

ABSTRACT

Duties in the Wake of Atrocity: A Normative Analysis of Post-Atrocity Peacebuilding

Chrisantha Hermanson
Lincoln College
DPhil Politics
Trinity 2012

Over the last two decades, the international community has taken on the task of rebuilding societies in the aftermath of mass-atrocities. Through a combination of trial and error and vigorous academic research, a relatively clear (and semi-malleable) blueprint of post-atrocity peacebuilding has developed. This includes setting up a temporary international transitional authority, establishing democracy, facilitating economic development, and holding war crime trials. Though there are volumes of studies which address the pragmatic strengths and weaknesses of these key elements of peacebuilding, to date political theorists have not critically analyzed the moral legitimacy of these policies. My thesis aims to fill this gap.

The overarching question of this thesis is this: What moral duties does the international community have to post-atrocity societies? To answer this question, I critically examine the normative issues involved in the four key aspects of peacebuilding (identified above). Using the framework of just war theory and a cosmopolitan theory of fundamental human rights, I argue that, in most post-atrocity cases, the international community has duties to remove atrocity-committing regimes from power, occupy the target-state and act as a transitional authority, help facilitate the creation of democracy and economic development, and hold war crimes trials. These duties, of course, are extremely complicated and limited and these qualifications are examined and developed throughout.

Running through the construction of my theory of post-atrocity duties is a clear message: we – the international community – have obligations to the victims and survivors of atrocities. In other words, providing assistance in the wake of mass-atrocities is not a supererogatory act of charity, rather, it is a duty which we owe to the victims of these horrible crimes.

Duties in the Wake of Atrocity: A Normative Analysis of Post-Atrocity Peacebuilding

Chrisantha Hermanson
Lincoln College
DPhil Politics

Trinity 2012
98,415 words

Acknowledgements

While writing this thesis I have had a tremendous amount of support and assistance from many people, to whom I am exceedingly grateful. I would like to thank the members of the University of Edinburgh's Political Theory Department - Lynn Dobson, Tim Hayward, and Elizabeth Cripps – for their comments and suggestions on a draft of Chapter 4. I would also like to thank the members of the Oxford Political Theory Graduate Workshop for their comments and engaging discussion on a draft of Chapter 5. In my second year of study, I had the incredible honour of working with David Miller during the construction of Chapters 3 and 5, and am extremely thankful for his suggestions and insight. I am also particularly indebted to several members of the Oxford 'War Group' – Henry Shue, Cecile Fabre, Janina Dill, and Seth Lazar – for their encouragement and critical feedback on several chapters of this thesis and for their overall support; it has been an unspeakable pleasure to work with such academically outstanding and all-around wonderful people.

Over the course of the last four years (during both my MSc and DPhil), I have had the amazing opportunity to work with my supervisor Cecile Fabre. This has been an unspeakably enriching and invaluable experience for me. I really cannot properly express how thankful I am to Cecile for her unwavering support and challenging and thought-provoking feedback. She is and will remain an important role-model for me.

Finally, I am exceedingly grateful to my family for their constant support over this long process. I am especially thankful to my amazing husband Hans, whose love and encouragement has kept me motivated and balanced throughout this process.

Contents:

Introduction	1
Chapter 1: Six Requirements of Just War Theory	15
Chapter 2: Fundamental Human Rights	54
Chapter 3: National Self-Determination	84
Chapter 4: Stay or Go?	115
Chapter 5: Democratization	163
Chapter 6: Conditional Aid	197
Chapter 7: Peace, Justice, and Moral Accountability	228
Conclusion	260
Appendix-1	265
Bibliography	269

Introduction

Though intrastate war has been the predominant form of warfare since at least the 1940s, the prevalence of intrastate war began to increase dramatically in the early 1970s and reached a disturbing peak in the 1990s (UCDP 2010). A developing body of literature calls a particular subset of these intrastate wars “new wars,” but they are hardly wars at all (Kaldor 2006; Munkler 2005). Rather, they are incidents of mass-atrocity; incidents in which belligerents actively avoid direct combat with each other and, instead, slaughter, mutilate, torture, rape, and otherwise terrorize the civilian population. In an effort to stop these appalling events, the international community has carried out several humanitarian interventions. The 1990s alone saw over twenty-five humanitarian interventions (of varied forms). Interestingly, most of these were carried out during the post-atrocity period, with the aim of preventing the resurgence of atrocities (Paris 2004).¹

With these post-atrocity interventions, the international community has taken on the task (in cooperation with the survivors of atrocities) of securing and rebuilding societies recovering from mass-atrocities. Through a combination of practical trial and error and rigorous academic research, a relatively clear (though semi-malleable) blueprint for post-atrocity reconstruction has developed. In most cases this includes setting up some form of international transitional authority, laying the groundwork for the establishment of democracy and a liberal market economy within the target-state, and holding war crime trials (ICISS 2001; Caplan 2005; Chesterman 2004; Evans, G. 2008; Newman, Paris, & Richmond 2009; Paris 2004; Paris & Sisk 2009; Richmond 2011). Though there are volumes of studies which address the practical strengths and weaknesses of these key elements of peacebuilding, to date, political theorists have not offered an extensive critical analysis of the morality of these

¹ Throughout this thesis citations/sources are used to indicate either that an author holds view X *or* that he/she discusses view X fairly and in detail (even if he/she does not hold the view him/herself).

policies.² This thesis aims to fill this gap by answering the following: What moral duties does the international community have to post-atrocity societies? While venturing to answer this broad question, this thesis also provides a normative analysis of current peacebuilding practices and policies.

Addressing the issue of post-atrocity justice is important for a number of reasons. Firstly, just as normative arguments in the just war tradition have served to influence international norms regarding war, developing a normative framework for humanitarian intervention will prove valuable to the development of international norms and practices regarding humanitarian intervention. Since many of these interventions occur after atrocities have ended, it is especially important to establish a set of moral guidelines for post-atrocity humanitarian interventions. This gives interveners guidance on what they may and may not do, and offers those on whose behalf the intervention is taking place a degree of protection from being treated unjustly. My hope is that this thesis will serve as a step towards this end.

Secondly, establishing guidelines for what constitutes a just post-atrocity intervention allows us to more critically assess the ‘success’ or ‘failure’ of such interventions. Library shelves are full of books which set out to determine which humanitarian interventions have succeeded and which have failed (Regan 1996; Seybolt 2008; Smith & Dee 2003). While the list of factors used to label humanitarian interventions in this way varies widely, there is a notable absence of normative criteria. It is difficult, however, to define a humanitarian intervention as a success or failure, without a concept of what constitutes a just or unjust intervention. Surely an intervention must be just in order to be deemed successful. By

² This is not to say that just war theorists have completely ignored post-atrocity peacebuilding. In recent years, theorists have made some important and insightful headway on this issue. However, these contributions have been preliminary and limited - often confined to a journal article or a few pages or paragraphs in larger works on humanitarian intervention more broadly (Bass 2004; Evans, M. 2008; Gheciu & Welsh 2009; Lucas 2006; Recchia 2009; Teson 2008; Walzer 2004). I return to these contributions later.

setting out interveners' duties to post-atrocity societies, my research helps to create a more robust and considered account of what it means for an intervention to succeed.

Lastly, by framing this discussion within the context of duties, this thesis aims to reinforce and defend the growing consensus that the international community has an *obligation* to help the potential victims and survivors of atrocity. More plainly, responding to and preventing atrocities is not a supererogatory act that international actors may choose to do out of the kindness of their collective or unilateral hearts or choose not to do because it does not suit them. While there are certainly limits to the duties associated with helping victims and survivors of atrocity, arguments throughout this thesis aim to show that helping is, in fact, a duty.

Approach & Methods

I approach this research as a political theorist and, more specifically, as a just war theorist. My analysis and argument, therefore, is almost entirely normative in focus. Given this, all references to rights, duties, principles, guidelines, and to what actors ought/ought not do, unless otherwise indicated, should be understood to refer to *moral* rights, duties, principles, guidelines, and ought(s). That said, it must also be noted that within this thesis I often rely on empirical studies and statistics to build, support, and test many of the normative arguments I make. Since I use empirical cases as more than just illustrative, it is necessary to spend a moment to explain (and justify) the method I use to incorporate this empirical data.

As Daniel McDermott explains, a common method of political theory is to “start with what we think we know and use that as a basis to investigate what we don’t know” (2008:12). There are many steps to this process. First, the theorist must identify a principle which, either intuitively or because it is commonly held, seems to be correct – this is ‘what we know.’ The theorist must then critically scrutinize this principle, test it against various ‘what ifs,’ identify possible exceptions and challenges, and present a strong and consistent argument in defence

of this principle. The next step is to take this principle – ‘what we know,’ or at least, what we can now accept based upon the theorist’s rigorous argument – and apply it to what we do not know. This entails, among other things, asking what the implications of the accepted principle are on the unknown. Let me illustrate. In Chapter 2, I discuss and defend the duty to aid which holds (to simplify) that if an individual is in grave danger and you have the ability to save him without unacceptable risk to yourself, then you have a duty to save him. This principle, once analysed and defended, becomes what we ‘know’ or accept. In later chapters, I then apply this principle to complex questions concerning post-atrocity peacebuilding to see what, if any, implications it has and what answers it may provide.

This is the basic process of inquiry used throughout this thesis. Along with moral principles (such as the duty to aid), I also incorporate empirical data into each step of the process. I use empirical data to establish ‘what we know.’ Also, once I apply ‘known’ moral principles and/or empirical data to ‘what we don’t know’ and identify the likely implications and conclusions, I then use additional moral principles and/or empirical data to challenge, support, and improve my normative arguments. For example, in Chapter 5 I argue that empirical data shows that due to the volatile political conditions in most post-atrocity societies, the lives of the population within these societies remain under serious threat. Further, I argue that empirical data shows that interveners can significantly reduce these threats. This empirical data identifies ‘what we know.’ I then argue that, based on this empirical data and the duty to aid (another ‘known’), international actors have a duty to provide aid to post-atrocity societies by, among other things, supervising elections. I then use additional empirical data on the dangers of holding elections in post-atrocity societies to further develop and test this normative argument. This is an important step, for if it was shown, by way of empirical evidence, that holding elections caused more harm than good or

that certain ways of holding elections caused more harm than good, my argument would either need to be revised or thrown out.

One possible downside of incorporating empirical data into normative arguments in this way is that if the empirical data one uses as a part of the basis of one's normative argument changes or is proven false, then one must revise one's arguments. The upside of this method is that because it addresses real-world problems using real-world data, it has the potential to offer feasible solutions and make a positive difference in the real-world. In this way, my hope is that by developing a moral framework for post-atrocity intervention which incorporates and is supported by empirical data, this framework will not only increase the chances that post-atrocity interventions will be carried out justly, but also increase the chances that they will be carried out more effectively. In turn, if all this can be achieved, this increases the chances that survivors of atrocity will get the help they desperately need. I believe the benefits of using this method far outweigh the drawbacks. Furthermore, the cost of incorporating empirical data is mitigated by my use of a more consistent/less fact-dependent foundation of moral principles (such as the duty to aid) which are less liable to change with changes in empirical data or circumstances.

Outline of Chapters

As indicated, one aim of this thesis is to provide a normative analysis of the main concerns/topics within the post-atrocity policy-oriented literature, to wit: forcible regime change, international transitional authorities, democratization, economic aid, and war crime trials. Chapters 4 through 7 are dedicated to these topics specifically. A normative account of post-atrocity duties must also answer broader questions such as: What are the grounds of these duties? What is/are the main goal/s of post-atrocity duties? What are the appropriate means for achieving these goals? Under what conditions do these duties hold? Who are the appropriate duty-bearers? Answers to these broader questions are developed throughout the

thesis and, in particular, are the focus of Chapters 1 through 4 (Chapter 4 is a bit of an overlap chapter – addressing both broad foundational normative questions and specific post-atrocity issues). More specifically this thesis is organized as follows.

Chapter 1 asks what we can deduce from just war theory about post-atrocity duties. The main argument of this chapter is that just war theory as a whole – *jus ad bellum*, *jus in bello*, *jus ex bello*, and *jus post bellum* – embodies six core principles which provide guidance on the just use of military force, generally, and which are applicable to post-atrocity humanitarian interventions, specifically. In the course of developing this main argument, I examine and defend the just war requirements and discuss the applicability and relevance of traditional just war requirements to the non-traditional exercise of humanitarian intervention. The guidelines developed in this chapter are used to critique and develop arguments for post-atrocity duties advanced in later chapters.

Chapter 2 examines what post-atrocity duties might be gleaned from current literature on human rights and, more specifically, the right to live a minimally decent life. I begin with an in-depth examination of the underlying principles, justification, meaning, and scope of this right and its component parts: the right to physical-integrity, the right to autonomy, and the right to community. I then discuss and defend three duties associated with these rights: the duty to avoid, the duty to institutionalise, and the duty to aid. Once defended, I examine how these rights and duties can be applied to the post-atrocity situation to generate post-atrocity duties. The resulting list of (rather general) post-atrocity duties is then used in later chapters to identify more specific/detailed post-atrocity duties. I use a human rights approach because, as I will claim in Chapter 1, I believe that the use of force is only justifiable if it is used in defence of fundamental human rights. Thus, the fundamental human rights discussed in this (and the following) chapter serve as an anchor for all of the arguments made about post-atrocity intervention in later chapters.

In Chapter 3 I define and defend the right to national self-determination and explore some of its immediate implications for post-atrocity duties. This is a particularly important endeavour because post-atrocity humanitarian intervention (and humanitarian intervention generally) and national self-determination are often portrayed as inimical to one another; one must either be a supporter of humanitarian intervention or a defender of national self-determination. The arguments in this chapter are used throughout the thesis to show that while the right to national self-determination certainly places limits on the actions of interveners, national self-determination and humanitarian intervention are not antithetical to one another. In fact, as I argue in later chapters, in some cases the protection of national self-determination necessitates humanitarian intervention. Finally, this chapter argues that national borders do not equate to borders of right-holders and duty-bearers; individuals and states have duties to protect the fundamental human rights of people outside their borders.

Having laid the foundation for our discussion of post-atrocity intervention in the previous three chapters, we dive into our discussion of specific post-atrocity issues in Chapter 4. Chapter 4 is the largest and addresses the controversial and interrelated issues of intervention, forcible regime change, and international transitional authorities (ITAs). This chapter asks whether it is morally legitimate for international actors to carry out these tasks. I argue that, in most cases, the international community has a moral duty to intervene, forcibly remove atrocity-committing regimes from power, and temporarily assume control of the target-state. I then examine two complications which arise with this argument when we consider questions of agency: *Who* has what duties and is it morally permissible to place certain duties on these particular actors as opposed to some other actors? First, I argue that for each post-atrocity duty, the most effective actor is the primary duty-bearer. Second, I discuss the moral legitimacy of holding states under duties to do things which place the lives of their soldiers at risk. I argue that it is morally legitimate to send volunteer soldiers (as

opposed to conscripts) to carry out post-atrocity duties and, in light of this, I conclude that only those states with volunteer military forces are obligated to carry out peacebuilding activities which require the use of military force. However, I further argue that because not all post-atrocity duties require the use of force, those states without voluntary militaries nevertheless have duties to post-atrocity societies.

Chapter 5 deals with the matter of democratization and asks whether it is morally legitimate for interveners to try to establish democracy in post-atrocity societies. The chapter begins with a review and defence of the normative claims that democracy is the least unjust form of government and argues that these claims offer a *prima facie* case in support of current peacebuilding attempts to establish democracy in post-atrocity states. I then examine empirical research on the political conditions of most post-atrocity societies and argue that, given these volatile conditions, interveners have a duty to *try* to establish democracy in the target-state.

In Chapter 6 I explore the morality of conditional economic aid. The chapter begins by asking when, if ever, it is morally permissible for a rescuer to attach conditions onto the provision of desperately needed aid. From this discussion, I identify six types of morally unjust conditional aid, one type of morally unjust unconditional aid, and one type of morally just and obligatory conditional aid. I then use this typology to evaluate current practices of conditional aid to post-atrocity societies.

The final chapter, Chapter 7, critically engages the ‘peace versus justice’ debate which (simply put) asks whether justice – criminally prosecuting those responsible for atrocities – can be sacrificed for the sake of peace – getting opposing parties to agree on some form of stability. I argue that when the target-state faces a choice between criminal prosecutions and continued/renewed atrocities *or* granting perpetrators amnesties, the case for criminal prosecution almost always fails. However, I also argue that there is often a third option in the

peace versus justice dilemma: international intervention to prevent the resumption of atrocities and provide a secure environment for criminal trials. I argue that where this option is possible (subject to some qualifications) the international community has a duty to intervene and assist the target-state in bringing those responsible for atrocities to trial.

Definitions & Clarification

Before we dive into our discussion of post-atrocity duties, it is necessary to define a number of terms which are used throughout this thesis and provide few points of clarification.

Defining *mass-atrocities* is a two part process; one must first establish what constitutes an atrocity and then determine the threshold beyond which such atrocities can be said to be occurring on a massive scale. *Atrocities* herein include the following. (1) Genocide by: killing, causing serious physical or psychological harm, deliberately imposing/inflicting destructive conditions of life, deliberately preventing births, deliberately impregnating, and forcible transferring of children. (2) Crimes against humanity and/or war crimes which include: murder/extermination of civilians, enslavement/forced labour, forcible transfer of populations, false imprisonment, extrajudicial execution, torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, forced disappearance, forced medical/biological/scientific experimentation, mutilation/amputation, forced starvation, the conscription of children into armed conflict, kidnapping/abduction, drugging, and forced cannibalism.³

Determining when the level of atrocities reaches the status of mass-atrocities is somewhat difficult, but within this thesis mass-atrocities occur when at least 1,000 civilians are killed, on average, annually. I have chosen 1,000 deaths as the marker of mass-atrocity for three reasons. First it is consistent with most of the existing mass-atrocity databases

³ My definition of atrocities is taken from articles 6-8 of the Rome Statute of the ICC, the ICC's *Elements of Crimes*, the *Report of the Chilean National Commission on Truth and Reconciliation*, and the *Statistical Appendix to the Report of the Truth and Reconciliation Commission of Sierra Leone* (ICC 2011a & 2011b; USIP 2002:51-56; Conibere et. al. 2004:5-6).

(Bellamy 2011; Harff 2003; Harff & Gurr 1988; Rummel 1995, 1998, 2008).⁴ Second, it is also consistent with the conventional definition of war which holds that violence reaches the status of conflict/war when there are at least 1,000 battle deaths annually (Collier & Hoeffler 2002; Doyle & Sambanis 2000; Harbom & Wallensteen 2009; Sarkees 2010a/b).⁵ Since many of the arguments in this thesis incorporate empirical data from intrastate and post-conflict research, staying consistent with these studies is helpful (I return to the differences between post-conflict and post-atrocity shortly). Lastly, and most importantly, I have chosen 1,000 deaths annually because I find that going higher or lower than this number has undesirable consequences. Setting the threshold of mass-atrocity lower than 1,000 runs the risk of diminishing the sense of horror and urgency associated with the term. On the other hand, setting the bar too high runs the risk of failing to identify cases where the perpetration of non-lethal atrocities is widespread and systematic. This is so because the determination of mass-atrocities, to date, is generally calculated using death-tolls alone. Accordingly, though ‘only’ 1,000 people are *known* to be dead, unknown thousands have likely been mutilated, tortured, raped, etc. (additionally there are likely to be thousands of unknown deaths not factored into the death-toll). For these reasons, I define *mass-atrocity* as those instances of atrocities in which at least 1,000 people are killed annually.⁶ Relatedly, mass-atrocities are understood to have stopped and *the post-atrocity period* is understood to begin when the occurrence of atrocities falls below the 1,000 threshold.

Target-state is herein defined as the state in which mass-atrocities are or have taken place and *target-population* is understood as the population living in the target-state.

⁴ These sources do not explicitly list 1,000 as their threshold, but the cases included in their databases adhere to this threshold.

⁵ Much of the literature on intrastate conflict which holds the 1,000 death threshold includes cases of mass-atrocity and, therefore, is also applicable to my first point.

⁶ This would need to be revised in cases of atrocity where victims were not killed but ‘only’ mutilated, raped, enslaved, etc.. In these cases, I would say that these acts reached the level of mass-atrocity when they reached the 1,000 threshold for the same reasons given above. The trouble here is that it is often very difficult to calculate non-lethal atrocities. I do not know of any case of mass-atrocity since 1970 which has not included at least 1,000 deaths, so for the time-being we can avoid these non-death cases.

Humanitarian intervention is herein defined as the use/deployment of military force for the primary purpose of stopping mass-atrocities in a state/area where interveners do not normally have jurisdiction. Likewise, *post-atrocity humanitarian intervention* is defined as the use/deployment of military force in the aftermath of mass-atrocities for the primary purpose of preventing the recurrence of atrocities in a state/area where interveners do not normally have jurisdiction. All references to intervention throughout this thesis will be understood to refer to post-atrocity humanitarian intervention unless otherwise indicated.

The term *interveners* is herein understood as both those actors carrying out post-atrocity military actions *and* those actors carrying out non-military activities in the target-state. So, for example, in the target-state one set of interveners may be providing military force to prevent a recurrence of atrocities and, otherwise, provide security to the target-population. Another set of interveners may be a team of civilian economic or political advisors in the target-state. What is constant, however, is that interveners are in the target-state while there is a foreign military presence. In contrast, I will refer to those actors who do not enter the target-state, but carry out duties from afar – through, for example, the deliverance of supplies or money – simply as *international actors*.

Lastly, *peacebuilding* is herein defined as those activities in the post-atrocity period associated with the social, political, and/or economic reconstruction of the target-state undertaken with the ultimate goal of preventing the recurrence of mass-atrocities and establishing sustainable security within the target-state.⁷ Thus, all the post-atrocity issues dealt with in the later chapters of this thesis – post-atrocity intervention, regime change, ITAs, democratization, economic aid, and war crime trials – fall under the category of peacebuilding.

⁷ The seminal definition of peacebuilding is given by Boutros Boutros Ghali in *An Agenda For Peace* (UN 1992:articles 55-59 & UN 1995:articles 47-56).

