of Justice as follows:

“It requires the establishment of the ‘intent to destroy, in whole or in part... [the protected] group, as such’. It is not enough to establish, for the instance in terms of paragraph (1), that deliberate unlawful killings of members of the group have occurred. The additional intent must also be established, and is defined very precisely. It is often referred to as a special or specific intent or dolus specialis... It is not enough that the members of the group are targeted because they belong to that group, that is because the perpetrator has a discriminatory intent. Something more is required. The acts listed in Article II must be done with intent to destroy the group as such in whole or in part.” \textsuperscript{56}

\textsuperscript{52} Statute of the Special Court for Sierra Leone (Special Court for Sierra Leone) Security Council resolution 1315 of 14 August 2000 (2000)
\textsuperscript{53} Cohen, S. States of denial: knowing about atrocities and suffering (2001)
\textsuperscript{54} Bennet, J. Clinton in Africa: the overview; Clinton declares U.S., with the world, failed Rwandans, New York Times (26 March 1998)
\textsuperscript{55} Kenley, D.L. Political will and the prevention of violent ethnic conflict and genocide: A regional intervention model for the international community, George Mason University (2009)
\textsuperscript{56} Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, 26 February 2007, para.187. See also (e.g.) Prosecutor v. Akayesu (Case No. ICTR-96-4-T), Judgment, 2 September 1998, paras. 497 and 516; Prosecutor v. krstic (Case No. IT-98-33-A), Judgment, 19 April 2004, Para. 20.
Although there have been suggestions by the International Law Commission to rephrase and clarify the specific intent requirement this has not been successful. In fact, United States has insisted that a genocidal intent must be specific. It has insisted that the intent to destroy in whole or in part in Article I must mean the specific intent to destroy. Authorities also recognize that the specific intent requirement for genocide is much more demanding than that require for the charge of murder.\(^{57}\)

Additionally since genocide may well flourish within the circumstances of high intensity conflict, the problems of investigation, detection, apprehension, prosecution, sentencing, and appeals are indeed formidable. Moreover, the criminalization of genocide cannot always satisfy the sense of justice in the nature of legal sanctions. The best that law can offer is prevention, rather than after the fact prosecution. When we get to prosecution, the damage has been done. Here, we confront the problem of what justice we can squeeze out of legal sanctions. For example whatever sentence is to a given to a convicted defendant the specific issue for justice is that there is no punishment that is proportional to the crime. Indeed, if defendable justice lies in the fair distribution of retribution the practical problem is that there is no link between the magnitude of the crime and any rational fairness in the distribution of the sanction. In short, criminal prosecution is better than nothing but is far from the important goals of preventing genocide from happening in the first place. This suggests that more inventive strategies of action and policy must be developed and promoted at every level from the local to the global to generate the preventive politics, preventive cultural practices which identified otherness and make it licit to victimize those in the category of “others”. Whether intervention is done in the course of a criminal investigation, or whether intervention implicates in much broader range of sanction-policies represents an important challenge concerning the nature, scope and timing of intervention. A threshold issue must require the clarification of the identity of the intervener or intervening coalition.

1. **Intervention and the Responsibilities of Identity**

Those who intervene must themselves have embraced a pattern of identity that does not disidentify with the victim. In short, to avoid the specter of interveners taking advantage of the victims, their training and outlook must embrace a more inclusive sense of human dignity. Should the intervener fall short on this matter, the effectiveness and/or appropriateness, as well as the legitimacy of intervention, will be called into question. Doubtlessly, allegations made about the UN taking advantage of captured Bosnian Muslim women will be recalled. Canadian troops, it has been claimed, were compromised in Somalia. U.N. peacekeeping mandates, it was suggested, created irreconcilable conflicts between the passivity of peacekeeping and the obligation to prevent genocide or mass murder. Finally, the creation of the tribunal for the former Yugoslavia generated a concern that perhaps race was a defining element in the tardy commitment to the Rwandan tribunal.

2. **The Objectives of Intervention**

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The objectives of the interveners will vary, but will be focused on appropriate sanctioning goals to restore and secure “minimum order,” and in more appropriate contexts, to employ sanctioning policies that gravitate toward a more optimal, transparent rule of law-governed culture that improves upon its human rights performance. The appropriate sanctioning objectives will depend on the nature of the context within which interventions will occur as well as the nature and quality of the interventions required. In short, interventions must consider a wide range of options, each which implicates discrete and sometimes complementary policy consequences. This is not a discourse that is evident in the Report or indeed regarding the comments of critics.