Now that we have defined key terms, I also need to make three points of clarification. First, this thesis is concerned with the morality of peacebuilding only as it relates to mass-atrocity cases. My research, then, is not in any way meant to apply to the post-conflict phase of interstate wars, intrastate wars in which mass-atrocities are not committed, or interventions carried out for purposes other than stopping mass-atrocities. Though a larger project would certainly need to address peacebuilding in these broader contexts, I restrict my research to post-atrocity cases to allow for as critical and in-depth an examination as possible in this area.

Second, though I refer to the duties of the international community – which I understand to be made up of all individuals, states, regional organizations, and international organizations – I concentrate largely on the duty of states. My reasoning here is that currently, and for the foreseeable future, states are the agents who possess the military capabilities necessary to carry out interventions. Whether states provide military resources to supra-state entities like the UN, regional organizations like NATO, whether they intervene unilaterally or multilaterally, or whether they hire/support non/sub-state actors such as rebel groups or private military corporations, states are currently the principle agents of intervention.

There are, of course, different agents to whom references to the duties of a state can be said to apply. On the one hand, the duties of a state might be understood to apply to the state-apparatus: the government and military. On the other hand, the duties of a state might refer to the duties which the citizens of that state have. Unless otherwise indicated, when I talk about the duties of states, I mean the duties of the citizens that make up those states. Thus, the question, “Did the UK have a duty to intervene to stop the genocide in Rwanda?” is really asking “Did British citizens have a duty to aid Rwandan citizens via the use of the British military?”

Thirdly, I would like to address the relationship between the terms post-conflict and post-atrocity. In current research, the term post-conflict is often used quite generally to refer to the situation resulting in the end of intrastate war and/or the end of intrastate mass-atrocities. While intrastate war and intrastate atrocities can certainly (and often do) occur at the same time, it is misleading to label all instances where intrastate mass-atrocities have ended as post-conflict. Mass-atrocities can and do occur outside of armed conflict and when this occurs it is morally dubious to put these atrocities under the category of intrastate conflict and/or to label the period following these atrocities as post-conflict. The worry is that by attaching the term conflict to atrocities one may give undue legitimacy to the perpetrators of atrocities and the egregious acts they commit. In a conflict there are combatants – often soldiers – who kill and, because they kill in the context of a war/conflict, their acts of killing are not normally acts of criminal murder (we will examine this claim further in Chapter 1). Therefore, to place the perpetration of mass-atrocities under the category of war or conflict runs the danger of mistakenly putting the perpetrators of atrocity in the category of combatants and putting their acts of killing in the category of legitimate acts of combat (when they certainly are not). So, there is a clear need to distinguish between post-atrocity and post-conflict, especially in those cases where mass-atrocities occur outside of conflict. Accordingly, I use the term post-atrocity throughout this thesis.⁸

The tendency in post-conflict literature not to distinguish between intrastate conflicts in which mass-atrocities do not occur, intrastate conflicts in which mass-atrocities do occur, and intrastate mass-atrocities which occur absent of armed conflict poses a potential problem for my research. Many of the normative arguments I make in later chapters are built on empirical data taken from post-conflict literature. To avoid the use of irrelevant or

⁸ To clarify, my claim is that *mass-atrocities* do not fall under the category of conflict or warfare. However, I hold (and argue in Chapter 1) that humanitarian interventions which are carried out to stop atrocities are a form of warfare. Thus, on my view, the Holocaust was not a war against the Jews, but the Allies' military efforts against the Holocaust were acts of warfare.

misleading data (due to the lack of distinction noted above), throughout this thesis I rely only on those post-conflict studies which concentrate exclusively or primarily on cases of mass-atrocity which occur concurrently with conflict or outside of conflict. Fortunately (but sadly) most post-conflict studies fall into this category.

With that, let us begin our discussion of post-atrocity duties.

Chapter 1: Guidelines of Just War Theory

To answer the central question of this thesis – what moral duties does the international community have to post-atrocity societies? – one need not start from scratch. As noted in the Introduction, both the just war tradition and the post-atrocity policy-oriented literature will bring us some way to an answer. This chapter focuses on just war theory (henceforth JWT) – a theory which I submit can be distilled down to the following six guidelines regarding the use of military force:⁹

- (G1) The use of force is only justified to defend and/or secure fundamental human rights.
- (G2) One must ensure that achieving one's aim does not cause more harm than good.
- (G3) One must never *intentionally* harm non-combatants.
- (G4) Actors must have the consent (either literal or reasonably assumed) of those on whose behalf they allege to act.
- (G5) Actors cannot be held under a duty to do something that will expose them to an unacceptable level of risk.
- (G6) Individuals must be held accountable for the unjust harms they are morally responsible for.

The purpose of this chapter is to defend the claim that these six guidelines run through the whole of JWT (rather than being limited to any one category of that theory) and, thereby, constitute the key moral principles of JWT. Defending this claim is necessary because by identifying the key moral principles/guidelines of JWT I, in turn, identify key moral guidelines for post-atrocity intervention which must shape the arguments I make in later chapters regarding post-atrocity duties. The chapter is divided into six sections, with each

⁹ Two points of clarification. First, there are, arguably, three variants of JWT (though there is a good deal of interaction between the three): legal, theological, and philosophical (analytical moral philosophy). My focus herein is on the latter. See George Lucas for discussion on these distinctions and the confusion that can occur by failing to recognize them (2010). Second, JWT is best understood as an ongoing dialogue, stretching over many centuries, in which the basic structure, or framework, stays relatively constant, but where the substance of that framework is in a state of constant question, clarification, and reinterpretation. My claim is that these six guidelines constitute the basic framework – or skeleton – of contemporary JWT.

section concentrating on an individual guideline (Section 1.1 on (G1), Section 1.2 on (G2), etc.). Before beginning, however, there are a few areas of concern which must be addressed.

First, it is likely that the format of this chapter will strike most readers as an atypical presentation of JWT. JWT separates war into distinct, though interrelated, categories. For much of its history, JWT has included the categories of *jus ad bellum* and *jus in bello* which establish, respectively, the conditions under which one is morally justified in going to war and the means of war which are justifiable.¹⁰ In the last two decades, many theorists have added (or revived) *jus post bellum* – which sets out what agents may/must do after a war is over – on the grounds that a theory of war which does not take into account what happens after a war has ended is incomplete.¹¹ Even more recently, a handful of theorists have added *jus ex bello* which stipulates when and how an agent must justly end a war. Each of these categories sets out a number of conditions which must be met, in each phase of war, in order for that phase of the war to be just and in order for the war as a whole to be just. It is standard for modern just war theorists to present and frame their discussions and debates about war within this compartmentalized understanding of JWT.

Though conceptualizing war in this segmented fashion is undoubtedly helpful in allowing theorists to focus on very particular questions of war, I have chosen to forego traditional just war categories and, instead, to widen my focus to the theory as a whole. Although each of the traditional just war categories has requirements with details unique to its particular phase of war (which justify the existence of the different categories), as noted, I contend that there are a set of basic guidelines which underlie all the categories and, thereby,

¹⁰ Although, as Robert Kolb points out, the terms *jus ad bellum* and *jus in bello* are relatively new (appearing for the first time in the early twentieth century), the separation of the conditions for resorting to war and the means used in war goes back at least as far as Vitoria (writing in the mid-16th century) and is seen in the writings of such classical theorists as Grotius, Wolff, Vattel, and Kant (1997).

¹¹ Although the term *jus post bellum* is new, the issue of how wars should end has been a concern since JWT's beginnings (at least as far as Augustine, arguably as far as Plato). However, it was not until the mid-1990s that theorists began to argue that post-war considerations needed to be more fully addressed via their own separate category. Michael Schuck is credited as being the first theorist to argue for the *jus post bellum* category in 1994 (1994).

serve to create a unified core of the theory as a whole. For my purposes of analysing how JWT may guide our thinking about post-atrocity duties, examining this unified core (comprising the six guidelines identified above) rather than the theory's individual parts seems the most expedient path. Furthermore, considering the theory as a whole helps to highlight the fact, which many theorists stress, that war is an ongoing and ever-changing process in which conditions radically change and where such change demands that actors continually reassess their situation and change their activities as necessary. In other words, while it is conceptually helpful to think of war in a linear series of categories, in reality war does not necessarily conform to this pattern. For these reasons, I have endeavoured to bring out what JWT, as whole, demands of actors in the course of a war, as a whole. This does not mean that I will ignore the existence of the just war categories entirely; throughout my discussion of the six guidelines I highlight where each guideline can be located in the different requirements of the four just war categories.

The second area which may concern the reader is this: if there is already a set of guidelines which set out what actors may/must do in the course of a war – before, during, and after – why is the rest of this thesis necessary? In other words, if we want to know what post-atrocity duties the international community has, why not just refer to the six guidelines and be done with it? First, because guidelines offer only general direction, they provide only part of the answers I am looking for. For example, if we want to know (as I ask in Chapter 5), whether the international community has a duty to try to democratize the target-state by using military force, just war guidelines will point us in the direction of a possible answer, but they will not provide an answer. Secondly, just war principles, as they are currently understood, apply narrowly to those parties actively involved in war/intervention: Y goes to war against/carries out an intervention against Z and just war principles are understood to apply to Y and Z. The inquiry of this thesis, however, is much broader. When state Y carries out an

intervention against some group in state Z, I want to know not only what duties Y has, but also what duties A, B, C, etc. (other states) may have in relation to both Y and Z. Just war principles are, therefore, an invaluable part of my thesis, but they are only a part.

The third, and last, issue which must be addressed is the potentially problematic differences between war and humanitarian intervention. Though these two forms of warfare are similar in many ways, there are also (at least) three very significant differences between them. First, on most accounts, war is not an obligatory activity; a state may choose to defend itself against aggression or it may choose not to. Similarly, others states (barring any binding treaties) may choose to come to the defence of an attacked state, or they may choose not to.¹² In contrast, for a growing number of theorists, humanitarian intervention is seen as a duty – albeit a limited duty (Caney 2006:226-257; Davidovic 2008; Evans, M. 2005b:75; Johnson 1999:117).¹³

Second, related to the first, unlike most wars (with the exception of wars in defence of others), humanitarian interventions are understood as being carried out for the sake of “others” rather than the defence of one's compatriots (Chatterjee & Scheid 2006:1; Coady 2006:280; Fox 2008). Some may object to this statement as being overly idealistic and historically untrue; many humanitarian interventions have been carried out for reasons of defending/advancing the intervener's national interest and, therefore, do defend one's compatriots (albeit indirectly). However, this difference can also be stated, unequivocally, empirically: unlike war, the *impetus* behind humanitarian intervention is not something that has happened to oneself (one's own state/citizens being attacked), rather, humanitarian intervention, regardless of other possible motives, is a reaction to something that is happening

¹² Simon Caney presents the beginnings of an argument that states may have a duty to defend other states from aggression, and I think that, subject to some qualifications, this argument is probably right (2006:204). However, this is still far from the dominant view.

¹³ I defend this claim in Chapter 4.

to someone else. In the case of humanitarian interventions soldiers fight in a state other than their own to defend the lives of foreigners.

Thirdly, in humanitarian interventions the relationships between the intervener, the target-state government, and the target-population are dramatically different than they are in war. In the current state of world affairs, a state is held to be the primary agent responsible for the welfare of its citizens; the government has the charge of protecting and advancing the fundamental (and non-fundamental) human rights of its population (I explore this claim in Chapter 3). In war, this relationship stays intact and once the war is over both states maintain the responsibility to protect the welfare of their population. In humanitarian intervention, however, there is often a shift of responsibility for the protection of the target-population from the target-state government to the interveners.¹⁴ Through the act of intervening, the interveners take on this responsibility (albeit temporarily) and, as a result, when the atrocities end the intervener is (often) in the position of protector for both its own citizens and (temporarily) the target-population. This leaves the post-intervention relationship among the parties drastically different than that experienced in most cases of war.

Given that the cases of concern for this thesis are post-atrocity humanitarian interventions carried out to stop the recurrence of mass-atrocities, does it make sense to consult JWT which, for centuries, has focused primarily on conventional wars of aggression between states? One might think that the differences are so significant that war and humanitarian intervention must be considered separately, each with its own distinct criteria. Against this, I find that despite the noted differences between conventional war and humanitarian intervention, the underlying moral guidelines of JWT are applicable to both. There are, no doubt, instances when a particular guideline will demand actions that are very

¹⁴ I discuss this shift of responsibility further in later chapters.

different in war than in humanitarian intervention.¹⁵ For example, many theorists argue that war cannot justifiably end in political reconstruction of the aggressor state but, conversely, that political reconstruction is often required in the aftermath of a humanitarian intervention (I return to these proposals in Section 1.1). The underlying guideline in each of these conclusions, however, is exactly the same: actors must respect and protect the fundamental human rights of the target-population. Furthermore, upon close examination of the apparent differences between war and humanitarian intervention, one realizes that while these differences hold between *most* cases of interstate war and humanitarian intervention, none stand at all times. For each difference, the reader will, no doubt, be able to recall from history or create plausible hypothetical cases in which what is said to be distinctive of humanitarian intervention is the case for some instances of interstate war and vice versa. This is not to deny the differences, but only to point out that they are not hard-and-fast distinctions. So while it is important to keep such differences in mind in order to better understand how a particular guideline may demand very different actions from agents depending on whether they are fighting an interstate war or a humanitarian intervention, they are not significant enough to necessitate distinct guidelines of war and humanitarian intervention or negate the relevance that JWT has to humanitarian intervention.

With that, we now move forward to examine the six just war guidelines which I claim constitute the core of JWT. To support this claim, in each section I map out the path each guideline takes through the just war categories. Having discussed how each guideline manifests itself in the various categories, I then use this discussion to refine and qualify the guidelines themselves. As noted in the Introduction, all references to intervention throughout

¹⁵ There are several theorists who have begun the work of formulating guidelines for humanitarian intervention, however even these intervention specific guidelines follow the basic just war framework (Bellamy 2008:622-624; Evans, M. 2008:533; Hoffmann:1996; Lucas 2003, 2006). Thus, rather than being completely distinct from JWT, these guidelines show how just war criteria need to be adapted/re-conceptualized for intervention.

this thesis should be understood as humanitarian, unless otherwise indicated (thus, henceforth I will just use ‘intervention’).

1.1 Guideline 1

The underlying logic of (G1) – the guideline that the use of force is justified only to defend and secure fundamental human rights – is that because war kills, maims, and causes widespread destruction and suffering, such lethal and destructive force can be used only in strictly limited circumstances. (G1) serves as the basis of the *jus ad bellum* criteria of just cause and right intention, the *jus in bello* requirement of necessity (in part), the *jus ex bello* principle of attainment, and the *jus post bellum* condition of securing fundamental human rights. Let us examine each of these.

As James Turner Johnson explains, “*just cause* classically meant one or more of three possibilities: that the use of force in question was for defence against wrongful attack, retaking something wrongly taken, or punishment of evil” (1999:27). Modern theorists, however, have reduced just cause to: ‘defence against wrongful attack.’ The question that remains, of course, is defence of what? A.J. Coates’ statement that “[a]ll just wars are, in a broader sense, defensive wars, involving the upholding of rights” is representative of a consensus among theorists that the focus of just cause is on rights (1997:161).

In interpersonal morality, most political theorists agree that the only circumstances in which B (or others defending B) is justified in killing A, are those in which A unjustly threatens a fundamental human right of B *and* where B has no other means of protecting his right except by using lethal force against A.¹⁶ Paralleling interpersonal morality, most theorists agree that, in the context of war, a wrongful attack is an attack (actual or threatened and imminent) on the fundamental human rights of a group of people (either on their individual or group fundamental human rights) and, conversely, a just cause for war is one

¹⁶ I return to this scenario and its qualifications (both in its strict interpersonal case and its application to war) in Chapter 2, but for now ask the reader to accept this case as being correct.

which seeks to defend those people against such an attack (Caney 2006:248; Evans, M. 2005b:74; Fixdal & Smith 1998:297; Hayden 2005:35; Johnson 1999:112-113; Luban 1980a:174-176; McMahan 2005:11-12; Walzer 2006:53).¹⁷

What counts as a fundamental human right differs from theorist to theorist; some (at least in the context of war) limit the list to two: the right to life and the right to national self-determination. Others expand this list to include the right to autonomy and subsistence (Luban 1980a:174-176; McMahan 2005:11-12). Though in later chapters I defend the claim that the protection of any of these four fundamental rights is just cause for war, I realize that this may strike some as particularly controversial. So, for now it is enough to settle on the standard claim that a just cause is one which aims to defend a group of individuals' fundamental human rights, including the right to life and the right to national self-determination, when those rights are under attack.¹⁸ That (G1) is reflected in this standard claim is evident.

Right intention requires that the objectives one aims to achieve in war be limited to defending and securing one's just cause (Johnson 1999:32-33; McMahan 2005:5). So, while the requirement of just cause tells us what causes are grounds for war, the requirement of right intention demands that one limit one's actions in war to achieving only those causes. The purpose of right intention is to prevent agents from engaging in such things as territorial expansion, conquest, economic aggrandizement, or purely self-interested regime change. Some theorists add to this that right intention also demands that an actor commit himself to carrying out the war according to all the just war criteria (all the *jus ad bellum*, *jus in bello*,

¹⁷ Richard Norman and David Rodin have both challenged the idea that claims taken from interpersonal morality concerning self/other defence can be applied to the case of war (Norman 1995:134-136; Rodin 2004). Though I think that the transfer from interpersonal morality to war is defensible, I will not defend the claim here because both Norman and Rodin accept that the transfer from interpersonal morality to war is legitimate in cases of intervention against atrocity (Norman 1995:135; Rodin 2004:140).

¹⁸ As I will argue in Chapters 3, my understanding of fundamental human rights is individualist rather than statist. So the violation/protection of the right to national self-determination should not be herein understood as the violation/protection of the right of a state *qua* state (states have no intrinsic value in my view). Rather, it is the violation of a group right which derives its significance from the value it holds for individuals within that group.

jus ex bello, and *just post bellum* requirements) and plan his strategy in adherence with these rules *before* going to war (Koeman 2007:199-204; Orend 2000:94, 2002:52).

Understood in this rather broad form – the objectives one aims to achieve in war must be limited to defending and securing one's just cause – the requirement of right intention seems relatively unproblematic. However, when we focus on the concept of intention, a number of complications arise. First an actor's intention can be understood in two different ways. On the one hand, what I term right intention-a, we might say an actor intends X (X in the case of warfare being the just cause) if his main purpose/objective/aim is to do X. On the other hand, what I term right intention-b, we might say that an actor intends X if his underlying motivation/reason for acting is to achieve X. The intervention by India in East Pakistan in 1971 illustrates this distinction. The most common understanding of this intervention (supported by the claims made by the Indian government at the time) is that India intervened in East Pakistan with the purpose/objective of stopping the mass-atrocities being committed there. Thus, India met right intention-a. However, India's underlying motivation/reason for pursuing this objective was to stop the flow of Pakistani refugees into India. Thus, India did not meet right intention-b.

When many theorists speak of right intention, they seem to include both right intention-a and b under the umbrella of right intention. However there is a significant problem with right intention-b. The requirement is absolutely reliant on self-reflection and regulation; outsiders simply cannot know the underlying motivations of an actor prior to a war (though there may be indicators which point to likely intentions). Accordingly, when it comes to the ability to judge the justice of other people's wars, right intention-b will usually have to be accessed retrospectively based upon what the actor actually did during the course of the war/intervention (and may not even be clearly discernible then) and is, thus, not a particularly reliable criteria for observers before a war. Moreover, when we are scrutinizing

the underlying motivations of actors within the international community – states, regional organizations, international agencies, etc. – we will certainly find a multitude of motivations which cannot always be easily identified or untangled. Most importantly, upholding right intention-b may unnecessarily (and perhaps even unjustly) prohibit otherwise just wars/interventions from taking place. Though India did not meet right intention-b, I think most of us will agree that the intervention was just.¹⁹

So, in my view, the requirement of right intention must be limited to right intention-a. Whatever one's view, right intention clearly reflects (G1) in its demand that when fundamental human rights are attacked or threatened, the force used against such attacks must be limited to activities which defend and secure those rights.

Let us move on to the requirement of necessity. Of all the just war requirements, this requirement is probably the most unclear; different theorists seem to hold slightly different understandings of what precisely necessity means. Recognizing this, it seems to me that necessity, despite the different nuances that theorists might add to it, can be generally thought to hold that during a war a target can only be attacked with force if attacking it is (a) necessary to the achievement of one's just cause *and* (b) if there are no non-violent means of disabling it (so to speak).²⁰ (G1) underlies condition (a) and, therefore, will be the focus of this section. Condition (b) reflects (G2) and will be taken up in Section 1.2. Though there are many grey areas, essentially condition (a) demands that if, for example, you are a fighter pilot and have the option to bomb either an aircraft carrier or a civilian cruise ship, both of which belong to the aggressor, it is just to bomb the aircraft carrier and unjust to bomb the cruise ship because only the destruction of the aircraft carrier will lessen the aggressors attack

¹⁹ See Pattison for an excellent in-depth discussion of right intention and the distinction between an actor's objectives and motivations (2010b:153-168)

²⁰ I emphasise 'and' here because, in my view, both criteria must be met. However, there are theorists who present necessity as only entailing (a) or (b).

on fundamental human rights.²¹ Since the cruise ship plays no part in the waging of the unjust war, bombing the cruise ship does not serve to defend one's just cause and, thus, is unnecessary (it would also violate non-combatant immunity, which we will discuss shortly). Necessity, therefore, can be thought of as the concrete version of right intention. Whereas right intention requires that an actor *intend* to use force only to achieve the just cause, necessity requires that an actor *actually* use force against only those things necessary to destroy/disable in order achieve the just cause. Here again we find another manifestation of (G1).

Moving on, the principle of attainment holds that once one's just cause has been achieved, the war must end (McMahan 2005:2; Orend 2008:39-40; Rodin 2008:60).²² It is important to note, however, that the focus of this principle is limited to achieving one's just cause in the short-term: one has literally stopped the attacks against fundamental human rights. The principle of attainment is not concerned with the long-term securing of the just cause – this is a matter which *jus post bellum* takes up. Accordingly, the principle of attainment requires that a war end once one has successfully stopped the aggressor from attacking, but it allows that the continued presence/threat of force may be used during the post-war phase to secure the long-term achievement of the just cause (e.g. occupation, disarmament, holding war crimes trials, etc.). Thus, the principle of attainment further refines (G1), such that the *active* use of force must end when the fundamental human rights being protected/defended are protected in the short-term.

As should be clear by now, (G1) insists that the use of force in war be strictly confined to activities which protect fundamental human rights. Once such rights are no

²¹ This, of course, assumes that the aggressor has not commandeered the cruise ship for military purposes.

²² Examining the relatively small literature on *jus ex bello*, one will not find a requirement specifically called the principle of attainment. One will also not find the *jus ex bello* 'principle of reassessment' which I refer to later in the chapter. This is because, so far, theorists have argued for the conditions entailed by these requirements without actually naming the requirements themselves. Accordingly, I have tentatively named them. This is also the case for the *jus post bellum* requirements of 'securing fundamental human rights' and 'the principle of moral accountability.'

longer under attack, the use of force is no longer justified. As discussed above, however, it is generally accepted that protecting fundamental human rights is (at least) a two-step process involving short-term achievement of the just cause and long-term securing of the just cause. The *jus post bellum* condition of securing fundamental human rights focuses on this later step. The condition of securing fundamental human rights holds that actors are entitled to secure their just cause by taking reasonable actions to prevent the likelihood of renewed attack (Bellamy 2008:605; Evans, M. 2005a:13; Orend 2008:40-41; McCready 2009:72-73; Walzer 2006:118). In addition to securing the just cause, some theorists argue that this condition *requires* that actors on both sides secure the fundamental human rights of the populations involved if these are under threat in the post-war phase (DiMeglio 2005:135; Hayden 2005:171; Williams & Caldwell 2006:309-318). There are a number of measures which are thought to be legitimate acts of securing fundamental human rights: disarmament, occupation, reconstruction and withdrawal are the most commonly cited. It is extremely important to note, however, that not all of these are considered morally legitimate options for every war/intervention; the legitimacy of the act depends entirely on the circumstances which exist at the end of the war/atrocity. Disarmament is fairly self-explanatory and thought to be justified in many cases of war/intervention. Accordingly, I will not discuss it on its own.

Occupation can take three forms; limited, extended, and transformative. These forms of occupation can be thought of as three points along a spectrum, with limited occupation being the least intrusive and involved and transformative being the most. The post-war conditions of interstate war are generally held to allow only the limited form of occupation (if any form is allowed at all) and, in contrast, the post-atrocity conditions of intervention are often thought to require transformative occupation. Limited occupation is considered legitimate in cases of war/intervention where the victor needs to occupy the vanquished state in order to carry out tasks, namely disarmament, which are likely to prevent the renewal of

war. In these cases, the actions of the victors are limited to those tasks which are required for disarmament and the occupation is permitted to last only as long as it takes to accomplish this limited task. As noted, limited occupation is thought to be the only acceptable form of occupation for most cases of interstate war.

According to most *jus post bellum* accounts, there are cases when extended occupation is morally legitimate and, in some cases, morally required. If the vanquished state is left in a condition of anarchy and/or if the victor finds itself temporarily filling the role of protector for the target-population, then the victor, so the argument goes, has an obligation to occupy the vanquished state in order to maintain order and security and, thereby, protect the fundamental human rights of the target-state population (Bass 2004:403; Bellamy 2008:612; McMahan 2009b:107; Recchia 2009:167; Williams & Caldwell 2006:318).²³ Extended occupation is thought to be legitimate in almost all cases of intervention and in a few rare instances of interstate war. It includes activities such as providing physical security and restoring basic public services.

The third category of occupation is transformative, and is synonymous with reconstruction.²⁴ The exact details of this obligation vary from theorist to theorist, so it is not at all clear whether this is considered an obligation to fully reconstruct institutions or to assist the target-population in this process. It is also not clear from current accounts exactly which institutions must be reconstructed. Some refer only to political institutions while others, mirroring the policy-oriented literature, include political, social, and economic institutions. The common denominator among all accounts, however, is that nearly all atrocity cases will require some sort of reconstruction. There are two lines of argument for this claim. The first position states that in cases where the target-state government is committing, or complicit in, the atrocities, it is morally unjust to leave that government in power because doing so leaves

²³ I expand upon and defend this claim in Chapter 4.

²⁴ I borrow the term 'transformative occupation' from Adam Roberts (2006).

the lives of the target-population in danger. As Gary Bass argues, “[r]econstruction is the final piece of business of a humanitarian intervention to stop genocide” (2004:38-41). Here reconstruction could be understood simply to mean forcible regime change.²⁵

The second argument for reconstruction holds that in order to bring a true end to atrocities, interveners must make a long term commitment to tackling the underlying political, social, and/or economic problems within the target-state which gave rise to the atrocities in the first place (Chatterjee & Scheid 2006:4; Frank & Rodely 1973:283; Hoffmann 2006:24; Walzer 2004:20, 71; Wheeler 2002:306-307). If these underlying issues or, as they are commonly referred to, root causes are left unaddressed then, according to these theorists, it is likely that atrocities will begin anew and, thereby, undermine the progress made by the intervention. Accordingly, interveners must have additional duties which, depending on each case, involve political, social, or economic reform/reconstruction within the target-state. For these theorists, reconstruction may take the form of creating minimally just and stable institutions, or it may take the form of building liberal market economy democracies.²⁶

Obviously there remains a considerable amount of disagreement on the meaning and scope of reconstruction. There is, however, clear agreement among theorists that reconstruction must be limited in (at least) the following ways (Bass 2004:387-390; Evans, M. 2008:541-541; Yannis 2002:831). First, reconstruction cannot be carried out for the unjust advantage of the victor; it cannot be used as a guise for conquest, as a way to install puppet-regimes, or in order to secure territorial or economic gains. Secondly, reconstruction must respect the target-population's right to national self-determination, where national self-determination is understood as the right of the population not as the right of the previous government to remain in power.²⁷

²⁵ I discuss forcible regime change in Chapter 4.

²⁶ I examine the question of political and economic reconstruction in Chapters 5 and 6, respectively.

²⁷ Again, I defend the claim that national self-determination is a fundamental human right in Chapter 3. In that chapter I also

Whereas the entitlements/requirements of disarmament, occupation, and reconstruction are actions which, arguably, serve to secure the fundamental human rights to life and national self-determination (as well as autonomy and subsistence if one includes those as well), the requirement of withdrawal focuses primarily on securing the right to national self-determination. It is often said that “[t]he conventional just war position...is that an armed conflict should end with the restoration of the status quo ante [bellum]” (Gheciu & Welsh 2009:122). Interestingly, however, it is very difficult to find a theorist who actually argues this. Even Michael Walzer (whose account of the JWT is often taken as the 'conventional' just war position) argues that war should end with a situation that is “more secure than the *status quo ante bellum*, less vulnerable to territorial expansion, safer for ordinary men and women and for their domestic self-determination” (2006:121-122). As Walzer, and many other just war theorists are apt to point out, because it is precisely the *status quo ante bellum* which led to war/intervention, it does not make sense to return to this state (McCready 2009:72-73). It is more accurate to say that the conventional just war position demands that after a war/intervention the sovereignty and territorial integrity of each state must remain intact (Bass 2004:387-388; Walzer 2006:123). The victor is absolutely prohibited from conquering, annexing, or otherwise controlling the vanquished state. Occupation is seen as acceptable because it is a temporary state of affairs which involves no permanent denial of sovereignty or change of territory. Further, sovereignty and territorial integrity are viewed as valuable because they are two manifestations of national self-determination. Here we arrive at the essence of the actual conventional just war position: national self-determination is a fundamental human right which must be secured and protected and to do this, once a war has ended parties must withdraw back to their respective states/territories (Orend 2008:35, 40-41; Williams & Caldwell 2006:318; Yannis 2002:831).

define this right (a step which is missing in many accounts of *jus post bellum*).

Withdrawal must occur in all cases of war/intervention, though (as discussed above) in some cases it may be preceded by disarmament, occupation, or reconstruction.

As noted, the condition of securing fundamental human rights falls under the category of *jus post bellum* – a relatively new category which, to date, remains in a state of construction. It is unclear, for example, whether interveners in post-atrocity cases have an entitlement or an obligation to carry out occupation and/or reconstruction. In order for a claim such as 'interveners have a duty to reconstruct the target-state' to stand, we must show that (a) reconstruction does protect the fundamental human rights of the target-population and (b) that it is the duty of the interveners to carry out/assist in this reconstruction. Is this really the duty of the interveners in particular or might some other actor be obliged to take on this task? There are countless other questions regarding the condition of securing fundamental human rights (many of which will be taken up in later chapters). Questions aside, the general claim that actors are entitled, and perhaps obligated, to take actions which secure, in the longer-term, fundamental human rights is sound and represents yet another embodiment of (G1).

I began this section with (G1) in its simplest form: the use of force is justified only to defend and secure fundamental human rights. Having now discussed the various just war requirements which embody this guideline, it is clear that (G1) entails (at least) four claims: (1) the only just cause for resorting to war/intervention is to defend fundamental human rights; (2) force may be used only against those persons/things whose destruction/disabling is necessary to achieve one's just cause; (3) once one has achieved one's just cause, in the short-term, one must stop using lethal force; and (4) one is entitled/obligated to use the continued threat of force (e.g. the presence of military forces) in order to secure one's just cause in the longer-term.

1.2 Guideline 2

(G2) is essentially a requirement of proportionality. It holds that one must ensure that achieving one's just aims does not cause more harm than good and it is captured in the *jus ad bellum* requirements of proportionality and last resort, the *jus in bello* requirements of proportionality and necessity, the *jus ex bello* principles of reassessment and the pursuit of diplomatic remedies, and the *jus post bellum* implicit requirement of proportionality (which I will argue should be made explicit).

Jus ad bellum proportionality is a particularly complex requirement. In its simplest form, it holds that “[t]he overall good achieved by the use of force must be greater than the harm done” (Johnson 1999:27-28). The complexity begins when we turn to what counts as a 'good' and what counts as a 'harm.' There are (at least) three possible goods. First, achieving one's just cause – protecting fundamental human rights – is a good. Second, many theorists add the promotion of international order and security as a good (so long as international order/security serves to protect fundamental human rights).²⁸ Third, some theorists include the realization of rights, other than fundamental human rights, as a good in the proportionality calculation (e.g. if as a result of war, education becomes available to a wide portion of the population who had previously been denied it, this would count as a good). This last inclusion is the most controversial. Against it, Jeff McMahan argues that it wrongly “impl[ies] that a war is justified, at least in part, by the fact that it would achieve certain goods that cannot permissibly be achieved by means of war” (2005:5). Let us grant

²⁸ Three notes here. First, though I think that, for the most part, international order/security does protect fundamental human rights, this claim might strike some as wrong. For those readers who disagree with this claim, I ask that they simply cross the protection of international order/security off of the list of relevant goods. Second, this good can arguably be reduced to the protection of fundamental human rights and, given this, one may object to counting the protection of international order as a separate good. While I acknowledge the reducibility of this good, I keep it separate because I believe that, if allowed, it significantly expands the range of possible 'goods' and, thus, notably affects the calculation of proportionality. Third, some readers may argue that protecting an international order which protects fundamental human rights would itself constitute a just cause for war rather than a separate good in the proportionality equation. Addressing this argument is beyond the scope and interest of this thesis, so for these readers I simply allow that they subsume the good of protecting international order/security under the good of protecting one's just cause.

McMahan's argument and agree that the goods which can be counted in the proportionality calculation are limited to the achievement of a just cause and the protection of international order/security (so long as it protects fundamental human rights).²⁹ What counts as a harm is the inverse of these goods: acts that advance an unjust cause or lessen the likelihood that a just cause will be achieved, the violation of fundamental human rights, and the breaking down of international order/security (when that system protects fundamental human rights).

The next difficult question concerns the subjects of the proportionality equation. William O'Brien argues that one must consider the likely impact of one's war on "all belligerents, affected neutrals, and the international community as a whole" (1981:27-28). McMahan qualifies this rather broad range of subjects such that proportionality is concerned with the harms placed on individuals who are not liable to be harmed – namely almost all civilians (on all sides), and those soldiers fighting with a just cause (2009a:20).³⁰ Proportionality, on this view, is not concerned with harms to soldiers involved in an unjust attack, because those soldiers are liable to harm.³¹ However, as several theorists (including McMahan himself) point out, in many instances of war it is extremely difficult to identify which soldiers have a just cause for war and which do not. Given this, it may be necessary,

²⁹ I grant McMahan's point because I am inclined to think that while the protection/realization of rights other than fundamental human rights is an added positive effect of war, this should not factor into the proportionality equation. However, disagreement over this point does not prove important for later arguments.

³⁰ I say "almost" because there is some disagreement among theorists over whether some non-combatants may be liable to harm if they are involved in the war-making process. Many theorists accept that civilians who are part of the war industry (e.g. they work in a bomb making factory) are liable to be harmed (subject to other just war requirements), and this is the view I accept throughout the thesis (Walzer 2006:146). Many theorists also hold that civilians who hold influential command/policy making positions (e.g. the President or Dictator who is ordering the atrocities) are subject to criminal prosecution for the crimes they orchestrate (Johnson 1999:199; Levinson 1973; May 2007; Walzer 2006:287-325). There is clearly a difference between punishing someone for war crimes and targeting them in war, and most just war theorists accept the former but do not address the latter. Recently, however, international law has stated that civilians, to include political leaders, who are causally responsible for war/acts of war/hostilities, are liable to be targeted (Akande 2010; Melzer 2009:54-55). The underlying reason is that civilians who directly participate in war are liable to be harmed. This seems consistent with the reasoning behind non-combatant immunity and its exceptions and, accordingly, is the view I take throughout this thesis. There are also disagreements among theorists as to whether non-combatant immunity holds in cases of so-called 'supreme emergencies' (Bellamy 2004; Statman 2006; Walzer 2006:251). Since this issue departs from the scope of this thesis, I remain agnostic on this debate.

³¹ What it means to be liable to defensive harm is a matter of great debate. Some, myself included, believe that one must simply be posing an unjust threat/harm. Others argue that one must be morally responsible for posing an unjust harm/threat. For the purposes of this chapter, it does not matter which view the reader holds. For further discussion see McMahan (2009a:20-24).

as O'Brien' claims, to count the harms to all soldiers. However, in atrocity cases, which are our concern herein, it is much easier to identify those liable to harm: the proportionality calculation in these cases will exclude harms to those individuals perpetrating atrocities, defending those perpetrators, or opposing those working to stop the atrocities.

A further difficulty is that the proportionality calculation is a somewhat speculative one which must be made despite the fact that one can never foresee all the possible consequences of one's actions (Coates 1997:172-174; Hurka 2005:66). That is, there is an inherent qualification to the requirement of proportionality, such that the calculations being made must be understood as the most likely given the available information, not as watertight mathematical equations. Difficulties aside, what is important for my purposes is the central claim that even when one acts with a just aim, one must ensure (based on the best information available) that achieving that aim does not cause more harm (understood as the advancement of an unjust cause or violations of the fundamental human rights of people who are not liable to that harm) than good (understood as the advancement of a just cause or the protection of fundamental human rights). This claim is a straightforward instance of (G2).

Let us move on to the requirement of last resort. According to this requirement, one may wage a war only in those cases when one is reasonably sure that "no other means will achieve the justified ends" (Johnson 1999:27-28). There is a negative and a positive aspect to this requirement. Negatively, one must not go to war when there are other viable options which could secure one's just cause. Positively, one is required to actively and continually explore non-violent ways of achieving one's just cause through means such as diplomacy, arbitration, and sanctions (Coates 1997:190; Rodin 2004:111). The requirement, however, is not that one literally try all methods short of war. Rather, the requirement is that one try all methods short of war which one thinks are likely to be equally or more effective at defending the just cause (Caney 1997a:32; Coates 1997:197; Hurka 2005:37; Walzer 2004:88).

Determining whether or not a non-violent response to aggression/atrocity will be effective is largely a calculation of *proportionality*: is it reasonable to expect that this particular non-violent option will stop the aggression/atrocity with less or greater harm than the use of force? If a non-violent option is likely to result in greater harm than the use of force then it would not qualify as an effective alternative. Given that we are concerned here with justified war and that such wars, as we have already discussed, are defensive, the reality is that an act of unjust war (or atrocities) has already taken place; there are already tanks rolling across borders, guns being shot, bombs being dropped, or machetes being swung. Accordingly, in many cases the immediate resort to force – without the attempt to make peace using non-violent methods – may reasonably be considered the option of last resort, for if the aggressor could be persuaded to give up his cause through non-violent means, it is likely that he would not have committed the act of aggression/atrocity in the first place. This is not to say that non-violent measures can never be an effective means of stopping an act of aggression or atrocity, rather it is to clarify the point that last resort need not be taken literally to mean that an actor has tried every other possible option before using force defensively.³² Perhaps last resort would be more accurately termed the option of least harm. In any case, last resort yields the following implication of (G2): if one can achieve one's end effectively/proportionally through non-violent means then one ought to do so.

Jus in bello proportionality is much the same as *jus ad bellum* proportionality in that it requires that the good that one achieves through force outweigh the harm that is caused. It differs in that, while *jus ad bellum* proportionality is concerned with the war as a whole – will the war, in full, cause more good than harm? – *jus in bello* proportionality is concerned with individual acts/missions within war – will bombing this particular hangar produce more good than harm? Coates aptly summarizes the purpose of *jus in bello* proportionality: “combatants

³² The diplomatic and civil-society efforts in Kenya during the 2008 post-election violence/atrocities provide examples where measures short of force were successful.

are required to employ only as much force as is necessary to achieve legitimate military objectives and as is proportionate to the importance of those targets” (1997:209). It is a relatively straightforward requirement until one recalls what counts as a good and a harm in the proportionality equation. Goods, remember, include the achievement of a just cause, the protection of fundamental human rights, and the upholding of international order/security. Conversely, harms include acts that advance an unjust cause, oppose the achievement of a just cause, violate fundamental human rights, or contribute to a breakdown in international order/security. As a number of theorists have pointed out, on this understanding, acts carried out by soldiers on the side of the aggressor would fail to meet the requirement of proportionality because (a) their cause is unjust and (b) their actions go against the achievement of the defensive soldiers' just cause (Hurka 2005:44-44; Rodin 2010:53). We will return to this discussion in Section 1.3. So *jus in bello* proportionality expresses (G2) by requiring that not only must the overall good of a war outweigh the harm that it causes, but individual acts conducted during the war must also achieve more good than harm.

(G2) is also present in the requirement of necessity. As noted earlier, the requirement of necessity can generally be understood to hold that a target may be attacked if attacking it is (a) necessary to the achievement of one's just cause and (b) if there are no non-violent means of destroying/disabling it. Having discussed condition (a) in Section 1.1, the focus of this section is on condition (b). Thomas Hurka captures the heart of this condition when he states that necessity is to *jus in bello* what last resort is to *jus ad bellum* (2005:36). Condition (b), like last resort, ultimately boils down to a condition of proportionality: if one can disable/destroy a particular target using lesser/no force and if this lesser/no force option produces less harm than the option of more force, then one must use the lesser/no force option. If you, an infantry man on the defending side, come upon soldiers from the opposing side and you have intelligence which tells you that these soldiers are likely to surrender, then

you must offer them that option rather than fire upon them. Though rendering the opposing soldiers incapable of fighting is necessary for the fulfillment of your just cause, it is likely that you can achieve this aim using means other than force and that doing so will produce less harm. Here again we find a clear example of (G2): use force only when you cannot achieve your aims equally or more effectively/proportionally through non-violent or less forceful means.

Moving on to the principle of reassessment, this principle requires that, during the course of the war, those conducting the war continually reassess whether the war still meets the requirements of (a) overall proportionality and (b) likelihood of success. I take up (b) in Section 1.5 and concentrate here on (a). The principle holds that if, upon reassessment of one's circumstances, it is found that the war, despite having once met the principle of overall proportionality, no longer meets this requirement, then the war should be ended even if the just cause has not yet been achieved (Moellendorf 2008:132-134; Rodin 2008:59).

Essentially, the principle of reassessment demands that *jus ad bellum* proportionality calculations be continually made throughout the war, not just at the beginning. If the war continues to be proportionate overall then the continued use of force is just. If at any point it is found that the war will be disproportionate overall then the war must end. So, here we see one instance of (G2) in *jus ex bello*.

The principle of the pursuit of diplomatic remedies is a second example of (G2) in *jus ex bello*.³³ The principle demands that during the course of a war, belligerents actively seek non-violent solutions to the war. In other words, even while the guns are firing, actors must continue to seek solutions through diplomacy, arbitration, sanctions, etc.. The requirement serves the same purpose as that of last resort and of condition (b) of necessity: if one can effectively/proportionally achieve one's aim through non-violent measures, one ought to do

³³ I take this term from Moellendorf (2008:134).

so. It adds to these that even when one does not have a proportional lesser/non-violent option, one must continue to actively look for and try to create one.

Lastly, let us examine (G2) within the context of *just post bellum*. As a category still in development, *jus post bellum* requirements are best understood as tentative proposals rather than agreed upon conditions. That said, in its current state of development one is able to identify three entitlements/requirements which most *jus post bellum* theorists agree upon: securing (longer-term) the just cause, holding war crimes trials, and reparations.³⁴ What is missing from this list is the requirement of proportionality. Surprisingly very few *jus post bellum* theorists even mention proportionality in their arguments. Four exceptions are Brian Orend, Gary Bass, Robert Williams and Dan Caldwell (Orend 2006; Bass 2004; Williams & Caldwell 2006). Of these, Orend is the only one to list proportionality as a requirement onto itself. The requirement is stated as follows (2006:180):

Proportionality and publicity. The peace settlement should be both measured and reasonable, as well as publicly proclaimed. To make a settlement serve as an instrument of revenge is to make a volatile bed one may be forced to sleep in later. In general, this rules out insistence on unconditional surrender.

However, despite the fact that he calls this requirement proportionality, proportionality plays only a vague role. The standard clause of producing more harm than good is implied rather than stated. Accordingly, even in this seemingly explicit requirement of proportionality, proportionality takes on a supplementary rather than a primary role (I explain this distinction below).