A rational, sanctioning policy for interventions will have seven interrelated phases or sequences. These are listed as follows:

1. PREVENTION. Here the purpose of intervention is to preempt the occasion of either genocide or mass murder by a strategy of “prevention.” This may take a variety of decision-making forms from coercive to persuasive interventions such as economic sanctions, military intervention, good offices, conciliation, negotiation, and a horde of other diplomatic strategies.

2. SUSPENSION. This assures that when acts of genocide and mass murder are happening, an urgent task of intervention will be secured for its suspension. Thus, the interim order of the ICJ in the Bosnia Genocide case is a representative illustration of a call to suspension. Economic coercion or even unitary intervention may transcend peacekeeping as a strategy of suspending genocide.

3. DETERRENCE. This is the primary objective of genocide sanctioning policy. It assumes that the investigation, detection, apprehension, conviction, and punishment of the genocide offender will serve as a deterrent, social surgery in the case of the actual offender, to the other would-be genocide perpetrators.

4. RESTORATION. Since genocide and mass murder assume intense levels of conflict, they also assume violations of basic public order expectations. The rational sanctioning objective of restoration is to stabilize the situation and to restore some level of public order.

5. CORRECTION. The sanctioning policy of correcting the conduct or behaviors that condition genocide and mass murder require a measure of “peace,” a semblance of “contained tension,” and a generation of public and private motives. These motives should be designed to humanize and empathetically identify with the presumed otherness of both victim targets and perpetrator actors, more than to breach the so-called impermeability of some levels of group identity like race, ethnicity, language, religion, political ideological affinity, and more. In effect, correcting is the stratagem of moving a social order from conflict, to contained tension, to active collaboration.

6. REHABILITATION. In order to strengthen the basis for trust and reconciliation between victim and those identified with the victimizer, the victim’s individual, as well as collective, sense of justice must be secured. Thus, legislation like the Torture Victims Protection Act helps in rehabilitating the victim. The Alien Tort Claims Act, which has been interpreted to provide a claim upon which relief can be granted in the form of compensatory justice in a domestic court, is a further instance of how the sense of justice and compensation may be tied to the idea of rehabilitation. In the case of genocide or mass murder, after-the-fact accounting and justice may not help those who have been
killed. However, those who survive should have a right to rehabilitation and either public or private compensation.

(7) RECONSTRUCTION. Professor Reisman suggests the process of reconstruction “involves identifying social situations that generate or provide fertile ground for violations of public order, and introducing resources and institutions that can obviate such situations.” If we accept the Rummel thesis that totalitarian/authoritarian societies are most frequently identified with policies and practices of genocide and mass murder, then reconstruction in favor of a democratic rule of law-governed system of public order with regular elections, public transparency, and vigorous and secure civil societies, may hold a key to reconstructive efforts to suppress or prevent genocide.

These sanctioning goals to guide intervention also assume that we need a broader concept of the desired goals that should influence national interests and how those goals intern are compatible with fundamental global values. The Albright-Cohen Report provides us with some important indicators of a clarified national interest with the corresponding challenge of seeking to merge US national interests with global imperatives. For example they identified the circumstances in which genocide fuels instability, may itself be complicit in attacking democracy and strengthening corruption leading to other important international wrongs being inflicted on global society. This is an important insight and probably needs greater systematic expansion in order to be an intelligence predicate that moves the idea of national interest as well as global values. The Report also draws attention to the long term consequences of genocide which involve the vast displacement of human beings and the enormous cost of peace keeping forces. Here again there is a key to broader and systematic studies about the transnational consequences and costs of genocide. The Report also recognizes that the US is the leading global power and as a global power it has some global responsibilities. To ignore genocide or human atrocity may well encourage tin-pot dictators and genocidal psychopaths in ways that could seriously compromise the US’ national interests in security. Moreover, for a great power to stand impotent in the face of enormous tragedy erodes the moral fiber of that power, and erodes confidence in the force of its leadership worldwide.

The most important point that Albright and Cohen made is that genocide and atrocity are more than mere humanitarianism. They represent a US national interest imperative as well as a global imperative. This it seems to us is not simply a mere engineering problem as Rieff suggests but an important challenge to thinking more carefully about both imperatives and the intellectual strategies needed to secure those imperatives. The Report does not solve this problem but it plots a pathway in the direction of the solution. And it is our suggestion that thinking through the sanctions and policies that may guide or influence intervention should be of value in policy circles.