Supplementary *jus post bellum* proportionality is really all that currently exists. For example, Orend also argues that *jus post bellum* should include some form of compensation/reparations, but that such compensation should be subject to proportionality (2006:180-181). Similarly, Bass and Williams and Caldwell argue that war crimes trials should be a part of *jus post bellum*, but that these should be subject to considerations of

³⁴ I have already discussed securing the just cause in Section 1.1, and will discuss the other three criteria in Section 1.6.

proportionality (Bass 2004:405; Williams & Caldwell 2006:317-318). Williams and Caldwell argue further that the actions one takes to secure fundamental human rights must also be restricted by calculations of proportionality (2006:317-318). In all of these proposals, proportionality serves only as an adjunct to primary *jus post bellum* requirements, rather than as a requirement unto itself. However, as proportionality is such an important requirement throughout the other just war categories and, further, as the importance of it is clearly recognized by some *jus post bellum* theorists, it seems to me that there is a strong case for listing proportionality as a necessary stand-alone requirement of *jus post bellum*. In either case – proportionality as a supplementary or primary requirement – it is clear that proportionality is a significant factor in *jus post bellum* and, thus, that (G2) underlies this category as well.

As demonstrated, (G2) can be found in all just war categories. It demands that in all phases of war, one ensures that achieving one's aim does not cause more harm (understood as advancing an unjust cause, opposing a just cause, destroying international order, or as violating fundamental human rights of people who are not liable to that harm) than good (understood as the achievement of a just cause, the upholding of international order, and the protection/securing of fundamental human rights). This applies not only to one's aim as a whole, but also to individual actions carried out in pursuit of that aim. Embodied within this guideline is the further demand that if one can achieve one's end proportionally through lesser/non-violent means, then one must do so and, further, that one must actively seek out such lesser/non-violent means. (G2) can be thought to qualify (G1) as follows: even when one has just cause to use force to protect/defend fundamental human rights (G1), one is, according to (G2), justified in using force only if, in doing so, one is likely to produce more good than harm.

1.3 Guideline 3

(G3) states that one must never *intentionally* harm non-combatants. The emphasis on intention is important because the principle allows for/acknowledges the reality that during the course of war/intervention non-combatants will be harmed/killed, albeit unintentionally, and this is not necessarily unjust. (G3) is, perhaps, the most complicated guideline and this is not surprising given that it reflects the *jus in bello* principle of discrimination – a principle which is currently the focus of huge debate. The principle of discrimination holds that one must distinguish between people who are legitimate targets of war and those who are not and, subsequently, one must only intentionally attack legitimate targets (Hurka 2005:36; McMahan 2005:6). Where the debate lies is in deciding who counts as a legitimate target. In his seminal book, *Just and Unjust Wars*, Walzer argues that the principle of discrimination should be understood as embodying two sub-principles: the principle of non-combatant immunity and the moral equality of soldiers (2006:137). I will discuss each in turn.

On Walzer's account, the principle of non-combatant immunity holds that non-combatants (understood as all civilians who are not involved in combat or “mak[ing] what soldiers need to fight”) are not legitimate targets and, further, combatants must take additional risks upon themselves in order to protect non-combatants, on all sides, from harm (there are limits to this acceptance of risk, and I will return to these in Section 1.5 on (G5)) (2006:146, 151-157).³⁵ The reason non-combatants are not legitimate targets, according to Walzer, is that “they have done nothing, and are doing nothing, that entails the loss of their rights” (2006:146). Using McMahan's reasoning from our discussion of *jus ad bellum*

³⁵ There is a growing body of literature within JWT which questions whether interveners have an obligation to take on more risk to themselves during intervention or, conversely, whether they may be permitted to transfer risk to the civilians they are defending to a greater degree than in traditional combat. I do not address this issue here as it does not have significant implications for the post-atrocity duties discussed in later chapters. However, I am inclined to think that non-combatant immunity and its concomitant requirement of assumption of risk ought not to vary according to the type of war being fought. Wherever applicable, this will be the view held throughout this thesis. For further discussion see (Baer 2011:321-322; Lucas 2001:44-46, 2003:138-139; Margalit & Walzer 2009, Pattison 2010b:99-120; and, particularly, McMahan 2010). See Lucas for an argument that individuals' violations of non-combatant-immunity in modern/future non-traditional warfare are far more detrimental to the overall success of a war/intervention than they were in the past (2007).

proportionality, non-combatants must not be targeted because they have done nothing which would make them liable to attack. Not only are non-combatants illegitimate targets, but so too are non-combatant (non-military) buildings and infrastructure: homes, businesses, hospitals, schools, etc. are all illegitimate targets because, as Johnson explains, targeting these structures serves no military purpose and, thus, can be viewed only as warfare against non-combatants (Johnson 1999:128).³⁶

There is one major qualification to the principle of non-combatant immunity which needs mentioning and that is the doctrine of double effect. According to this doctrine, while non-combatants can never be deliberately targeted in war, they can, nevertheless, be killed if their deaths are unintentional (even if they are also foreseeable) (Teson 2006:103; Walzer 2006:153). The reasoning behind the doctrine of double effect is that, while it is morally wrong to intentionally kill non-combatants, the nature of war is such that it is nearly impossible to conduct a war without killing some non-combatants.³⁷ Granting that during the course of a war, some non-combatants will be killed, the doctrine of double effect holds that this is legitimate if: (1) the act of war being committed is carried out with the intention of destroying a legitimate military target and (2) the destruction of the legitimate target is necessary in order to advance the just cause. If conditions (1) and (2) are met, the doctrine is further limited by the demands of (G2) such that the act must meet the demands of proportionality: the good achieved by destroying the target must outweigh the harm of killing non-combatants. For example, imagine that there is a military hangar housing the aggressor's fighter planes that you need to destroy in order to win the war, but you know that there is a public highway that runs along the side of this hangar. As long as you make efforts to reduce

³⁶ See Henry Shue for a convincing argument that dual purpose facilities, such as electric plants, must also be understood as illegitimate targets if their existence is necessary for "the maintenance of a minimally decent human life" (by providing clean water, heating, etc.) (2006).

³⁷ 'Nearly impossible' because a war conducted entirely at sea or in a desert could conceivably be fought without killing non-combatants. However, such wars are so rare at this point in history that they are better thought of as thought experiments rather than real possibilities.

the risk to non-combatants (by bombing the hangar at night when the road is less travelled, and by bombing it from a low altitude in order to increase precision), you may legitimately destroy the hangar even though it is foreseeable that you will also kill non-combatants travelling along the highway. The significance of the principle of non-combatant immunity, and thus (G3), is that it rules out the intentional targeting of non-combatants and non-combatant facilities as a war strategy/tactic.

Barring some disagreement over who, precisely, counts as a non-combatant, the principle of non-combatant immunity is almost unanimously accepted. The debate lies around Walzer's principle of the moral equality of soldiers. The moral equality of soldiers thesis holds that soldiers on both sides of a war have the same liabilities, rights, and duties; soldiers on both sides are equally liable to be killed, equally permitted to kill, and equally bound to the rules of war (Walzer 2006:36, 39,127-128, 136). The main point here is that even though aggression is unjustifiable (and criminal) those who fight in an aggressive war are not unjust (or criminal) "so long as they fight in accordance with the rules of war" (Walzer 2006:128). For a growing number of theorists, myself included, this is an extremely unsettling view. Among those who take issue with Walzer's moral equality of soldiers, McMahan and David Rodin offer particularly convincing arguments for why the moral equality of soldiers is untenable.

McMahan begins his argument against the moral equality of soldiers from the claim, noted above, that it is unjustifiable to target individuals who have done nothing to make themselves liable to attack. From this claim, McMahan argues that soldiers "who fight solely to defend themselves and other innocent [non-labile] people from wrongful attack, and who threaten no one but the wrongful aggressors, do not make themselves morally liable to defensive attack" (2009a:14). Conversely soldiers fighting on the side of the aggressor, by committing the act of aggression, have made themselves liable to defensive attack and,

consequently, have no grounds for attacking soldiers fighting a defensive war in their (the aggressors) own defence.³⁸ On McMahan's view, then, soldiers fighting a defensive war fall under the protection of non-combatant immunity, (G3), and the moral equality of soldiers does not stand.

Rodin takes a different approach against the moral equality of combatants, shifting the focus from liability to proportionality (2010). According to Rodin, if one's cause is unjust (if one fights on the side of the aggressor), then one's actions cannot produce more good than harm because such acts, (a), advance an unjust cause and, (b), oppose the achievement of a just cause. One, therefore, cannot meet the requirement of proportionality. If one cannot meet the requirement of proportionality, then one cannot legitimately commit any act of war. Thus, the moral equality of soldiers fails; the side that a soldier fights on does determine his liabilities, rights, and duties.

I am convinced by the arguments of both McMahan and Rodin, but I believe that their opponents also have a powerful counter argument. The most common argument in defence of the moral equality of soldiers (generally) goes as follows. One can grant that soldiers fighting on the side of the aggressor make themselves liable to attack, have no right to kill soldiers on the defensive side, and cannot meet the requirement of proportionality. The trouble is not in the arguments that McMahan and Rodin present, as such. Rather, the problem is that when one moves from the theoretical to the practical, the reality is that in most wars it is very difficult to determine which side has a just cause and this is especially true for soldiers who are caught up in the confusion of pre-war turmoil, to a degree beyond which most theorists are able to take account (Coady 2010:159, 164; Coates 1997:150-151;

³⁸ McMahan notes that there may be some rare exceptions to this claim. For example, if the defending soldiers intentionally attack civilians in the aggressor state as a means of war, soldiers on the side of the aggressor may legitimately attack the defending soldiers in defence of those civilians (McMahan 2009a:16-17).

Lazar 2010:913-916). The epistemic limitations on soldiers are such that most soldiers probably believe that they are fighting on the just side, whether or not this is the case.

I grant the claim that in most wars it is difficult for both observers and soldiers to know with certainty which side is just, and agree that this warrants allowing the moral equality of soldiers to stand in such unclear cases; if soldiers on both sides of the war reasonably believe their cause to be just, then soldiers on both sides enter war as moral equals. Not all cases, however, are difficult to judge and this is particularly true in cases where interventions are carried out to stop mass-atrocities. In such cases there are no epistemic limitations which might excuse those who carry out atrocities and, therefore, in such cases the moral equality of soldiers does not stand and those carrying out the intervention fall under the category of illegitimate targets.³⁹

Full discussion of the debate on the moral equality of soldiers is quite complex and beyond the aim of this chapter. The important points, for the purposes of understanding (G3), are these: (1) to be a non-combatant in war is to be a person who is not posing or threatening an unjust harm; (2) in war, one must not intentionally harm non-combatants; and (3) when harming non-combatants is an unavoidable, albeit unintentional, consequence of attacking a legitimate target, in order for the attack on the target to be just one must meet the requirements of (G2).

1.4 Guideline 4

(G4) requires that actors have the consent (either literal or reasonably assumed) of those on whose behalf they allege to act. The only just war requirement which embodies this guideline is the *jus ad bellum* requirement of legitimate authority. However, as I will argue,

³⁹ A possible exception might be a case in which atrocities are taking place in an isolated country where some soldiers, unable to get international news and misled by their government, are unaware of the atrocities and told that international armies were unjustly invading. I think such examples are unlikely, but not impossible.

it is a guideline which should be understood to hold throughout the course of a war/intervention and, in particular, during the post-war/atrocity phase.

The crux of legitimate authority is the belief that not just anyone has the authority to go to war; war must be carried out by (or at least authorized by and carried out on behalf of) an actor who possesses the right to wage war. The purpose of the requirement is twofold. First, by placing a limit on who can wage a war, it is hoped that the occurrence of war will also be limited. Second, it serves to distinguish the acceptable act of killing in war from the criminal act of murder. For some theorists legitimate authority equates to statehood: limiting the right to wage war to states, groups who are believed to be entitled to statehood (e.g. groups under foreign rule), or international organizations (such as the UN) which are made up of states.⁴⁰ For other theorists, myself included, limiting legitimate authority in this way is morally arbitrary and may prevent actors who meet all the other requirements of *jus ad bellum* from justly defending themselves or others from attack (Fabre 2008; Moellendorf 2002:121). On this last point, most state-oriented theorists are willing to concede that in extreme circumstances the requirement of statehood can be dropped (Coates 1997:127-129; Ryan 2010:150-151; Zupan 2010:215). The 1994 Rwandan genocide is often used to show this exception – anyone, whether a state or not, who was able to intervene could have intervened.

Setting aside the claim that legitimate authority equates to statehood (in any of its three versions), we need to dig a bit deeper to find the essence of the requirement. The common ground among many theorists is the idea that a legitimate authority is an entity who acts an agent or representative of a people. This understanding of legitimate authority entails two important points. First, in order to be a legitimate authority one must be *acting on behalf of* a group of people whose fundamental human rights are threatened and, second, one must

⁴⁰ This includes the Walzerian understanding which pulls together legalistic and moral/philosophical veins of JWT.

be acting *with that group's consent*. The requirement that an actor must have the consent of the people whom he defends places both pragmatic and normative restraints on would-be war fighters. The normative restraint is grounded in the idea that “if the intended beneficiaries of an act of defence themselves object to being defended...it would *wrong* the victim[s]” to, nonetheless, defend them (McMahan 2009b:112). Though from a strictly theoretical point of view, the requirement of consent seems sound, from a practical point of view it may be “impossibly demanding” in circumstances where the actors are not normally seen as representing the community and where time constraints do not permit actors to actively seek the consent of those whom they aim to protect (Fabre 2008:973; Kamm 2004:652). Again, the Rwandan case makes the point. We would not want intervention to have been stalled by requiring would-be interveners to get the consent of the Tutsis before intervening; in the midst of atrocities this would be quite a daunting, if not impossible, task and in the meantime thousands would be dying daily. In such cases, it is often argued that it is reasonable to presume that groups facing atrocity would consent to being defended and, therefore, the consent requirement can be assumed to be met (McMahan 2009b:110-111; Teson 2006:107). The important insight which legitimate authority offers, then, is that actors must have the consent (either literal or reasonably assumed) of those on whose behalf they allege to act.

Though, as JWT stands, (G4) is found only in the *jus ad bellum* requirement of legitimate authority, it is not difficult, especially when considering post-war/intervention scenarios, to see the continued importance of consent. This, I think, is true regardless of whether one is discussing war or intervention, but it is easiest to see in the case of post-atrocity intervention. Imagine a case, Case-1, where a coalition of liberal democratic states justly intervenes in a theocratic state in order to stop mass-atrocities being carried out by the target-state government. They do so with the assumed consent of the target-population and once the atrocities are stopped it is clear (through their active aid to the interveners) that the

target-population consents to the interveners' continued presence in the target-state. The target-population is unusually homogeneous and is extremely religious. For centuries the government has been theocratic and, with the exception of the atrocity committing regime just defeated, has been benevolent. The interveners, following the advice of the UN, want to reconstruct the target-state into a liberal democracy. However, the target-population, though agreeing that human rights must be protected, want to maintain their religious history and create a new benevolent theocracy. Do the interveners need the consent of the target-population before taking steps to construct a liberal democracy? It seems to me that they would. Such a conclusion is even more apparent if we slightly change the example.

Now imagine a case, Case-2, where a coalition of conservative Islamic states justly intervene in a state with a long history of liberal democracy in order to stop mass-atrocities being carried out by the target-state government. The intervention is carried out with the assumed consent of the target-population. The target-population is heterogeneous and, for centuries, has lived under a constitution which guarantees religious freedom and separation of church and state. Up until the recently removed murderous regime, the government has been liberal, democratic, and benevolent. However, now the interveners want to reconstruct the target-state into a benevolent Islamic theocracy. It seems obvious in this case that it would be unjust for them to do so without the expressed consent of the target-population. I submit that in both cases it is wrong to impose a certain form of government on the target-population because this violates their right to national self-determination; it is through the target-population's consent – their will – that this fundamental human right is actualized. I return to this issue and argue it in full in Chapter 5, so for now it is enough for the reader to accept the claim that consent is a relevant factor in *jus post bellum*. To accept this claim, is to accept that (G4) has significance beyond *jus ad bellum*.

To recapitulate, though (G4) is explicitly located in only the *jus ad bellum* requirement of legitimate authority, it is my view that it should be applicable to war/intervention as a whole. Ultimately (G4) works to increase the likelihood that when actors *claim* they are using force to defend the rights of others, that they are, in fact, doing so. The requirement of consent, in other words, substantiates this claim. Further, it recognizes that there may be cases where people whose fundamental rights are threatened do not want to be defended, and in such cases, it seems most appropriate to respect their wishes.

1.5 Guideline 5

(G5) holds that actors cannot be held under a duty to do something that will expose them to an unacceptable level of risk; they may choose to accept the risks and act, but cannot be obligated to do so. (G5) is found in the *jus ad bellum* requirement of likelihood of success and, to a lesser extent, in the *jus in bello* principle of non-combatant immunity.

Though likelihood of success is generally understood as a *jus ad bellum* category, as noted in Section 1.2, it is also found within the *jus ex bello* principle of reassessment which demands that during the course of the war, those conducting the war continually reassess whether the war still meets the requirements of overall proportionality and likelihood of success. Thus, this requirement should be understood as applying (at least) to both *jus ad bellum* and *jus ex bello*.

Of all the just war requirements, I find likelihood of success the most dubious. This is because the requirement can be interpreted in (at least) two different ways. On the one hand, it may simply be a reiteration of *jus ad bellum* proportionality: it must be likely that the overall good achieved by ones efforts will outweigh the harm (claim-1). On the other hand, likelihood of success may mean that one must be reasonably sure that one will *win* the war and achieve one's just cause (claim-2). Though the two claims are similar, there is a crucial difference between the two and I am not sure that claim-2 is morally justifiable.

There are two problems with claim-2. First, it suggests that if A is attacking V, V cannot defend himself unless he is reasonably sure that his defence will be successful. The converse of this means that if he is not reasonably sure that he can defend himself, V must allow himself to be attacked without resisting. I find this requirement disturbing – we cannot really say to potential murder or rape victims that they cannot defend themselves if there is little chance of success. It seems that one retains the right to try to defend oneself from such attacks no matter the likelihood of success. Likewise in the case of war or mass-atrocities. Imagine that Rwandan Tutsi knew that they had little chance of defending themselves against the Hutu perpetrators of genocide. It seems wrong to say that, given their chances, they would not be morally justified in *trying* to defend themselves. Yet this is what claim-2 implies. I am not alone in this reservation. Coates, taking a slightly different approach, argues that “[t]here may be a victory of a moral kind to be had that transcends military defeat” (1997:182).⁴¹

The second problem with claim-2, is that it does not allow others to voluntarily risk their lives to save the lives of others. That is, if A is attacking V, claim-2 holds that R (a third party) cannot intervene unless it is likely that R can successfully defend V and himself from A. While it certainly is legitimate to say (as I argue in later chapters) that it is unjust to *force* R to risk his life to save V, I see no grounds for saying that R acts unjustly if he *chooses* to risk his life to save V. Imagine that Tanzanian soldiers knew that they had little chance of defending the Tutsi against genocide but, nevertheless, wanted to *try* to defend them; it seems unsettling to argue that they would not be justified in doing so. Now, if the Tanzanians knew that they had (claim-2) little chance of protecting the Tutsi and, in fact, knew that many of the Tanzanian soldiers would also die *and* (claim-1) that their attempt to defend the Tutsi would result in *more* overall harm than non-intervention (let us say that Hutu militants enter

⁴¹ See Daniel Statman for another argument regarding little chance of success and the just use of defensive force (2008).

Tanzania and carry out revenge attacks against Tanzanian civilian) then I think we can grant the claim that the Tanzanians ought not to intervene. However, this is based on the harm captured by claim-1, not by claim-2.

So, likelihood of success understood in the form of claim-1 reiterates the concept of proportionality and is a rather non-controversial example of (G3). However, likelihood of success in the form of claim-2 is problematic. That said, I do not want to throw out claim-2 altogether. It seems that there are two cases where it might be morally relevant. First (and this may be the true purpose of claim-2), because most wars are carried out by soldiers who are *commanded* to fight, it seems necessary to require their commanders not to send soldiers (without those soldiers' explicit consent) into wars where they have little chance of succeeding. Secondly, and more relevant for my purposes, claim-2 is important in the case of interventions if one holds that actors are under a duty to intervene in atrocity cases. I return to this issue in Chapter 4, but for now it is enough to say that one cannot be held under a duty to intervene if, in so doing, one will incur an unreasonable amount of risk. Therefore, if it is very unlikely that a particular intervention will succeed, this would negate the duty to intervene. It is crucial to recognize, however, that saying that soldiers/states are not under a duty to act in cases where there is little chance of success does not exclude the possibility of those soldiers/states *choosing* to fight and, so choosing, being justified in fighting. Thus, our discussion of claim-2 illustrates the important insight of (G5): actors cannot be held under a duty to do something that will expose them to an unacceptable level of risk; they may choose to accept the risks and act, but cannot be obligated to do so.⁴²

Let us turn to the principle of non-combatant immunity. As discussed in Section 1.3, this principle holds that (a) non-combatants are illegitimate targets and, (b), that combatants must take additional risks upon themselves in order to protect non-combatants from harm.

⁴² There are a number of complications with this statement and, consequently, a number of qualifications that need to be made. I return to questions of unacceptable risk and intervention in Chapter 4.

Condition (b) is of concern here. Walzer argues that soldiers must realize that waging war, even a just war, necessarily places non-combatants in danger of being harmed. With this realization, Walzer continues, soldiers must “seek to minimize” the harms to non-combatants by taking greater risks to themselves (2006:155). He adds that the “limits of risk are fixed...roughly at the point where any further risk taking would almost certainly doom the military venture or make it so costly that it could not be repeated” (Walzer 2006:157). Walzer's limits of risk are rather vague; it is likely to be understood quite differently by readers depending upon their philosophical persuasion (i.e whether they are statist, communitarian, cosmopolitan, etc.). This problem aside, what Walzer's position does do is reassert the idea that individuals cannot be obligated to do something if doing so exposes them to some unacceptable level of risk. I return to the issue of determining what constitutes unacceptable risk in later chapters. For now, it is enough to note that within the principle of non-combatant immunity is another instance of (G5).

Though *jus post bellum* proposals do not yet include a requirement which reflects (G5), I believe they should. Theorists agree that in most instances where agents are held under a duty, as they are often claimed to be in the post-war/post-atrocity period, such duties are limited by the factor of unacceptable risk. I will not herein offer an argument of how this might, more specifically, apply to *jus post bellum*, as the rest of this thesis will illustrate this. For now, we move forward with the claim that (G5) is an important guideline which is found in *jus ad bellum*, *jus in bello*, *jus ex bello*, and likely plays an roll in *jus post bellum* as well.

1.6 Guideline 6

Guideline 6, which holds that individuals must be held accountable for the unjust harms they are morally responsible for, is the least developed of all the guidelines. It is, of course, not a new guideline of JWT but its exact implications and scope are in much need of further discussion and elucidation by theorists. As it stands, (G6) is generally thought to

apply to all phases of war/intervention insofar as agents who act contrary to the just war criteria, at any stage, are thought to be subject to being held accountable for their actions. The standard position is that those morally responsible for starting unjust wars, thereby violating the *jus ad bellum* criteria, and those who fight unjustly, thereby violating the *jus in bello* criteria, should be held accountable for their transgressions. Holding individuals accountable for their crimes is commonly discussed within the context of war crimes trials, though in recent years several theorists have added reparations as a possible mechanism for holding individuals accountable.⁴³

Let us begin our discussion of accountability by looking at war crimes trials. As Bellamy observes, war crimes trials are thought to serve two general purposes: punishment and rehabilitation (2008:613). Many argue that punishing individuals for war crimes is the necessary last step in war/intervention in order to achieve justice (Bass 2004:404; Bellamy 2008:613-614; Hayden 2005:169; Evans M. 2005a:13; Johnson 1999:199; Koeman 2007:205-206; McCready 2009:74-75; Orend 2008:40-41; Williams & Caldwell 2006:317-318). Others argue that conducting war crimes trials is part of the post-war rehabilitation process in so far as it offers victims (or their survivors) a sense of justice, serves to prevent retribution, and “helps to foster a culture of reconciliation” (Bellamy 2008:614; DiMeglio 2005:153-154). Some theorists argue that war crimes trials provide both. Though there is general consensus that war crimes trials should be held, there are a number of theorists who caution that “[i]nsisting on criminal prosecutions could make bloodstained leaders fight to the bitter end” (Bass 2004:405). Therefore, the decision to hold trials should take proportionality into consideration; there may be cases where holding trials creates more harm than good and, in such cases, these activities would, themselves, violate the just war criteria. This is an issue

⁴³ On the once orthodox Walzerian account only those in high command could be held responsible for *jus ad bellum* violations, while both commanders and soldiers could be held responsible for *jus in bello* violations. In recent years this has been challenged. For the sake of space, I do not discuss this debate here, but will briefly return to it in Chapter 7.

I explore in depth in Chapter 7. For now it is enough to recognize that war crimes trials are one way by which to hold individuals accountable for the unjust harms they are morally responsible for, (G6).

Another manifestation of (G6) is found in the requirement of reparations. The basic idea behind reparations is that those who are responsible for the destruction that war/atrocities causes, should pay towards repairing that destruction. The general premise is the same as that for war crimes trials, but reparations hold individuals monetarily accountable rather than/in addition to legally accountable. There are two basic types of reparations: those paid to individuals to compensate them for their personal suffering, and those paid to communities (either in the form of money or labour) to repair physical damage (Evans, M. 2005a:13; Hayden 2005:171; McCready 2009:74-75; Sassoli 2009:278; Schuck 1994:983). There are also two types of actors which might be liable to pay reparations: communities and individuals. In the context of aggressive war, many theorists argue that because it is nearly impossible to determine who was responsible or supportive of the war, it is generally thought that, if reparations are owed, they should be paid by the general population of the aggressor state through some sort of tax (Bass 2004:408-409; Walzer 2006:297). Very little is said about how reparations might work in atrocity cases, but it seems to me that in many mass-atrocity cases it would be easier to identify particular wrong-doers.

War crimes trials and reparations are both ways of enacting (G6). There are lingering questions surrounding each of these and it is far from clear that these two options exhaust the possible ways of holding people accountable for the unjust harms for which they are morally responsible. Missing from this guideline is a discussion on the possibilities of using truth commissions and/or traditional-based courts/authorities (among others options) to hold individuals accountable. This is one area of post-war/post-atrocity where the policy-oriented

literature is much further along than JWT. I will return to that literature and the broad topic of accountability in Chapter 7.

1.7 Six Guidelines: Conclusion

Throughout the course of this chapter I have endeavoured to show that there are 6 guidelines which underlie the whole of JWT:

- (G1) The use of force is only justified to defend and/or secure fundamental human rights.
- (G2) One must ensure that achieving one's aim does not cause more harm than good.
- (G3) One must never *intentionally* harm non-combatants.
- (G4) Actors must have the consent (either literal or reasonably assumed) of those on whose behalf they allege to act.
- (G5) Actors cannot be held under a duty to do something that will expose them to an unacceptable level of risk.
- (G6) Individuals must be held accountable for the unjust harms they are morally responsible for.

While these guidelines do not reveal any post-atrocity duties, they do tell us how such duties – if they involve the use of force – must be limited. As I move ahead in the task of formulating post-atrocity duties, I must ask whether these duties meet these just war guidelines. If I find myself making claims that are inconsistent with these guidelines, I then face the task of showing either, (a), why the just war guideline is unsound or, (b), why the just war guideline does not apply or may be overridden in a particular case.

Chapter 2: Fundamental Human Rights

Pick up an academic book, review a scholarly journal, or listen to an expert forum on intervention and you will soon discern that two core issues permeate much of the discussion: human rights (especially the right to life) and national self-determination. Most theorists who support intervention in cases of mass-atrocity base their arguments on the need to protect the right to life. Conversely, those who have reservations about intervention (though there are very few who are opposed to intervention under all circumstances) stress the need to respect the right to national self-determination and the correlative policy of non-intervention. Clearly, then, an understanding and consideration of both these rights – the right to life and the right to national self-determination – is essential to tackling any question about intervention. Accordingly, in order to formulate a theory of post-atrocity duties we must establish an understanding of these rights. Once we have established this understanding, we must ask what duties are placed upon the international community by virtue of these rights.

In this chapter, I discuss the right to life and, more broadly, the right to a minimally decent life – its justification, components, parameters, associated duties, and, briefly, its wider implications for post-intervention justice (these implications will be examined at greater length in subsequent chapters). In Chapter 3, I likewise explore the right to national self-determination. Establishing an understanding of these rights and their correlative duties will further refine some of the guidelines from Chapter 1 and provide additional guidance with which to approach the more complex and controversial topics of post-atrocity regime change, reconstruction, and punishment.

As you will recall, in Chapter 1 I identified six core guidelines which, as I argued, will inform the arguments for post-atrocity duties in later chapters. The first guideline discussed in that chapter, (G1), states that the use of force is only justified to defend and secure fundamental human rights. This guideline, as stated, leaves open the question of what exactly

fundamental human rights are and, consequently, leaves us with an unsatisfactory account of when actors may justly go to war. This current chapter sets out to identify fundamental human rights and, in so doing, gives a clearer understanding of what rights, when threatened, give actors a just cause for war. The fifth guideline identified in Chapter 1, (G5), states that actors cannot be held under a duty to do something that will expose them to an unacceptable level of risk. The examination herein will also expand on the moral reasoning behind this claim and, to a lesser extent, will touch on the question of what constitutes unacceptable risk. Our discussion of these issues will not only refine our understanding of fundamental human rights, it will also reveal a number of post-atrocity duties.

Before beginning our exploration of the right to a minimally decent life, let me make two notes. First, it is important to offer some initial clarification on what I mean by this right and how it relates to the more commonly referred to 'right to life.' In debates on intervention, the right to life is sometimes used quite literally to mean the right not to be killed/the right to be alive while, sometimes, it is used more generally to mean the right to those things necessary for a minimally decent life and other times the right refers to something in between the two. To avoid confusion, within this thesis, 'the right to life' equates to the limited right not to be killed/the right to be alive and, furthermore, is understood to constitute a part of 'the right to a minimally decent life' which, as will be discussed, is much broader in scope.

Second, while my aim in this chapter is to provide a solid understanding of the right to a minimally decent life and its correlative duties, my aim is not to provide an exhaustive account of rights generally or even of this right more specifically. My interest/purpose in establishing what this right entails is limited by the purpose of this thesis and, given this, there will be topics throughout this chapter which would need further discussion in a work dedicated solely to establishing a theory of fundamental human rights.

This chapter proceeds as follows: Section 2.1 lays down the foundations for/justification of the right to a minimally decent life. Section 2.2 identifies and defines the three constituent parts of the right to a minimally decent life: the rights to physical-integrity, autonomy and community. Section 2.3 answers the question: What sort of rights are the rights to physical-integrity, autonomy, and community? Section 2.4 discusses the duties associated with these rights. While each section provides an important foundation for the claims made throughout this thesis, this last section is of particular importance. In this section I argue that there is a duty to use force – including lethal force if necessary – in order to aid individuals whose rights to a minimally decent life are in grave danger. The duty to use force is the keystone of arguments found in Chapter 4 on intervention, regime change, and occupation, Chapter 5 on democratization, and Chapter 7 on criminal trials.

2.1 Foundations of the Right to a Minimally Decent Life

The right to a minimally decent life is founded on three key principles – now standard to most accounts of human rights – about the status of all human-beings:⁴⁴

- (P1) All human-beings have moral worth; they are intrinsically valuable simply as human-beings.
- (P2) All human-beings must be treated in ways that respect their moral worth.
- (P3) All human-beings are of equal moral worth.

The first principle, P1, captures the belief that there is something profoundly significant about human life. To say that human-beings are intrinsically valuable is to say that they are valuable simply by virtue of being human-beings; it is to say that there is something sacred or especially significant about human life.

The second principle – human-beings must be treated with respect – focuses on the view that, on account of their moral worth, there are certain ways that human-beings may and

⁴⁴ See for example (Beitz 1979a:417, Caney 1997a:32-33; Dworkin 1985, 2000; Griffin 1988:231-232; Jones 1994:94; MacDonald 2009:36; Vlastos 2009:55-60)

may not be treated. The idea is built on Kant's categorical imperative that people must be treated as ends in themselves, and never merely as means to one's ends. How does one treat a human-being as an end in himself? There are three answers to this question which I adopt and combine. First, Onora O'Neill states that to respect the moral worth of a human-being is to treat them in ways that: (1) support or "leave intact" their ability to live a minimally decent life; and (2) avoid doing things to them that they could not be expected to consent to (1993:178). Second, Peter Jones holds that to treat human-beings in ways that allow them the "freedom to develop and to act upon their capacity for autonomous conduct" is to respect their value as human-beings (1994:128). Lastly, Allen Gewirth argues that to respect the worth of a human-being we must respect what is important or necessary for that individual (in Jones 1994:99-101). At a minimum this means respecting the individual's life and those things – capacities and material goods - necessary for its continuation. Each of these views not only provides insight on what it is to treat a human-being as an end in himself, they also open our discussion on what constitutes a minimally decent life. We will return to this later, but for now it is useful to note that all three views implicitly share the belief that human-beings must have some level of agency in determining how their lives are led. Combining the above positions, I submit that to respect the moral worth of an individual – to treat a human-being as an end – is to:

(P2a) act in ways that value, support, and protect the individual's current and continued ability to lead a minimally decent life and those things necessary for that life;

(P2b) treat the individual only in ways that he could be reasonably expected to consent to and/or which allow the individual to act autonomously.

So, P2 builds on P1 and adds that human-beings, on account of their moral worth, are entitled to be treated in certain ways. The claim that human-beings are *entitled* to be treated in certain ways is important because it provides us with a basis for fundamental human rights. A right,

as herein understood, is an entitlement to certain types of treatment (Jones 1994:49-50). I expand on this claim below, but for now, granting this claim, I submit that if we agree that human-beings are entitled to be treated with respect, then we have located the grounds for the claim that people have the *right* to respect (I will herein refer to P2 and its sub-points, collectively as ‘the right to respect’). That human-beings have the right to respect further provides us with the grounds for the claim that people have the right to a minimally decent life (I will examine the details of this shortly).

It is necessary to briefly examine the nature of the *right* to respect, as a right, more closely. Gewirth explains that the concept of a right is best understood in the context of the formula: R has a right to X against D by virtue of J (2009:93).⁴⁵ As Gewirth notes, the formula encompasses four distinct elements: (1) R, the “subject” or **Right-holder**; (2) X the “object” of the right; (3) D the “respondent” or **Duty-bearer**; and (4) J, the “ground” or **Justification** of the right (2009:93). There are many theories of rights which endeavour to explain the relationship between these four elements, most of which are categorised as either choice theories or interest theories.

H.L.A. Hart’s seminal article, “Are There Any Natural Rights,” is representative of choice theory (2009). Filling in Gerwirth’s formula, on Hart’s view, R can be a right-holder if, and only if, R has the capacity of choice and some ability to control some action of D in regards to X. D is an individual whose own personal freedom is limited by R’s ability to control D’s action – to demand that D do/not do something – in regards to X. The justification, J, for the right to X, is also R’s capacity and ability to choose or control D’s action. While Hart’s outline of what it means to be a right-holder may apply to some sorts of rights (see Section 2.2b on autonomy), it is problematic when applied to the right to respect. By limiting rights to those humans who have both the capacity of choice and ability to control

⁴⁵ I have changed the letters of Gewirth’s formula, who uses A-X-B-Y respectively, for internal consistency and to make what the letters represent easier to remember.

the actions of others, choice theorists not only exclude young children and mentally-handicapped individuals from the category of right-holders, they also exclude those individuals capable of choice but unable to exercise control over the actions of others. Thus, on this view, slaves, prisoners of war, and victims of atrocity, despite having the capacity for choice, must be said to have no rights against their captors/perpetrators and no justification for rights because they do not have the ability to control the actions of others. Rights become nothing more than statements of empirically observable conditions of human interactions rather than normative statements of how human beings ought to be treated. In this way, the choice theory sacrifices the moral force of what it is to have the right to respect and so, on its own, does not offer a convincing understanding of what it means to have this right. We will return to the importance of choice later, but for now put aside choice theory because it provides an unsatisfactory account of rights generally.

The interest theory holds that the interests of an individual provide the grounds for that individual's rights. The position is best captured by Joseph Raz in *The Morality of Freedom* (1988). Applied to Gewirth's formula, Raz's theory states that: R, an individual whose "physical-integrity is of ultimate value," has a right to X against D because, J, "an aspect of [R's] physical-integrity (his interest) is a sufficient reason for holding some other person(s) to be under a duty" (1988:166). Raz's interest theory mirrors what is captured in (P1) and (P2): R's value as a human-being provides 'sufficient reason' for demanding that D treat R in ways which respect/recognize this value. Accordingly, I submit that (P2) is a statement of a right, that the nature of this right is captured by the interest theory, and that this right – the right to respect – includes the right to be treated as specified in (P2a) and (P2b).

P3, the principle that all humans are equally valuable, is a powerful moral claim. It states that, at the most elemental level, one human life is just as important as any other human life. This is not to say that human-beings are equal in all things. Clearly, there are vast

differences in their physical strength, intelligence, sociability, motivations, and so on. What P3 insists upon is that, regardless of these differences, at the most basic level of each human-being exists a core of moral worth, equal to the moral worth of every other human-being. Thus, P3 is distinct from P1 in that while P1 holds that all human-beings have moral worth, P3 qualifies this by adding that the moral worth of every human-being is exactly the same. The implication of P3 is stated in what I term the doctrine of equal respect.

The doctrine of equal respect ties (P1), (P2), and (P3) together, and concludes that if all humans have moral worth, and if the moral worth of human-beings requires that they be treated with respect, and if the moral worth of all human-beings is equal, then (the doctrine of equal respect) all human beings have the equal right to respect. Respect, remember, is here defined as treating individuals in ways that (a) acknowledge the moral value of their life by treating them as an end, rather than merely a means, (b) support and protect their current and continued ability to lead a minimally decent life and those things necessary for that life, and (c) which they could be reasonably expected to consent to and/or which allow them to act autonomously. The degree of respect does not vary. It is consistent – it is equal – for all human-beings. Equal respect, however, does not equate to equal treatment full-stop. The doctrine of equal respect allows that “persons may, with justice, be treated unequally” when/if there are “morally relevant differences in their situations” (Beitz 1979a:417). If Adam has a barrel of apples, he may distribute them to people according to their need – giving more to the malnourished/hungry, less to the adequately nourished, and none to those with their own thriving apple trees. What is crucial is that differences must be morally relevant, not arbitrary. Many differences that separate people – gender, race, religion, sexual orientation, etc. – are arbitrary from a moral point of view, and therefore, do not provide grounds for unequal treatment. I am not any more entitled to the apples than you are simply because I am a man and you are a woman, or because I am German and you are South

African, or because I am atheist and you are Christian. We are both equally entitled to the fulfillment of our right to subsistence; the unequal distribution of apples is only justified when our level of need (I am fully nourished and you are malnourished) is different (or when there simply are not enough resources to distribute equally).

As my thesis develops, it will become apparent that the doctrine of equal respect has far-reaching implications for questions of intervention and, more specifically, post-atrocity duties. We will explore these in the coming chapters. For now, we move from the right to respect to one of its derivatives: the right to a minimally decent life.

2.2 The Components of the Right to a Minimally Decent Life

Within the right to respect we locate the right to a minimally decent life. (P2a) states that to treat a human-being with respect one *must* act in ways that value, support, and protect the individual's current and continued ability to lead a minimally decent life. This means not only that human-beings have the right to be treated in ways that allow them to lead minimally decent lives, but also that they have the right to be treated in ways that value, support, and protect those things necessary for the continuation of their lives. These two points are incorporated in what I term the right to a minimally decent life. To explore the components of this right, we need to concentrate on what is 'necessary' for the existence and continuation of a minimally decent life.⁴⁶ Notice that we are not just interested in what is necessary to be alive; rather, we are searching for what is necessary to lead a minimally decent life. Clearly, however, being alive and having some level of physical-integrity is a requisite part of a minimally decent life. Many theorists also agree that autonomy is a necessary component of a minimally decent life (Jones 1994; Raz 1988, 2009; Vlastos 2009). I would add that some form of community – broadly understood as that which results by creating and maintaining ties with other human-beings – is also a necessary factor to living a minimally decent life. If

⁴⁶ I am concerned here with what constitutes a minimally decent life for human-beings only, not for animals/other life forms and the arguments herein should be understood to be limited as such.

we grant the claim that to live a minimally decent life one needs physical-integrity, autonomy, and community, then, based on (P2a), we must also grant that individuals have the *right* to physical-integrity, autonomy, and community. Let us examine each of these.

2.2a Physical-Integrity⁴⁷

The right to physical-integrity includes two important features. First, it is a right to those things necessary for human survival: water, food, physical security (e.g. not being murdered), and shelter (Jones 1994:146; Campbell 2006:156; Shue 1996:18-29; Waldron 1993:5-11). I term this the survival aspect of the right to physical-integrity because the focus is on those things clearly necessary for human survival. The logic behind the survival aspect is straightforward: to have a minimally decent life one must be alive and to be alive one requires certain environmental conditions and material goods. As supplementary justification, the survival aspect also expresses the reality that without the attainment of the basic necessities of life, an individual cannot make use of any other rights (Luban 1980a:174-175; Shue 1996:19-21). Being alive is a precondition to an individual's ability to act autonomously. The second aspect of physical-integrity, which I call the physical-suffering aspect, holds that in order to have a minimally decent life, individuals must be free, insofar as possible, from avoidable physical suffering (Fabre 2000:12-13). This view can incorporate the survival aspect – for if one does not have food, for example, one will surely suffer the physical pain of hunger and starvation – but differs from it in two ways. First, it goes beyond survival to include the right not to be tortured and, possibly, to some basic level of healthcare. Second, rather than basing the purpose of the right to physical-integrity on survival, the physical-suffering aspect is based on the belief that individuals ought not to be subject to

⁴⁷ On some understandings of the term well-being, the right to physical-integrity could also be termed the right to well-being. I have chosen the right to physical-integrity, however, because the term well-being has taken on so many disparate meanings in the literature, some which fall in line with the conditions I include here under physical-integrity (Caney 1997a:33), others which fit more closely with what I have termed autonomy (Vlastos 2009:56), and many which combine the two concepts (e.g. Sen 1985:197-200). To avoid confusion I have chosen not to use the term well-being. See Griffin for an inquiry on the meaning of well-being (1988).

avoidable harm and/or suffering. While this may be similar to the survival aspect, it is distinct, as it is possible to torture someone without killing them. I submit that both views provide vital elements of the right to physical-integrity, as I intend it, and, so, I define the condition of physical-integrity as: (a) having those material objects and conditions necessary for survival; and (b) being free, insofar as possible, from avoidable physical suffering and harm.

It is important to remember that I am working under the principle that to value the moral worth of an individual one must value what is necessary for that individual to live a minimally decent life. If we agree that, based on the right to respect, individuals have the right to a minimally decent life, and, further, if we agree that physical-integrity is an important and necessary part of a minimally decent life, then we must grant that individuals have a right to physical-integrity. Consistent with this claim, we can conclude that, based on the survival aspect of physical-integrity, individuals have the right to food, water, shelter, and physical security. Based on the physical-suffering aspect of physical-integrity, individuals have rights such as the right not to be tortured and the right to some basic level of healthcare. The exact force of the right to physical-integrity – its possible limits, qualifications, and correlative duties – will be analysed in Sections 2.3 and 2.4. For now, I conclude with the claim, (C1), that the right to a minimally decent life includes the right to physical-integrity, and that this right is the right to (C1a) those things necessary for survival, and (C1b) freedom from avoidable physical suffering. Further, and following the underlying justification for the right to a minimally decent life, the right to physical-integrity is a right that all individuals have equally by virtue of their equal moral worth.