3. The Perspectives of Expectation Relating to Interventions to Prevent and Deter Group Deprivation

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The general expectations to sustain intervention involve international law in its greatest significance. These expectations find institutional expression in the International Bill of Rights, as well as the covenants that relate to group identity, such as the legal instruments on genocide, race, minorities, indigenous rights, religious, gender and other forms of deprivation. They also find expression in the efforts to broaden the bases of humanitarian law, as well as outlaw aggression and secure a right to peace and mechanisms for the peaceful resolution of disputes. In practical terms, these also include institutional modalities and practices, which may be seen as institutional bases of power to vindicate the public order of the international community. One of the problems concerning the prospect of intervention is the sequence of timing in terms of the conditions on the ground. This issue confronts strongly held constraints on intervention. To summarize there are conflicting perspectives about the “thick” form of sovereignty and the “thin” form of sovereignty. The challenge for the intervener is to find an objective technical legal basis that events inside a State are of sufficient global salience as to constitute the grounds for international concern. Early warning signs may not be of sufficient gravity to justify early interventions. When the problems inside a State gravitate to a level of high intensity violence, the grounds for intervention may be apparent, but the strategic and tactical forms of intervention may be far more problematic. Here the intervener must consider a multitude of potential basis of power to determine whether, when and how to intervene.

4. Bases of Power

The central base of power of all human rights lies in the actual perspectives of all individual members of the international community. Authority for an anti-genocide/mass murder process lies in the people themselves, the ultimate consumers of human rights. More specifically, there are many important agencies and parties that secure the public order and directly or indirectly prevent mass murder and genocide outcomes such as:

(1) Human rights law, the law of state responsibility, and the developing law of liability without fault; (2) international criminal tribunals; (3) universalization of the jurisdiction of national courts for certain delicts, called International crimes; (4) non-recognition or the general refusal to recognize and to allow violators the beneficial consequences of actions deemed unlawful; (5) incentives in the form of foreign aid or other rewards; (6) commissions of inquiry or truth commissions; (7) compensation commissions; and (8) amnesties.59

To these practices, the institutionalization of peacekeeping operations through the U.N. may be added, as well as other institutions of international decision-making. These practices of securing world public order depend on a resource base to fund them. They also depend on the seriousness with which states seek to prevent intervention in their internal affairs60 and the strength of international concern. If democracy reduces the risk and occasion of genocide, does this not suggest that respect for the

59 Id. at 177.
60 See U.N. Article 2.7.
authority base of the people is a vital genocide-preventing stratagem? The role and resources of NGOs in the context of the former Yugoslavia were other important bases of intervention to prevent genocide.

C. The Intellectual Tools that may be provided by the Study of Scientific Conditions

It is important that we understand the conditions that predispose a human community to generate outcomes of genocide and mass murder. Some of this factors repose in complex factors of socio-psychological experience other factors require a deeper appreciation of the foundations of social conflict, and the importance of conflict resolving strategies. What is important in conflict is that the promoters of conflict often have to imagine or invent a perennial enemy or threat and the capacity to vastly exploit insecurity which includes the demonizing of the “other”, the ostensible threat.61 Science may help us to understand the phases of social conflict, which in its early phases may appear to be benign. The central point in understanding emerging conflict in its early phases is that the tools of conflict resolving intervention may be more effective at that phase of the conflict. When the conflict evolves into the dynamic of high intensity interaction, intervention is more difficult, more risky, or expensive and the likelihood of genocidal outcome is probable.62 For example when the Nazi started their campaign of victimizing the Jews of Germany would the regime then have been hesitant in proceeding, if the major powers of the world had uniformly condemned the Nazi’s initiatives and as well roundly condemned Nazi anti-Semitism?

Genocide frequently is preceded by what is called “ethnic conflict”. Ethnic conflict when it gravitates to levels of high intensity can have a high human cost. Moreover, ethnic conflict is usually a prelude to the possibility of genocide. One of the central challenges confronting modern social science is to better explain the conditions of ethnic conflict in order to get an understanding of what precisely is happening. However, ethnic conflict carries enormous freight. It is conventionally thought to be inexplicable. The conventional wisdom suggests that ethnically segmented society for unknown reasons breakout into patterns of inexplicable conflict and ferocity.63 Since the conflict is inexplicable it is not possible to justify interventions into incomprehensible conflicts. This generally leads to a certain paralysis from the international community and results in the bloodletting tragedy of mass murder and genocide. This means that early intervention will never be an easy policy matter. Apart from the policy limitations we are in effect dealing with an epistemological problem. We need a theory and method that unpacks the mystery of ethnic conflict in order to not only assign responsibility but also to shape rational and timely strategies of intervention. Here international law may provide some important sources of epistemological guidance.