2.2b Autonomy⁴⁸

⁴⁸ The right to autonomy plays a relatively minor role in this thesis – it will appear in Chapter 5 on democracy and in Chapter 6 on conditional aid – and, given this, the account of autonomy herein is only a concise/basic sketch of what this right entails. It is, so to speak, a minimalist account of autonomy. Most accounts of go well beyond this minimalist understanding, but for

The claim that autonomy is necessary to live a minimally decent life is a claim that emphasises the *human* aspect of life. As Jones argues, to deny an individual autonomy, is to deny them “what is essential to being human and to being able to live a distinctly human life” (1994:128). The notion of autonomy captures the fact that human-beings are not robots or beings of primarily or solely collective purpose and/or awareness (like, perhaps, ants), but are, rather, beings who possess strong individual consciousness and will (though there are some exceptions, to which I will return). To be a human-being, then, is to be a being with some degree of independence of thought, choice, and action by which one’s individual consciousness and will can be expressed; it is to be autonomous. Tom Campbell explains that to be autonomous is to “make moral choices, to decide what is right and wrong for yourself and to do what you believe to be right” (2006:55). Raz states that “an autonomous person is one who is the author of his own life,” such that he has a significant degree of control over his life’s path, or “destiny” (2009:191). Similarly, Jones argues that autonomy is “self-rule;” the ability to “determine the course of [one’s] own life” through one’s decisions and choices (1994:121-125). The picture of an individual charting his life’s ‘path’ or ‘course’ emphasises that a minimally decent life involves the ability to make choices and actions which not only relate to the immediate/present, but which shape, in some significant way, the future as well. Pulling from these statements, I define autonomy as having a significant degree of authority and freedom to make choices, and act upon those choices, which guide and determine one’s life. If we agree that autonomy, so defined, is an essential aspect of a minimally decent life, then, we can conclude that individuals have the right to autonomy.

Before exploring the details of the right to autonomy, it is necessary to examine an inherent difficulty with the claim that human-beings have the right to autonomy. The difficulty is that *all* human-beings do not have the mental capacity to act autonomously.

the purposes herein, the minimalist account is sufficient. For a fuller account see those theorists discussed in the text as well as Dworkin and Griffin (1988 and 2008:149-151 respectively).

Babies, mentally disabled people, people in comas, etc., while being physically human, do not possess the ability to make choices (or are impaired in their ability to do so). In light of this observation choice theory again becomes relevant. Hart writes that a right-holder is “any adult human-being capable of choice” (2009:77). While the ‘capable of choice’ condition need not apply to the right to a minimally decent life as a whole – there is no reason, for example, to hold that a baby must possess the ability to choose in order to be entitled to food or the right not to be murdered – it is clearly a precondition for the right to autonomy. If one does not have the mental capacity of choice, then being given the right to choose one’s path in life is nonsense. It might be that what is needed is a system of levels of autonomy, as children and people with minor mental disabilities are capable of some degree of choice and, therefore, of lesser-than-full degrees of autonomy. It certainly is the case that such individuals cannot rightly be enslaved (and thereby denied all autonomy). However, for the sake of space, I will leave the possibility of an echelon structure of autonomy unexamined and move forward with the claim that to be *fully* autonomous one must be capable of choice. The right to autonomy is, therefore, a qualified right: all human-beings capable of choice have the right to autonomy.

To determine what the right to autonomy consists of we return to what it is to be autonomous. To be autonomous is to have some degree of authority and freedom to make choices, and to act upon those choices, which guide and determine, to a significant degree, one’s life. There are three salient factors here. In order to be autonomous one must have freedom of thought and choice, freedom of action, and freedom to form a conception of the good life (what one thinks is an appropriate way of life). Again, I will examine the more exact contours of what it means to have such freedoms in Sections 2.3 and 2.4, but for now I add the claim, (C2), that the right to a minimally decent life includes the right to autonomy

and that this right consists of the (C2a) right to freedom of thought and choice, (C2b) freedom of action, and (C2c) freedom to form a conception of the good.

2.2c Community

That community is a necessary part of a minimally decent life and that, therefore, there is some sort of right relating to community will be discussed at length in Chapter 3. However, a preliminary glance at the importance of community is necessary before we move on to examine the details (the further qualifications and correlative duties) of physical-integrity and autonomy. Community plays an essential part of a minimally decent life in three ways. First, in order to attain the survival aspect of physical-integrity, humans are absolutely dependent upon others for material sustenance until they become self-sufficient adults. Even as adults the statement that people are dependent upon others for their physical-integrity remains true in all but a few exceptional cases. In a non-atomistic world, the actualization of the right to physical security, for example, is dependent upon collective action to stop and prevent murder. Thus, crucial aspects of physical-integrity are dependent upon some form of community (whether in the form of a family or a larger society) for their fulfillment.

Second, an individual's autonomy is also, in large part, dependent upon community. As Raz explains, a “person is autonomous only if he has a variety of acceptable options available for him to choose from and his life became as it is through the choice of some of these options” (Raz 2009:191). Community provides, or should provide, individuals with the necessary environment of options (options such as occupation, marriage, religion, hobbies, leisure activity, etc.). Within a community, people “co-ordinate their activities and...co-operate with one another in various ways” which allow them to pursue separate goals and which make possible various conceptions of the good life (Jones 1994:112). Michael Sandel further pushes the claim that community is necessary for autonomy, arguing that community

not only provides individuals with an environment of options and interaction, but is also a major factor in the actual development of each individual's identity and will. Community is not only that within which the good life is pursued, but it is also that which helps to shape the individual's conception of the good in the first place (Sandel 2006:244).

Even for those who become isolated from their community, community is absolutely necessary, even if only for a limited time. Hermits, for example, are dependent upon community to survive childhood and become hermits, and likely decide to become hermits for reasons largely shaped by the influence of their community on them and their concept of the good.

Lastly, community is a necessary part of a minimally decent life because although, as stated earlier, humans are not beings of *primarily* or *solely* collective purpose (like ants or bees), human-beings are nevertheless social beings. Creating and maintaining relationships with others is part of what it is to live a minimally decent life; most human-beings form families, friendships, and various other relationships which provide significant moral value in their lives. Community, then, is not only instrumentally valuable (as outlined above) but is also valuable for its own sake.

Understanding that community is a necessary part of a minimally decent life is important because as we move on to discuss the qualifications and correlative duties of the rights to physical-integrity and autonomy, we must remember that right-holders do not live in a state of atomistic existence. Therefore, to fully understand what it is to have the rights to physical-integrity and autonomy and how these rights are fulfilled, we must understand what it is to have these rights and to fulfill these rights within communities.⁴⁹

2.3 Parameters of the Right to a Minimally Decent Life

⁴⁹ One charge against liberal accounts of human rights is that they do not recognize the importance of communities to individuals. Clearly, my account is not subject to this objection. See Caney for an argument that contrary to the charges made against them, most liberal accounts do recognize the importance of community (1992).

To recapitulate, so far we have established that all individuals have the right to respect and that the right to respect is the right to be treated as a human-being rather than as an object or as (only) a means to an end. Further, the right to be treated as a human-being includes, (P2a), the right to be treated in ways that value, support, and protect one's ability to live a minimally decent life and, (P2b), in ways that one could be expected to consent to. I have argued that the right to a minimally decent life encompasses the right to physical-integrity and the right to autonomy (and to some right of community, but for now I set this right aside). It is now time to explore the parameters of the right to a minimally decent life.

If physical-integrity and autonomy are absolutely necessary for a minimally decent life, does that make these rights absolute? A right, according to Gewirth, is absolute if "it cannot be overridden in any circumstances, so that it can never be justifiably infringed and it must be fulfilled without exceptions" (2009:92). I submit that the right to respect – the right to be treated as an end in oneself and never merely as a means to one's ends – is, at this very general level, absolute. There are no circumstances under which a person can legitimately be intentionally treated solely as an object or a means to another's ends.⁵⁰ The right to respect is a foundational right. As discussed above, there are a number of rights which derive from the right to respect: (P2a) the right to be treated in ways that value, support, and protect one's ability to live a minimally decent life; and, (P2b), the right to be treated in ways that one could be expected to consent to. (P2a) equates to the right to a minimally decent life and from this we further derive the rights to physical-integrity, autonomy, and community. While the right to respect – in its most abstract sense – is absolute, the derivative elements of the right are not. Rather they are nearly-absolute rights, limited rights, or what most theorists term *prima facie* rights. A *prima facie* right is a right that must be fulfilled except in "special

⁵⁰ Derek Parfit has recently challenged this claim; presenting a number of scenarios where it may be justifiable to treat someone solely as a means (2011:212-232). Though challenging, I do not find Parfit's arguments successful. However, if the reader agrees that the right to respect is a *prima facie* right rather than an absolute right then it is fine to substitute this view in the place of mine, as this disagreement is not particularly important to the main arguments throughout the thesis.

circumstances” where the justification for not fulfilling the right outweighs the justification for its fulfillment (Vlastos 2009:47). These special circumstances may arise when the rights of two or more individuals conflict or when the resources necessary for fulfilling the right are not available.

It quickly becomes apparent that autonomy must be a *prima facie* right when we remind ourselves that the right to autonomy is realized in a community of individuals with the same right. Autonomy, as noted, includes the right to freedom of action. This, however, is not a right to unlimited/absolute freedom. To have absolute freedom of action would be to have no constraints or demands on one's activities, but we have already established that the right to respect of all individuals places demands on others as to how they must treat right-holders. In this way, freedom of action is qualified to exclude any actions which treat other individuals as merely means, and/or which do not support and protect their ability to live a minimally decent life, and/or which treat them in ways they could not be expected to consent to. Freedom of action, therefore, is not absolute. My right to autonomy is limited by the duties I have to other individuals; just as their autonomy is limited by the duties they have towards me (what these duties include will be examined in Section 2.4). Thus, the right to autonomy is a *prima facie* right.

A moment's reflection reveals that right to physical-integrity – an essential part of the right to a minimally decent life – is not absolute either. The right to kill a person in self-defence, for example, quickly shows that the right not to be killed is not absolute. Further, the right to physical-integrity includes the right to physical security, food, water, and shelter. As food, water, and shelter are material resources, if these resources are not available, they cannot be provided. Thus, the right to physical-integrity is conditional upon the existence of the resources needed to fulfill these rights. If R is starving and D has an excess of food, D has a duty to give R the food necessary to survive. If, however, R is starving and D does not

have an excess of food, then R's right to food cannot be fulfilled. To state that the fulfillment of the right to food is conditional, is to state that it is necessarily a *prima facie* right. These examples show that the right to physical-integrity is a *prima facie* right.

To sum up, the core of the right to respect – the right to be treated as a person – is an absolute right which, by definition, must be observed in all circumstances. It is never, under any circumstances, justifiable to treat a human-being merely as a means to an end or as an object. One derivative of this right – the right to a minimally decent life – and its constituents – the right to physical-integrity and the right to autonomy – are *prima facie* rights. Keeping this in mind, we now move on to examine how these *prima facie* rights are implemented.

2.4 Implementing The Right to a Minimally Decent Life

Gewirth's formula, R has a right to X against D by virtue of J, indicates that rights are held against someone, D, that he behave in some particular way towards R. Accordingly, Gerwith's formula is the formula of a claim right. The realization of R's right *requires* some action or inaction on the part of D. While many theorists would argue against the claim that any and all rights are claim rights which place duties on others, the right to a minimally decent life and its constituents – the right to physical-integrity and autonomy – are clearly claim rights in that, as we have already established, they require individuals to treat the right-holder in certain ways.⁵¹ The question at hand then, is not whether or not individuals have duties in regards to others' rights to physical-integrity and autonomy, but what these duties are.

Henry Shue argues, convincingly, that the “complete fulfillment” of any right requires the “performance of multiple kinds of duties,” to include “duties of omission...commission, [and] some...too complicated to fit easily under either heading”(1996:36).⁵² He presents a

⁵¹ Against the claim that all rights are claim rights, Wesley Hohfeld has argued that a right can be either a claim-right, a power, a liberty or an immunity and only the claim right creates duties for others (1964).

⁵² I do not address the argument that we have only negative duties herein, as I think Caney, Waldron, and Shue (among others)

“tripartite typology of duties” which separates the duties associated with the right to a minimally decent life into three categories, each of which is necessary for the complete fulfillment of this right.⁵³ First is the duty to “avoid depriving” which I refer to as the duty to avoid. Second is the duty “to protect from deprivation,” which, for reasons which will become obvious, I refer to as the duty to institutionalise. Third is the duty “to aid the deprived,” which I refer to simply as the duty to aid (Shue 1996:52-53, 60). In what follows I adopt Shue’s basic three-tier structure, as I find it the most convincing, though I often diverge from the actual details of his theory.

Before moving on to discuss the three categories of duties associated with the right to a minimally decent life, I would like to quickly note the scope of these duties. The right to a minimally decent life, recall, is a universal right held equally by all human-beings. To this claim I add that the right is held against all human-beings, such that the right to a minimally decent life of one individual is held against, or places duties upon, all other human-beings. R’s right to physical security, for example, requires that all other people honour their duty not to kill R. If only some people had a duty not to kill R, while others did not, R’s life would remain in danger. Like the condition placed on the right to autonomy, however, ‘all’ here must be qualified as all those capable of having duties, so that infants or severely mentally disabled individuals would be excluded. So, we begin our discussion of the duty to avoid, the duty to institutionalise, and the duty to aid, with the understanding that, like the right to a minimally decent life and its derivatives, the scope of these duties is universal (we return to the issue of the scope of duties as it relates to co-nationality in Chapter 3).

2.4a The Duty to Avoid

have successfully shown that we cannot value fundamental human rights fully without accepting that they generate duties of both omission and commission (Caney 1997a:33; Shue 1996:36-40; Waldron 1993:24-25).

⁵³ Shue does not use the term ‘right to a minimally decent life.’ Rather his discussion centres around what he terms the rights to security, subsistence, freedom of movement, and political participation. The former two are consistent with the right to physical-integrity herein presented, and the latter two can be incorporated into what I have termed the right to autonomy and, as will be discussed in Chapter 3, the right to national self-determination.

The duty to avoid is rather self-explanatory, so its discussion will be brief. The duty to avoid is the duty to “avoid depriving” right-holders of their rights. It is what has been traditionally known as a negative duty in that it requires others simply to refrain from actions which violate the rights of others. Applied to the right to a minimally decent life and its derivative rights to physical-integrity and autonomy, the duty to avoid includes the duty not to treat individuals merely as means, the duty not to kill, not to torture, and not to enslave. More precisely, the duty to avoid requires people abstain from any action which: (a) treats an individual as merely a means, (b) threatens or destroys an individual’s ability to live a minimally decent life, his physical-integrity, or his autonomy, and/or (c) the individual could not be expected to consent to. With this, I add the claim, (C3), that the implementation of the right to a minimally decent life requires the duty to avoid any actions which violate (P2), (P2a), (P2b), or, more specifically, that deprive the right-holder of his *prima facie* rights to physical-integrity or autonomy.

2.4b The Duty to Institutionalise

If everyone always honoured the duty to avoid, the duty to institutionalise would probably not be necessary. However, it is a regrettable, but indisputable, fact that while most people have no inclination to kill, enslave, or harm others, there exist “many individuals, firms, and governments [who] are precisely in the business of violating rights” (Shue 1996:168). The duty to institutionalise exists in response to this reality. Thomas Pogge argues that “the postulate of a human right X is tantamount to the demand that, insofar as reasonably possible, any coercive social institutions be so designed that all human-beings affected by them have secure access to X” (2002:46). The duty to institutionalise captures Pogge's understanding of rights. It is the duty to create and maintain social institutions which “prevent, or eliminate, insofar as possible the degree of vulnerability that leaves people at the mercy of others” by providing protection, enforcement and, if necessary, aid to right-holders

(Shue 1996:17, 30). If such institutions do not exist, individuals have a duty to help create them. If institutions do exist but are in need of reform, individuals have a duty to advocate and facilitate such reform. If effective institutions exist, individuals have a duty to support them (Orend 2002:145).

In addition to the fact that not all people honour their duty to avoid and thus counter-measures must be taken, the justification for the duty to institutionalise is grounded on three points. The first justification is based on the acknowledgment that duty-bearers are also right-holders with lives of their own to lead and so cannot spend their entire lives fulfilling the rights of others. The second justification is that institutions provide effective and efficient means for protecting and advancing rights. Third, is the Lockean belief that the chief purpose of a social institution is to protect and advance the rights of its individual members, so that such an institution is legitimate and just only if and to the extent that it does this. Let me explain.

The duty to institutionalise takes account of the fact that duty-bearers are themselves right-holders with lives of their own to lead. As Raz states, it “is implausible to assume that an individual can conduct his whole life on the...sole motivation of respecting [or fulfilling] other people's rights” (2009:198). If individuals were tasked with protecting all other individuals from preventable violations to their rights, it would be an impossible task to complete. Even if the duty was qualified to limit the scope of the duty-bearer's area of responsibility, say to one's town, the duty would remain impossibly burdensome. Such a duty brings scenes to mind of men and women patrolling their neighbourhoods, always on the lookout for murders in progress, house-fires blazing with people trapped inside, pools with children drowning, and on and on. To place such a duty on an individual would not only be implausible, it would be a violation of his own rights, for it would require so much of his time and energy that he would not, himself, be able to lead a minimally decent life. In other

words, such a demanding duty to protect the right to a minimally decent life would itself be a violation of the right to a minimally decent life. Building institutions allows the support and protection of rights to be allocated in a way that allows both right-holders and duty-bearers (one in the same in this case) to lead minimally decent lives. Take modern police forces as an example. Some members of a community, who have volunteered to be police-officers, are trained, equipped, and paid to directly protect the lives of others, while the non-police members of the community indirectly protect the lives of others by supporting the police force through taxes, cooperation, etc..

The duty to institutionalise is also justified by the argument that, by way of collective action, institutions are the most effective and efficient means we currently have for protecting and promoting fundamental human rights. Institutions are able to coordinate activities, pool resources, and exert coercive force in ways that individual duty-bearers acting alone are incapable of. An institution that allows judges, policemen, firemen, etc. to be specially trained and equipped to advocate, protect, and advance the right to a minimally decent life, is much more effective at securing rights than if such jobs were indiscriminately and simultaneously ascribed to everyone. I am a more effective duty-bearer by paying my taxes to support my state's fire-rescue service, than I would be if I roamed the streets with buckets of water on my own searching haphazardly for house-fires. Which brings us to another point: institutions allow for a more efficient protection of rights. By way of the emergency-response telephone service, the fire hydrant system, and the supply of equipment, the fire-rescue service is able to respond quickly and knowledgeably when fires break out. Furthermore, through their monopoly of force and their status of legitimacy, institutions are better able to enforce rights (e.g. through a system of law). If there is an arsonist running around town setting fires to homes while their occupants are asleep, the institution is more

likely than me, acting on my own, to have the resources necessary to find, apprehend, and punish the arsonist.

Lastly, the duty to institutionalise is important because it demands that institutions be constrained by the rights of individuals. The duty to institutionalise is an acknowledgment of the fact that “institutions have a deep and pervasive effect on the prospects of people living under them, on their preferences, and on their abilities to act (or not act) on their preferences” (Beitz 1999:79). The fulfillment, suppression, or violation of individuals' rights is, in large part, dependent upon the how the institutions which structure the communities in which individuals live are designed. Therefore, institutions must be designed not only to protect individuals from other individuals, but from the unrestrained power of institutions themselves. This is especially the case with coercive institutions like government. According to the duty to institutionalise, governments must be designed in ways that protect and promote citizens' rights to physical-integrity and autonomy. Conversely, governments who do not do so are in violation of the duty to institutionalise and individuals within and outside of that government, according to the duty to institutionalise, have a duty to reform or replace the government so that it does protect and promote citizens' rights. The claim that the duty to institutionalise applies to governments is important to keep in mind in later chapters, for it provides justification for the claim (gaining growing acceptance in both political theory and in practice) that a government is legitimate only to the extent that it protects and promotes the rights of its citizens.

Returning to our two areas of concern, the duty to institutionalise can be understood as the duty to create and maintain institutions which support and protect individual's physical-integrity and autonomy. Therefore, institutions must allocate resources in a way that is consistent with the rights to physical security, food, water, shelter, and freedom from avoidable physical suffering. Similarly, institutions must be designed to allow individual

autonomy and an environment of options. We will explore the implications of this duty on post-atrocity duties at length later in the thesis. For now, I conclude with the claim, (C4), that the implementation of the right to a minimally decent life necessitates the duty to institutionalise; the duty of all people to create, support, and maintain institutions that protect and promote physical-integrity and autonomy.

2.4c The Duty to Aid

The duty to aid is the duty to provide aid “to those unable to provide their own” when the institutions designed to provide such protection are unable or unwilling to do so, or when it is unreasonable to rely on them to do so (Shue 1996:53, 60). Accordingly, it relates primarily to the right to physical-integrity. The logic behind this duty is illustrated by the paradigmatic case of a drowning child. You are walking by a shallow pool and discover that there is a small child drowning in it. As an adult, there is no danger to you if you go into the pool and pull the child out, thereby saving the child’s life. The duty to aid holds that in such a case it would be wrong for you to do nothing and inappropriate for you to grab your cell-phone and call the police to alert them of the drowning child. Rather, the duty to aid *requires* that you pull the child out of the pool. Likewise, if you are walking in the desert with your camel who is carrying 50 gallons of water and you come upon a man dying of thirst, the duty to aid *requires* that you give the man some of your excess water. The acting principle in both cases is the duty to aid. The duty to aid, as articulated by Fernando Teson states that individuals “have a general duty to assist persons in grave danger if [they] can do it at reasonable costs” to themselves (2008:97). This statement highlights two crucial aspects of the duty to aid. First is the insistence that the duty to aid is, in fact, a *duty* rather than a supererogatory act. Second is the qualification that the duty to aid is limited in that it does not require duty-bearers to put themselves in grave danger or severe hardship.