The Nuremberg Trials were confronted with essentially a form of ethnic conflict writ large. How where the prosecutors to assigned responsibility for war crimes and crimes against humanity? The

61 Wistrich, R.S. Demonizing the other: antisemitism, racism & xenophobia, Vidal Sassoon International Center for the Study of Antisemitism (Universiṭah ha-‘Irīt bi-Yerushalayim) (2003)
63 Lobell, S.E. & Mauceri, P. Ethnic conflict and international politics: explaining diffusion and escalation
conventional wisdom had been that responsibility with a non-transparent entity called the sovereign state.\textsuperscript{64} The significant contribution of Nuremberg was to penetrate the veil of obscurity and identifying the human agents in decision making goals were responsible for the decisions to make war and violate elemental humanitarian standards.\textsuperscript{65} The model of Nuremburg therefore gives us a clue to the proper intelligence function in determining the question of intervention. Central to that function is the identification of both formal and effective decision makers, and to make them responsible for their conduct. What is critical here are, the identification of the actors and the chain of responsibility for the consequences of their choices. Such procedures that is to say, looking for the rights things, may provide us with the intelligence predicate at an early stage of the conflict where intervention may be better achieved through diplomacy, economic coercion, propaganda, without necessarily having recourse to the military option. What must be kept in mind here of course is that “thick” sovereignty does provide a shield against early intervention. However, if it can be shown that there are sufficient elements that touch in the abuse of sovereignty or the erosion of legitimacy, then justifications that are objective may be found for the appropriate strategic form of intervention be it persuasive or coercive.

From what we had suggested about the question of when intervention should happen requires a better set of tools to guide the relevant enquiry concerning whether to intervene and what form of intervention should take place. Social Science has provided us with a useful typology for identifying the 5 stages of conflict, including relevant signals and markers that provide the appropriate foundation in terms of facts on the ground that will tailor intervention in the most effective and cost saving way. Essentially, the five stages of conflict and their signals are as follows:\textsuperscript{66}

(1) The Peaceful Situation. This situation implies a stable pattern of social organization and a regime whose authority is rooted in its own people. The general characteristic of such a regime is a high degree of political security, and the protection of out-groups is secured by the legal system. The specific signals that typify such a regime are usually the existence of a working democracy, peaceful regime transitions, an independent judiciary and a strong legal profession. Freedom of the press is secure. Political dissidence and irredentists have no mass following. Changes in either the political situation or the economic situation do not signal any aspect of abrupt deterioration.

(2) Increased Political Tension. In the situation of increased political tension, intensified levels of “systemic frustration” begin to appear, generating accented social cleavages, often of a sectarian character. The specific signals of this kind of situation include both new and old political parties exploiting issues of political polarization or sectarianism. Elections are usually

\textsuperscript{64} Chiedu Moghalu, K. Global justice: the politics of war crimes trials (2006)
\textsuperscript{66} This is drawn from Article 33 of the U.N. Charter. These are processes indicated in Chapter VI and indicative of a Security Council role in calling on parties to avail themselves of such means of dispute resolution. United Nations, art. 34 (2).
heavily challenged. The courts are considered politically compromised. Press freedoms are under pressure. Protests in non-violent ways and even violence “against property and national symbols” become apparent. Political protests, often by students, labor interests groups, and sectarian groups become more frequent. Increased levels of unemployment and economic stagnation are further signals of increased political tension.

(3) The Serious Dispute Stage. The general characteristic involves a weakening of political authority of the national government and a greater acceptance “of sectarian politics.” The specific signals include the increased tendency of inflammatory communication by elites and counter-elites. Elections are often characterized by fraud and violence. The courts and the legal profession become politicized by the State. Press freedoms are challenged by radicals and by governmental pressure. Sporadic incidents of violence often target individual politicians, ideologues, or members of disfavored ethnic groups. Terrorism and vigilantism appear on the political scene. Usually, the economy is under pressure from unemployment and inflation.