The grounds for the claim that one has a *duty* to aid individuals who are in danger is found in the concept of what I term unjustly letting die. The concept joins together two notions: passive injustice and letting die. Passive injustice is the view that, as Mill writes, “[a] person may cause evil to others not only by his actions but by his inaction, and in either case he is justly accountable to them for the injury” (Mill 1865:7). Letting die is used to distinguish between action where an agent has “primary causal responsibility for a[nother] person's death” – killing – and action/inaction where an agent could provide aid but “fails to provide...aid or withdraws his own aid” to a person and that person dies, but where the agent does not have “primary causal responsibility” for the person's death – letting die (McMahan 1993:261, 277). This distinction does not carry with it moral judgment, such that neither killing nor letting die are conceived of as always just/unjust. Combining the concepts of passive injustice and letting die, I submit that unjustly letting die occurs in cases where: (1) D knows that R is in grave danger and (2) D is in a position to rescue R with (3) little or no significant risk to himself, but (4) D chooses not to rescue R and (5) R dies (I will refer to this as the duty to aid formula). Thus, in the case of the child drowning in the shallow pool, if you know that the child is drowning and can rescue him without putting your own life in danger, but you choose to walk away, then you have unjustly let the child die. In cases of unjustly letting die, the fact that the potential rescuer, the duty-bearer, is able to rescue the right-holder but chooses not to places a degree of moral responsibility for the death of the right-holder onto the duty-bearer. The drowning child clearly dies from lack of oxygen, but you also share some of the moral responsibility for his death because you could have easily saved him, but did not; you unjustly let the child die. Just as one has a duty not to kill, one has a duty not to willingly share in the responsibility of a preventable death – thus, one has the duty not to unjustly let die.

The duty to aid is complicated by the qualification that its fulfillment is limited by the risk it places on the duty-bearer – henceforth termed the excessive risk proviso. Here we are reminded of the fact that duty-bearers are themselves right-holders and cannot, therefore, be obligated to sacrifice their own lives for the sake of others. To place such an obligation on the duty-bearer would be to fail to respect his ability to live a minimally decent life and, thus, would be to fail to treat the duty-bearer as a person. On these same grounds, the duty to aid cannot include situations which put a duty-bearer at risk of serious permanent injury. These limitations mean that there is some point along a spectrum of risk where the danger placed upon the duty-bearer's own physical-integrity is too great for him to be obligated to aid someone in need, and beyond which any action he takes is supererogatory. Where on the spectrum of risk the duty to aid ends and the realm of supererogatory acts begins is difficult to precisely determine but, despite this difficulty, there is still plenty of room for reasonable judgment. As Cecile Fabre notes, the risk of "being completely paralysed from the waist down" would clearly be an unacceptable risk, but the risk of "breaking one's thumb" would be acceptable (2007b:368). Similarly the risk of crossing a high-speed heavily trafficked freeway (where the risk of being hit by a car is great) would be unacceptable, while the risk of crossing a low-traffic residential street (where the risk of being hit by a car is low) is acceptable. Further, the risk of giving away one's resources at the risk of one's own survival would be unacceptable, while giving away one's resources even though one might no longer be able to afford an expensive luxury car or a television in every room of one's house is acceptable. The level of risk must be appreciably high to be held unacceptable. Recognizing that the duty to aid is limited by the degree of risk that the duty-bearer is likely to incur in the act of assisting does not negate the claim that the duty to aid is a duty. Rather, it simply means that the duty to aid is an imperfect duty; it is a duty which does not "hold for all agents in all their actions," but rather, is "necessarily selective" and situational (O'Neill 1993:178).

The right to physical-integrity includes the right to, (C1a), those things necessary for survival – physical security, food, water, and shelter – and, (C1b), freedom from avoidable physical suffering – including the right to medical care and the right not to be tortured.

Applying the right to physical-integrity to the duty to aid formula, we come to the following conclusions. If D knows that R is about to be hit by a train, and if D can pull R off of the tracks without himself getting hit by the train, then D has duty to pull R off the tracks.

Similarly, if D knows that R is starving to death and D has an excess of food so that giving food to R will not put D at risk of starvation, then D has a duty to give R some of his excess food.

Consider, though, the following scenario: D knows that R is about to be killed by M (an unjust attacker), and D has the ability to prevent R from being murdered without significant risk to himself, but the only way for D to save R is to kill M. Does D have a duty to kill M to save R? As Richard Norman states, it is “generally accepted that the deliberate taking of human life [killing] is...utterly wrong” (1995:1). If this is so, how might one argue that it is justifiable, even obligatory, for a person to kill an attacker in defence of a victim? The answer to this question, I believe, is found by considering two key terms: defence and attacker. With the exception of absolute pacifists, everyone accepts that individuals have the right to self-defence. Further, it is accepted that self-defence includes the right to kill one's attacker, provided killing is the option of last-resort. Imagine that you are sitting at a cafe when a man approaches you brandishing a knife. He raises the knife and is moments away from plunging it into your chest. You grab your gun and shoot and the man falls down dead. Though you killed the attacker, his death was the result of a “forced choice” that your attacker, by threatening your life, placed upon you – you were forced to choose between giving up your own life or defending yourself (Norman 1995:123). Under this forced choice, you cannot be obliged to sacrifice your own life in order to spare the life of your attacker;

you, in other words, have no duty not to kill him at this moment. So long as your attacker continues to threaten your life and, thereby, put you in this forced choice, your attacker forfeits his right not to be killed by you. Your attacker is causally responsible for the threat to your life, the forced choice created by this threat, and, subsequently for his own death.

Taking the right to self-defence as her guide, Fabre argues that if we accept that in cases where R is being attacked by M, R has the right to kill M in self-defence, then it follows that a third party, D, should also have the right to kill M in defence of R (2007b:367-368). More strongly, Fabre argues that in situations where R will die unless D kills M, D not only has the right to kill M in defence of R, but D is obligated to do so. I agree with Fabre's conclusion.⁵⁴ Returning to the cafe scenario, if it is I that has a gun instead of you, if I can kill your attacker without endangering myself, and if you will die unless I kill your attacker, on what grounds could it be argued that I have a duty to kill him? The answer is threefold. First, by his attempt to kill you, your attacker has placed me in a 'forced choice' where no matter what I do – kill your attacker or allow him to kill you – someone will die, so that if I kill him, he is largely responsible for his own death. Second, the attacker, by his actions, has forfeited/overridden his right not to be killed – in that he has no right that your life be sacrificed to spare his – and, thus, I no longer have a duty not to kill him. Lastly, you retain your right to life and so I still have a duty not to kill you and a duty to aid you. If I choose not to kill your attacker, I share part of the moral responsibility (though obviously much less) for your death because, though I could have prevented it, I choose not to and unjustly let you die. In short, if I allow your attacker to kill you, even though I have the ability to stop him from doing so without risking my own life, then I have failed in my duties to you. If I kill your attacker I have not violated his rights because he has, in this instance, forfeited them.

⁵⁴ Though I agree with Fabre's conclusion here, Fabre herself has revised her argument in a more recent article (2009b). My argument here differs from her latest argument on rescue killings in which she argues from 'agent-centered' considerations rather than the more 'agent-neutral' considerations found here. However, my requirement of victim consent is similar to Fabre's 'agent-centered' argument.

Based on this reasoning, the duty to aid must include, in cases where the only way to defend an individual's life is to kill his attacker, the duty to kill. I herein term this the duty to use force rather than the duty to kill to acknowledge that killing an attacker is at the extreme end of defending a victim – it is the option of last resort – such that if one can save a victim using less than lethal force, one must do so.

Before we move on, there is one final qualification to the duty to use force which must be addressed. Returning to the cafe scenario, imagine that, once again, an attacker is moments away from plunging a knife into your chest and killing you and I have a gun and can save you without significant risk to myself. Imagine, further, that as I prepare to pull the trigger you cry out, “no don't shoot”! It turns out that the attacker is your son and you prefer to die rather than have your son killed. This dramatically changes the situation. Up until now I have assumed that you would want to be saved – a reasonable assumption in most cases of self- and other-defence, as only extreme pacifists are likely to prefer sacrificing their own lives for the sake of their attacker. Despite the reasonable presumption that individuals want to be saved, this scenario illustrates an important limit on the duty to use force: ultimately, it is the potential victim who has the final say on whether the attacker is killed. Though in most cases it may be reasonably assumed that a victim wants to be saved and, thus, it may be reasonably assumed that the duty to use force stands, if a rescuer knows that the victim does not want to be saved he may not kill the attacker. In such circumstances the rescuer no longer has a duty to aid the victim and, in essence, the forced choice between the victim and the attacker no longer exists. In other words, the grounds for the duty to use force are lost. This qualification to the duty to use force reflects (P2b) from Section 2.1 above and (G3) from Chapter 1, which holds that, in order for the use of military force to be just, actors must have

the consent (either literal or reasonably assumed) of those on whose behalf they allege to act.⁵⁵

In summary, we have established the claim, (C5), that the right to a minimally decent life requires the duty to aid which holds that if (1) D knows that R is in grave danger and (2) D is in a position to rescue R with (3) little or no significant risk to himself, then (4) D has a duty to aid R, to include, in extreme cases, the duty to use force, if and when (5) D has the explicit or reasonably assumed consent of R.

2.5 The Right to a Minimally Decent Life: Conclusion

In this chapter I set out to discuss the justification for the right to a minimally decent life and determine its components, parameters, and associated duties. As the chapter progressed, I argued that the right to a minimally decent life is located within the right to respect and, thus, grounded on the doctrine of equal respect which holds that all human-beings are of equal moral worth and equally have the right to be treated with respect. I explained that to have the right to respect is to be entitled to certain treatment; the right to respect places demands on others that they act/do not act in certain ways. I stated that human-beings have the right to those things necessary or important to living a minimally decent life, and argued that physical-integrity, autonomy, and community are all necessary. I defined the right to physical-integrity as including both the right to those things necessary for survival and the right to be free from avoidable physical suffering. I defined autonomy as the right to a significant degree of freedom of thought and choice, freedom of action, and freedom to form and pursue a conception of the good life. I qualified these rights as *prima facie* rights, but insisted that the right to respect is absolute. Lastly, I argued that the actualization of the right to a minimally decent life requires the duty to avoid, the duty to institutionalise, and the duty to aid.

⁵⁵ See Fabre for discussion on the significance of the victim's consent (2009b).

Through our discussion of fundamental rights and their associated duties we have identified several important, albeit general, duties which we can apply to post-atrocity scenarios. With these we can begin to answer our question – what duties does the international community have to post-atrocity societies – as follows:

(D1) We have a duty to treat individuals as ends in themselves.

(D2) We have the duty to act in ways that value, support, and protect individuals' current and continued ability to lead a minimally decent life and those things necessary for their life.

This includes the duties associated with the right to a minimally decent life:

(D3) We have the duty to act in ways that value, support, and protect individuals' rights to physical-integrity, autonomy, and community.

This includes:

(D4) We have the duty to avoid: to avoid any actions which violate (D2) and/or violate individuals' physical-integrity or autonomy.

(D5) We have the duty to institutionalise: to create, support, and maintain institutions that protect and promote individuals' physical-integrity and autonomy.

(D6) We have the duty to aid: to aid those whose physical-integrity or autonomy is in grave danger, if we are in a position to do so at an acceptable level of risk to our own physical-integrity.

(D7) We have the duty to treat the individuals only in ways that they could be reasonably expected to consent to.

As we examine questions of regime change, reconstruction, and punishment, we must be sure that our answers are consistent with these duties.

Chapter 3: National Self-Determination

The last chapter put forward the claim that individuals are social creatures for whom community – belonging to, creating, and maintaining communities – is a necessary part of a minimally decent life. Accordingly, I suggested, individuals have some sort of *prima facie* rights to community. This basic claim could lead us down many paths. The focus of this chapter, however, is limited to the right to national self-determination. This right is often championed in arguments against intervention and presented as though actors must choose between either respecting/upholding this right or supporting interventions. In this same vein, many post-atrocity activities are often framed as antithetical to national self-determination. As will become clear throughout this thesis, I believe that this view of the relationship between intervention (herein understood to include post-atrocity activities) and national self-determination is misleading. In fact, I will argue throughout the remainder of this thesis that interventions often protect and enable the exercise of national self-determination. That said, I will also argue that the right to national self-determination does act as a restraining force on the actions of interveners in all stages of intervention.

I am, however, jumping the gun. Before we can analyse the relationship between intervention and national self-determination, we need to establish what exactly the right to national self-determination is. This chapter seeks to define and justify this right, explore its scope and application, and address some initial implications of this right regarding intervention. Section 3.1 focuses on the concept of a nation and asks: What is a nation and what is it about nations that warrant their right of self-determination? Section 3.2 concentrates on the meaning, scope, and actualization of this right. Here I examine what the right to national self-determination is a right to, discuss the right's scope, and explicate how individuals actually exercise this right in practice. Sections 3.3 and 3.4 anticipate later chapters by addressing two of the possible implications of the right to national self-

determination for intervention. Section 3.3 considers how, if at all, shared nationality limits one's duties to foreigners. Section 3.4 discusses the duties that outsiders, generally, and would-be interveners, specifically, have in regards to a nation's right of self-determination and, in so doing, provides us with additional guidelines we must bear in mind as we move ahead to questions of post-atrocity duties.

Before getting started, I would like to clarify that the aim of this chapter is to understand national self-determination for the purpose of understanding its implications for intervention. What follows, therefore, is not an exhaustive account of national self-determination and all of its complexities. Rather, I address those areas of concern which are relevant to later chapters. Given the limited aim of this chapter many questions must remain unanswered and I ask the reader to keep this in mind as we proceed.

3.1 Nations

What is a nation? Within the literature on national self-determination, one finds a mix of objective and subjective criteria used to define nations. Objectively, a group of individuals may be a nation if those individuals live on or are connected to a particular territory, share a common name, ethnicity, language, and/or religion, participate in a common economy, use a common system of law, and/or have distinct customs, cuisine, architecture, music, art, and/or dress (Koskeniemi 1994:263; Margalit & Raz 1990:443-444; Mayall 1999:478; McCorquodale 1994:866; Miller 1998:65, 1999:24; Moore 2001:6-8). None of these objective indicators are, by themselves, sufficient or necessary for a group to be considered a nation and each nation will have a different combination of these objective elements; some nations have all, others have very few. Given this fact, it is very hard – perhaps impossible – to determine whether a group is a nation based on objective criteria alone.

While the objective criteria listed above may serve as indicators of the existence of a nation, most theorists agree that a nation is best identified subjectively.⁵⁶ The most important subjective indicator of a nation is self-identification. That is, in order for a group to be a nation, its members must recognize each other as sharing a distinct collective identity and way of life (I will return to this shortly). In addition to this, many theorists agree that a nation is a community (Koskenniemi 1994:263; Margalit & Raz 1990:442-447; McCorquodale 1996:21; McMahan 1996:10, 1997:107; Miller 1998:65, 1999:17-26, 2007:124-126; Moore 1997:905, 2001:6):

- (1) in which a significant part of the members' identity is based upon being a member of the group,
- (2) whose members have a sense of mutual commitment to each other and to the group as a whole,
- (3) desire to continue to live together as a group, and
- (4) have or aspire to have some degree of political autonomy.

Most theorists also add the semi-subjective, semi-objective, criterion that members of a nation must share (Campbell 2006:173-174; Koskenniemi 1994: 263; Margalit & Raz 1990:443; Mayall 1999:478; McCorquodale 1994:866; McMahan 1997:107; Miller 1998:65, 1999:23-26, 2007:125; Moore 1997, 2001:6-8):

- (5) a common history – real, imagined, or a mix of both, and
- (6) a common culture, system of beliefs, and/or way of life.

The predominant theme running through these criteria is that a nation is a community whose culture – the “particular way of life” – and characteristics influence several aspects of the lives of its members (Miller 1998:65; Tamir 1991:577). The culture of the nation distinguishes its members from non-members. It significantly shapes its members' lives by framing the life options they have, the choices they make, and the way they understand their world. How one is educated, who one marries and why, one's occupation, one's leisure activities, etc., are all impacted by the national culture. More broadly, the nation has a

⁵⁶ See Daniel Philpott for an argument that subjective criteria alone are enough to define a nation and, more strongly, that the desire of a group to form an autonomous political community is enough to define a nation (1995).

profound influence on how its members understand themselves and their world.⁵⁷ Of particular importance, being a member of the nation is part of “who one is” - it is both part of how one understands oneself and how others understand oneself (Margalit & Raz 1990:442-447).⁵⁸

Defining nations subjectively has its downsides. It certainly makes identifying nations and distinguishing them from other forms of community more difficult and this proves particularly problematic when disputes between groups claiming to be nations arise over territory and political autonomy. However, it does not make identifying nations impossible (a task we will return to) and disputes over national boundaries can be resolved. Despite these difficulties, I find the subjective understanding of a nation is the most realistic and I herein define a nation as a group which meets the six subjective criteria (to include the two semi-subjective) listed above. As for the objective criteria, I believe that most of these are better understood as possible/likely manifestations of a nation rather than defining characteristics. However, I do agree that an ongoing link/claim to a specific territory is a distinct and necessary feature of a nation, and include this in my definition of a nation. This

⁵⁷ The claims put forward by theorists that membership in a nation constitutes a significant part of an individual's identity and how he/she views the world is confirmed by several studies in the field of social-psychology (DeLamater, Katz & Kelman 1969; Druckman 1994; Terhune 1964)

⁵⁸ Four points. First, this is not to say that belonging to a nation is a significant part of *all* individuals' identities, as there are certainly many people for whom belonging to a nation is of little or no consequence. So this statement should be understood to mean that for many people who belong to a nation, nationality forms a substantial part (to varying degrees) of their self-identity and world view. Additionally, the importance of nationality to one's identity may vary depending on the security of one's nation. Kurds, for example, may be more likely to claim strong national sentiments than Britons because, unlike Britons, the Kurdish national identity is threatened by the larger states in which the Kurdish nation exists. It is also possible that the denial of the importance of nationality may itself be an identifying factor of the cultures of many Western nations. Second, the claim here is only that national membership is an important part of an individual's identity, not that it is *the* defining factor of identity. An individual's identity is certainly defined by a combination of the many groups he/she belongs to and his/her own individual characteristics, achievements, etc.. Third, to say that members of a nation share a common identity and way of life is not to say that all members are alike in all ways or that they agree in all things. However, allowing for disagreement and divergence within a nation – which will certainly exist – does not negate the claim that there is a recognizable (at least subjectively) common identity and culture. Lastly, for a different – ‘modernist’ – view which holds that nations are the products of relatively modern circumstances (industrialization, capitalism, print, colonialism) see Benedict Anderson, Ernest Gellner, and Elie Kedourie (Anderson 2006; Gellner 2006; Kedourie 1993). Though I take no position on these modernist theories, they are not necessarily at odds with the account of nations that I present here.

definition is particularly useful because it provides us with one of the chief reasons why nations are important enough to be granted a *prima facie* right of self-determination.

In the next section I set out to define the right to national self-determination. For now, let us move forward with the tentative claim that this is the right of a nation to some degree of political autonomy – some ability to protect and maintain its member’s way of life and to govern its member’s intra-group relationships and collective activities (again, we will deconstruct this claim shortly). Given this definition, the question before us is what is it about a nation that is important enough to necessitate or justify it having such a right? There are a number of ways one might answer this question; I will present the two I find most convincing: what I term the collective autonomy argument and the personal identity argument. Both arguments follow the same basic logic: because (a) nations provide a value to the nation’s members which is a necessary part of a minimally decent life, and because (b) the collective life of the nation has many aspects which require the nation to act politically, (c) nations ought to have some degree of political autonomy. The crucial point here is that the value that each of these arguments focuses on in (a) is held to be so vital to the lives of the nation's members that the arguments are meant not only to ground the claim that it is important for nations to have political autonomy, but that it is important enough to be a right. Where these two arguments diverge is in the smaller details.

The collective autonomy argument holds that individuals are social beings and, therefore, part of a minimally decent life is the freedom to form and maintain associations with others. The nation is one such association and it is a particularly important one because of its tremendous impact on and importance to the lives of its members. Given this importance and the desire that members of a nation have to continue to live together (criterion 2 above) in a common culture (criterion 6 above), the collective life provided by the nation ought be protected and maintained. This requires that the nation’s members have the ability

to make collective choices, build collective institutions, and take collective actions which preserve, reflect, and shape their collective life. Many of these choices, institutions, and actions will necessarily be political and, therefore, the nation requires some degree of political autonomy. The value – step (a) above – which justifies the right to national self-determination, according to this argument, is the value of belonging to and participating in community.⁵⁹

The personal identity argument is represented well by Margalit & Raz and proceeds as follows (1990).⁶⁰ Given the pervasiveness of national culture, membership in a nation is a large and important part of one's self-identity (criterion 1 above). Many of the characteristics by which one identifies and understands oneself are shaped by the nation; one's value system, religion, career, family dynamics, ethnicity, etc., are often greatly impacted by the national culture within which one lives. One's identity is inextricably linked to one's self-respect and autonomy and, therefore, is part of a minimally decent life.⁶¹ Due to the importance of nationality to one's self-identity and one's ability to live a minimally decent life, one's continued “membership of such groups is of great importance” and therefore, “the prosperity of the culture is [also] important” (Margalit & Raz 1990:448). Further, and here is the connection to national self-determination, politics and political participation are essential to the continued existence of the nation and, given this, it is necessary for nations to have some degree of political autonomy. More strongly, it is necessary for nations to have the right to national self-determination.⁶² The right to national self-determination, in other words, is

⁵⁹ For similar, though not identical, arguments see (McMahan 1996:8-11, Miller 1999:87-90, 2007:131-181). I borrow the term ‘collective autonomy’ from Miller (1999:88).

⁶⁰ For similar arguments see (Tamir 1991).

⁶¹ Margalit & Raz use the term well-being instead of self-respect and autonomy. However, given the ambiguity that the term well-being has, as noted in Chapter 2, I have used self-respect and autonomy for clarity and I think this is a fair reading of how Margalit & Raz use the term well-being in their article.

⁶² In both arguments, national self-determination is an instrumental rather than an intrinsic value. That is to say that unlike the right to life or autonomy – which are intrinsically valuable on their own – national self-determination is instrumental in that it allows/facilitates the exercise of an intrinsically valuable aspect of a minimally decent life. In the collective autonomy argument the intrinsic value is creating, belonging to, and participating in community (though perhaps a case could be made that nations are an intrinsically valuable community, I will not make that case here). In the personal identity argument the

justified on this account because national self-determination protects/preserves individuals' nationality, and thus, an important part of their self-identity and individual autonomy.