(4) Lower Intensity Conflict. The general characteristics of a lower intensity situation are that hostilities are now overt. There is armed conflict between variously situated groups. Patterns of insurgency, reaction, and repression become evident. The specific signals of this outcome reflect a concentration of power among contending forces. Rule by civil authority is threatened by the ascendance of the military and politics. The rule of law is undermined, as is the freedom of the press, often through the use of emergency powers. Full states of emergency herald the ascendance of security forces and often the systematic abuse of human rights. In economic terms, a situation of lower intensity conflict is an unattractive investment for the prudent investor. Capital leaves, and disinvestment often happens.

(5) The High Intensity Conflict. The general characteristic of high intensity conflict is open war between the contenders for power. The specific signals are the breakdown of government and the demise of civil society. Multiple contenders lay claim to sovereignty. The rule of law is a critical casualty. The press and the media become instruments of propaganda. The high intensity conflict situation also witnesses the ascendance of military rule or the permanent state of emergency. In effect, the political culture becomes a garrison State. The political economy of a garrison State is dominated by being unproductive, and the black market flourishes.

The model of the five stages of conflict requires a great deal of specificity in understanding the timing and the form of intervention. Here there are technical difficulties with early interventions because if the foundations of international law and the principles of non intervention. However, this model does provide us with a framework within which we can improve the importance of the intelligence function of decision making specialized to genocide and atrocity. Intelligence here that is timely may be intelligence that is worth its weight in gold. This may suggest a broader role for conventional intelligence services as well as the development of a genocide-mass atrocities intelligence unit under Security Council control.

D. The Intellectual Tools of Forecasting
It would seem to be clear that the development of intellectual tools to improve on the forecasting of the possibility of genocide or domicide\(^67\) would seem to follow from the value of trend and scientific analysis concerning the prospect of genocide or domicide. It is an important matter therefore for both scholars and public policy makers to come to grips with the problem of mass murder and genocide in the future. Here we should deploy skills that provide us with a possible picture of a realizable future. This could be done by appreciating the trends and conditions about peace, conflict and human rights in the world community and providing a prediction from this realistic background of what we might anticipate as a least desirable future. We may step back and with the same data project a future that may represent the most realistic optimistic sense of a desirable future. Obviously the least desirable future may be increased conflict exaggerated otherness, clash of civilizations, religious and ideological parochialism, and more and unique manifestations of racism. The more desirable future will see an increase in global solidarity, increase recognition of our interdependence and inter-determination, greater value given to universal human respect, a deeper regard for the critical human subjectivities encased in the emotions of positive sentiment and global affect.

E. The Strategy of Creating a Desirable Global Future where Genocide, Holocaust like practices and Mass Murder are eliminated.

Here we must focus on bringing the great humanitarian values in human rights and humanitarian law from the global to the local and even micro-social institutions of human association. It is through human rights and humanitarianism that we create the ideals of global solidarity. To create and sustain global solidarity we need more human rights, we need more strengthen identifications with the values of affect and respect and a universal embracing of the goal and indeed the ideals of human dignity. We therefore recommend that the shaping and the sharing of positive sentiment, affection, be a self conscious policy of governance and civil society at every level from the global to the local. In short, humanity will in general be better off if it maximizes the shaping and sharing of affection as a crucial element in the enhancement of the universality of respect and human solidarity. There is truth in the wisdom of a contemporary Hindu mystic who reminded us about the love aspect of affection: “in unselfish love, there is no such thing as oriental love and the occidental love. In its pure form love is a universal factor governing and guiding life. But for its existence life is not worth having”.\(^68\) However, the prospect those lingering practices which thrive or cultivate the values of human indignity will doubtless remain with us. Here we must be ever watchful at every level of society that the pathological seeds of negative sentiment and hate are never allowed to germinate.

Conclusion

In this article we have considered the Report of Albright and Cohen an extremely important and constructive contribution to better understanding of the importance of preventing genocide from the perspective of US national interests and the fundamental interests of the global community. We have

\(^67\) Rummel, R.J. *Death by government*, Page 36 “the murder of any person or people by a government, including genocide, politicide, and mass murder” (1997)

\(^68\) Chidbhavananda, S. Comments on *The Bhagavad Gita*, Page 75 (2000)
noted some of the criticisms which we do not believe, undermine the essential thrust of the Report. We have expressed some disquiet at the tone of Rieff's appraisal. However, even without the harshness of his words, he has also generated important insights for the improvement of our understanding of genocide and the prospects of appropriate intervention.