One objection to both arguments is that they may allow too much. Based on these arguments, the objection goes, what is to stop red-heads, Christians, fly-fishermen, supremacists, women, or homosexuals from claiming the right of group self-determination (here we return to the difficulty of distinguishing a nation, as flagged earlier)? The implication, of course, is that it would not make sense and/or not be justifiable for these groups to have the right of group self-determination. There are a number of rejoinders. First, some of these groups do not have cultures which are pervasive/all-encompassing enough to meet all six of the criteria of nationhood. They simply do not have enough impact on the lives of their members to warrant their political autonomy. Being a red-head, for example, does not *drastically* shape one's life options, one's understanding of the world, one's way of life, and one's self-identity. Of course, some of these groups do profoundly influence one's life, so to distinguish these groups (and their rights) from nations, we must look further. Secondly, some of these groups do not hold any moral value; that is, unlike a nation, we cannot argue that the protection of a supremacist group is justified on morally valuable aspects of the group.⁶³ Thirdly, most of these groups are not tied to a particular territory. The fourth and most important feature that distinguishes these groups from nations is that while they may want certain political protections, they do not actually want political autonomy. Moreover, the continued existence of these groups does not entail/necessitate political autonomy, so the need to grant them a right of self-determination does not follow. That is, the existence of these groups does not depend on the group having significant control over political, social, and/or economic institutions and these groups do not generally want such control (we will examine the concept of political autonomy in more detail in the next section).

⁶³ intrinsic value is individual autonomy.
See Caney for discussion of the distinction between morally valuable and morally neutral/valueless groups (1996).

A stronger objection to these arguments is that while they may be perfectly reasonable in the realm of theory, history is a testament to the fact that when groups demand/exercise the right to national self-determination, in the real-world, the outcome can be devastating. Many people have died in the wars and atrocities carried out in defence of or opposition to a nation's right of self-determination and such devastation certainly must militate against this right (herein termed the destruction objection). There are two important rejoinders to the destruction objection.

First, while we must grant the fact that the actualization of the right to national self-determination has, in many cases, led to a great deal of death and destruction (and this fact is morally important), we nevertheless need to make a distinction between the right and how the right is sometimes, but not necessarily exercised. For example, much of the death and destruction attributed to the exercise of this right occurs in battles over territory: nation-A and nation-B claim the right to full political control over territory-X. However, it is fully possible that nation-A could exercise its right of self-determination in territory- X_1 , nation-B could exercise its right of self-determination in territory- X_2 and no death or destruction would take place in association with the exercise of the right to national self-determination. As will be discussed below, the right to national self-determination is not, in all cases, a right to full and exclusive control of a particular territory. The point, more broadly, is that the destruction objection does not distinguish the right to national self-determination, R, from *one* way by which the right may be actualized, A-1; the objection is raised against R, when, in fact, it is an objection against A-1.

Secondly, the implication made by the destruction objection is that because the realization of the right to national self-determination may cause destruction, the right must not be granted or must be severely curtailed. However, as we saw in our review of just war theory in Chapter 1, the fact that the exercise/protection of a fundamental human right results

in death and destruction does not necessarily make either the right or its protection/exercise unjust.⁶⁴ Thus the objection, as it stands, does not work. It does, however, require us to accept the following. First, that the right to national self-determination must be understood as a *prima facie* right limited by other rights with which it may conflict and subject to certain qualifying conditions of justice. Second, if one accepts that actors may use force in defence of this right, in order for that force to be justifiable it must comply with just war requirements.

Thus, keeping in mind these qualifications, we can move ahead with the claim that the right to national self-determination is grounded on the importance that the nation has to its members' ability to lead a minimally decent life.

3.2 National Self-Determination in Practice

Surveying the philosophical and legal literature on the right to national self-determination one quickly discovers that there is no general agreement on what exactly this right entails. Among others, the right to national self-determination has been defined, respectively, as the right:⁶⁵

- (1) of each nation to some degree of political autonomy,
- (2) of each nation to statehood,
- (3) of each nation to the preservation of its distinct way of life,
- (4) of each nation to be governed by co-nationals,
- (5) of ethnic groups to statehood,
- (6) of communities – national, ethnic, or other – to be free from domination and/or oppression,
- (7) of people under colonial rule to political independence,
- (8) of people, within existing state borders, to a government which expresses or fits their collective culture,
- (9) of people, within existing state borders, to choose their own form of government,
- (10) of people, within existing state borders, to democracy,
- (11) of people to form democracies either within existing borders or by redrawing new borders,

⁶⁴ Whether or not defence of the right to national self-determination is a just cause for the initiation of war is a question beyond the scope of this chapter (though I believe it is and will argue in Chapter 5 that it is a just cause for the use/presence of military forces in post-atrocity societies).

⁶⁵ For a survey of the different conceptions of national self-determination see (Benner 2001:157-158; Buchanan 1993:587-588; Knight 1985:248-251; Margalit & Raz 1990:440; Mayall 1999:475-479; McMahan 1996:5; McCorquodale 1994:859-864; Miller 1999:81; Moore 1998:3, 2001:47-49; Philpott 1995:358-361; Quane 1998:537; Walzer 1980:211, 2006:53-57)

(12) of states to territorial integrity, sovereignty, and non-interference.

Given the lack of concrete definition, it is no wonder that the application of this right often leads to conflict. Much of the confusion may be attributable to the fact that some of these definitions are not definitions at all but justifications for the right or descriptions of how the right might be exercised. The purpose of this section is to set out, as clearly as possible, how I define the right to national self-determination, discuss this right's limits, analyse how, given these limits, this right might best be applied to the society of states as it currently exists, and, finally, examine how this right is actually exercised by the members of a nation.

I stated earlier that national self-determination could be understood, tentatively, as the right of nations to some degree of political autonomy. Let us now expand on this claim and, in particular, on three important points. First, the statement that a *nation* has the right to self-determination raises the question of who holds this right. Is it the right of individuals or groups? Some theorists, though a minority of them, argue that national self-determination is a group right (that is, a right held and exercised by a group, rather than being held by individuals independently) granted to nations – groups – based on the intrinsic value of the nation *qua* nation. The emphasis here is *not* that nations are valuable to their members and/or mankind, but that they are valuable moral entities *independent* of the value they have to their members. Like most theorists, I find this position problematic. By claiming that the right to national self-determination is held by the nation based on some value that is *independent* from its members, the intrinsic view problematically anthropomorphizes the nation; it suggests that the nation is a valuable entity/being independent of its members. As Campbell puts it, if “we cannot bring ourselves ontologically to say that groups have minds and wills [and, I would add, the ability to act on these] distinct from the organised sum of...its members, then we must take the moral position that groups cannot have intrinsic rights” (2006:176). Thus the intrinsic view fails.

Most theorists (myself included) argue that national self-determination is a group right, but that the group holds instrumental, rather than intrinsic, value. Nationality is a group right because it “not only require[s] many [individuals] in order to produce [the good]” but, further, it is valuable only “because of the joint involvement of many” (Reaume 1988:10). Simply put, national self-determination is a group right because it *requires* a group in order to be actualized. The right, however, is not grounded on some intrinsic value of the nation *qua* nation. Rather, it is grounded on the intrinsic value of the individual members of the group and the moral value that the group has to their lives. Thus, national self-determination is a group right, but it is an instrumental group right.⁶⁶

The second thing to say about the right to national self-determination understood as the right of a nation to some degree of political autonomy is that the fulfillment of this right is a continual process. The right grants nations a sphere of political autonomy in which its members are continually determining – shaping, participating in, protecting, etc. – their collective way of life. I will return to the issue of how this process might be carried out shortly.

Thirdly, this right is not limited to or automatically equated to statehood. Taking a wider view of political autonomy, Darrell Moellendorf writes that a nation has political autonomy if it has “the moral authority to exercise control over an aspect [or aspects] of its political and social environment” (2002:130). Similarly, Hurst Hannum states that a nation has political autonomy if it has the right to “preserve, protect, and promote values which are beyond the legitimate reach of” non-nationals (1996:5). The key here is that the nation has political control over those things that the members of the nation feel are distinctive and essential to the collective life of the nation.

⁶⁶ The claim that a nation is granted the right of national self-determination based upon the intrinsic value of its individual members rather than on some intrinsic value of the nation *qua* nation is distinct from the claim (discussed shortly) that nations provide an important moral value for their members (rather a purely instrumental value).

Political autonomy, so understood, can take a number of different forms. A politically autonomous nation may have a significant amount of control over the political and social institutions of a particular territory within a larger state (through federation, devolution, or consociationalism), control over particular policies or laws (e.g. a millet system), a right of veto within a larger political community, and/or constitutional guarantees/protections of those things viewed as essential to the national way of life (e.g. language). Statehood/secession is but one of several forms of political autonomy (Hannum 1996:5; Knight 1985:266; McCorquodale 1994:864, 1996:24-25; McMahan 1996:6).⁶⁷

How do we determine the degree of political autonomy each nation will have? As noted earlier, arguments over this question sometimes leads to violent conflict. It is this reality that necessitates placing limits on the right and is one reason that not all nations will be granted the same degree of political autonomy.⁶⁸ Daniel Philpott has suggested that the form of political autonomy a nation is given should be determined, in part, by applying the just war requirement of proportionality to the exercise of national self-determination: “if the morally evil consequences of an otherwise just...self-determination movement...outweigh the good achieved, then the action should be avoided” (1995:381). While I agree with Philpott's suggestion, I think it needs to be given a bit more detail. Recall, from Chapter 1, that the just war requirement of proportionality holds that one must ensure, insofar as reasonably possible, that achieving one's just aim does not cause more harm than good. Good, in this calculation, is understood as the protection or fulfillment of fundamental human rights. Fundamental human rights, I argued, are rights to those things necessary for a minimally decent life and these include rights to physical-integrity, autonomy, and community (the latter from which

⁶⁷ For expanded discussion on national self-determination and the right of secession see (Buchanan 1993, 1997, 2006; Caney 1997b; Chwaszcza 2006; Elden 2006; Moore 1998).

⁶⁸ See Koskeniemi for a particularly astute article on the complications of moving from the theory of national self-determination to the practical application of this right (1994).

the right to national self-determination derives). Harm is understood as the inverse of this and essentially equates to the violation of these fundamental human rights.⁶⁹

Given these parameters, we can adopt just war's proportionality requirement to national self-determination as follows: the degree/form of political autonomy that a nation is granted will be determined by balancing (a) the good of protecting the nation and empowering its members to act collectively against (b) the negative/harmful costs that the different forms of political autonomy will likely have on all those impacted by the realization of this right.⁷⁰ Let me offer an example to sketch-out how calculations of proportionality might work. Nation-F and nation-G reside in state-H. Nation-F *wants* to secede from state-H. However, secession would cause economic collapse in state-H and, subsequently, widespread and sustained suffering for members of nation-G. Knowing this, members of nation-G have agreed to grant nation-F the option of devolution and, conversely, have threatened to prevent secession with force if necessary in order to protect their own livelihood. Further, it has been determined, by impartial mediators, that in order for nation-F to preserve its national way of life, devolution is sufficient. In such a case, it seems that proportionality would dictate devolution over secession. More strongly, based on calculations of proportionality, nation-F would not be justified in pursuing secession by force on the grounds of national self-determination.

This example highlights a number of important questions which must be asked when determining the degree of political autonomy for a particular nation. First, what form of political autonomy is necessary for the preservation of the nation? Second, what form of

⁶⁹ See Chapter 1 for discussion of proportionality. See Chapter 2 for my defence of the claim that physical-integrity and autonomy are fundamental human rights.

⁷⁰ As in the case of a just war, the calculation of harm would not include 'harm' inflicted on those unjustly opposing the right of the nation to self-determination. If, as an example, granting a nation political autonomy meant using force against a government who oppressed the nation and sought to keep the nation under its oppressive rule, the destructive results of this use of force – killing soldiers in the military of the oppressive government – would not count as a harm in the proportionality calculation. As a side-note, there is a great need to address wars involving national self-determination within the just war tradition.

political autonomy does the nation prefer? Third, what forms of political autonomy are available given the physical relation of the nation to other nations (are nations intermixed throughout a state)? Fourth, and this is where proportionality comes in to play, what are the likely costs of implementing each of the possibilities? How would granting the nation the various forms of political autonomy negatively impact, if at all, members of the nation and outsiders (individuals and other nations living either inside or outside of the nation)? Within the calculation of proportionality one would also want to know how granting the nation different forms of political autonomy might negatively impact international peace and security. There are probably several more factors which could be added to the list, but it seems clear that one of predominant considerations is proportionality.

To quickly take stock: The right to national self-determination is the right of nations to some degree of political autonomy. The actual form of political autonomy will vary in each case and is determined, in part, by calculations of proportionality which involve a complicated act of balancing the need to protect nations and empower their members to act collectively with the form of political autonomy the nation wants and the unjust harms that enacting this may cause on the national, state, and international levels. With this in mind, let us dig a bit deeper and examine the thorny relationship between existing state borders and the right to national self-determination.

As outlined above, the right to national self-determination is often interpreted as either a right of state governments to sovereignty, territorial integrity and non-interference (definition 12 above) or of the citizens of a state to create and maintain their own form of government or, at least, to have a government which reflects their collective way of life (definitions 8, 9, and 10 above). Though many strong arguments have been pitted against both interpretations, I adopt elements of each into my understanding of how this right should be applied in practice.

Let us begin with the claim that the right to national self-determination is the right of state governments to sovereignty, territorial integrity, and non-interference. Theorists have argued that this interpretation places undue importance on more-or-less arbitrary and, in many cases, unjust borders and, more importantly, offers protection and legitimation to oppressive governments (McCorquodale 1994:868). Furthermore, and in light of this, the right to national self-determination “interpreted in this way...loses much of its original moral appeal, which came from the vision of a body of people sharing a common identity and wishing to be associated with one another” (Miller 1998:62-63). All of this, I think, must be granted and, therefore, the right to national self-determination cannot be interpreted as a right belonging to state governments full-stop. That said, I do think that state governments, sovereignty, territorial integrity, and non-interference do, nevertheless, play an important role in both the internal actualization of this right – how members of a nation actually self-determine – and the external respect of this right – the duties that outsiders, or non-nationals, have in relation to this right. We will return to these points below.

So, the right to national self-determination is not a right held by state governments. What then of the claim that it is or ought to be held by citizens within existing state borders? Here again one could pose the objection that many state borders are morally arbitrary and, thus, it is morally arbitrary to limit the exercise of the right to national self-determination according to these borders. More strongly, it is indisputable that existing states house many nations and, given this fact, it is unjust to deny intrastate nations the right to national self-determination by limiting the scope of this right to the boundaries of states. Furthermore, since it is the case that many/most states contain sub-state nations and since, as established above, the right to national self-determination is the right of nations it is simply incoherent to say that this right ought to be exercised by the citizens of states.

Taking all these objections into consideration, I will argue that while the right to national self-determination is the right of nations, it, in the first instance, ought to be exercised by citizens of existing states. My argument incorporates three main points. First, I think one must grant that most existing state borders were drawn in morally arbitrary and often unjust ways. Most are the products of geography, war, and colonization, among other things. However, the key word here is *were*. Though the borders of most states were established in a morally arbitrary way, for the citizens of many states these same borders have become morally important. With the passage of time people have formed meaningful communities within these once arbitrary borders. Even many borders which were unjustly drawn have become morally important to those now living within them.

Second, though related, the fact that many states house several nations does not negate the possibility that the citizens of those states, nevertheless, constitute a nation. As David Miller has convincingly argued, it is quite possible (and often the case) that a state is both multi-national – housing several distinct sub-state nations – and yet a nation unto itself (2001b).⁷¹ In other words, individuals within the state may belong to more than one nation; they may be members of the nation-state and a sub-state nation within that very same state. Many Scots, for example, consider themselves part of a Scottish nation and the larger British nation. If this is possible, then it does not seem incoherent to say that the right to national self-determination ought to be exercised by citizens of a state, even in multi-national states (there are qualifications to this which I will return to momentarily).

Third, sub-state nations, once identified, are often very hard to cordon off from other nations. This makes putting the right to national self-determination into practice very difficult. Unlike sub-state nations, the boundaries of most states are very clear.

⁷¹ Miller terms these “nested nationalities” (2001b:304).

Bringing all three points together – that existing state borders are, in many cases, no longer morally arbitrary, that many states do constitute nations even if they are multi-national, and that it is very difficult to determine the borders of sub-state nations – I submit that national self-determination ought to be, in the first instance, exercised by citizens of a state. Now, I add the qualifier – in the first instance – for a number of reasons. First, if the state is a multi-national state, as many are, my argument is not that these sub-state nations should not also have the right to national self-determination. My argument, rather, is for a sort of tiered application of this right. The citizens of a state – as a whole – ought to have control over those things necessary for their collective way of life and the state government ought to reflect this collective way of life. In such a case, the state government ought, also, to have the rights of sovereignty, territorial integrity, and non-interference against other states (subject to some further qualifications which I will return to). Next, the citizens of a state ought to determine, collectively, the most suitable way of fulfilling the sub-state nations' rights of national self-determination. Finally, members of sub-state nations ought to have political autonomy over those areas of its collective life that are distinct from the nation-state.

The qualification of 'in the first instance' is also meant to acknowledge that there will be cases where citizens of a state do not consider themselves a nation-state. In fact, there will be cases where nations within a state are violently opposed to each other. This opposition may be so intense that it forms part of the identity of individuals of the nations (Miller 2001b:303). Part of what it is to be a Palestinian or a Hutu, for instance, may be to be someone opposed to Israelis or Tutsi (and vice-versa). In such cases I agree that it is incoherent to speak of national self-determination as applying to all citizens of the state as though they constitute a nation; these intrastate nations will exercise their rights to national self-determination exclusive of one another. However, there may still be reasons for existing state borders to stand. Where antagonistic nations are intermixed throughout the state, as in

the Rwandan case, for reasons of practicality and proportionality each nation's right to national self-determination will likely have to take a lesser-than independent statehood form of political autonomy. My position, then, is that the citizens of a state ought to be considered the *initial* holders of the right to national self-determination unless it is clear that they do not constitute a nation.

This understanding of the application of the right to national self-determination serves to lessen the chances of two equally bad situations: on the one hand, sub-state nations being oppressed by state governments or other intrastate nations and, on the other hand, bloody conflicts between sub-state nations who cannot agree on each other's borders. This view allows for the possibility that multi-national states may be nations themselves but, at the same time, does not insist on rigidly restricting national self-determination to the citizens of state. Accordingly, this approach is likely to meet the requirement of proportionality more easily than those that demand either that the right to national self-determination only apply to sub-state nations or only to citizens of a state.

So far I have argued that, in most cases, the right to national self-determination is exercised, in the first instance, by citizens of a state and subsequently by sub-state nations within that state. We have established that this right is the right of nations to a certain degree of political autonomy through which they can collectively determine – decide on, shape, protect – those things that are essential to their collective way of life. I now turn to the matter of how, in practice, individuals within a nation – either the nation-state or a sub-state nation – carry out this act of determining. There are two sides of this inquiry. First, how do members of a nation exercise their right? Second, what signs can outsiders use to determine whether or not members of a nation are actually self-determining or, conversely, whether this right is being denied them by an oppressive or otherwise illegitimate government which claims to represent the nations it oppresses? My aim is to address both.

Democracy is one clear way by which members of a nation (henceforth understood to mean either a nation-state or a sub-state nation as discussed above) can exercise their right of self-determination. I shall call this democratic self-determination. On some accounts there are no other means by which the right of self-determination can be exercised; national self-determination simply *is* democracy within the confines of a nation or within the sphere of political autonomy of the nation (Philpott 1995:358). Other accounts hold that national self-determination admits of degrees, and while democracy is likely the fullest or most genuine method of determining, there are lesser or at least, less reliable, forms of self-determination (Miller 1999:90). I agree with this second view and suggest that in addition to democratic self-determination, a nation can be said to be exercising their right of self-determination if its government is council-based (henceforth council-based self-determination) or if its government is implicitly supported (henceforth implicit self-determination). Government here should be understood to mean both/either a state government or the sub-state government of a nation which has the power to decide issues within the nation's sphere of political autonomy, but for ease of exposition I concentrate my discussion on state governments.

I take the idea of council-based self-determination from John Rawls' concept of "decent hierarchical societies" (2002:64-77).⁷² In a decent hierarchical society "the basic structure of the society must include a family of representative bodies whose role in the hierarchy is to take part in an established procedure of consultation" (Rawls 2002:71). More specifically, in such societies, each (adult) individual within the society must be a member of at least one representative body within the society, each representative body must be consulted in the decisions made by the final authority in the government, and the final authority must make a genuine effort to "weigh the views and claims" of each representative

⁷² I am grateful to David Miller for suggesting Rawls' decent hierarchical societies as an example of a nation which can be said to be self-determining even though it is not democratic.

body (Rawls 2002:71-77). Further, this final authority must be somewhat answerable to these representative bodies; it must be willing to “explain and justify the rulers' decision[s]” to the representative bodies (Rawls 2002:77). It seems to me that a nation in which every member belongs to a council who represents their views, and every council is consulted in the decision making process of the nation as a whole, and there is a good-faith effort to reflect the views of each council in the decision, is a nation that is self-determining. The members of the nation may not be as involved in the self-determination process as they would be in a democracy (or perhaps they would be more involved?), but they are surely still self-determining to a significant degree.

The concept of implicit self-determination is much more slippery than democratic or council-based self-determination. My argument here is that it is possible for members of a nation to be self-determining, albeit in a very minimal way, even when their government is purely autocratic. This idea comes largely from the debate between Walzer and David Luban over the signs that observers can look for which indicate that an autocracy 'fits' its citizens and their collective way of life (Luban 1980a, 1980b; Walzer 1980, 2006). The debate, in my view, boils down to a debate about repression and what it means if a government represses its citizens. Both theorists use similar hypothetical cases to convey their views, and I, likewise, think that this is the best way to capture both the differences in Walzer's and Luban's views and the idea of implicit self-determination more generally. Imagine, then, a society ruled by an autocratic elite. There are constant challenges to the government's decisions and its overall right to rule. These challenges are met with repression: the rights of speech, assembly, and freedom of the press are severely limited and people are regularly executed, tortured, and/or imprisoned for their political dissent. The repression, however, never reaches a level where it can be equated to mass-atrocity (see Luban 1980a:170, 1980b:394-395 and Walzer 1980:225-226 for similar examples).

Walzer takes the view that even a repressive government such as the one described may 'fit' its citizens and reflect their collective way of life (1980:225-226). Moreover, Walzer argues, repression may simply be part of the self-determination process (2006:88). Only when a government commits mass-atrocities can we – outside observers – be sure that there is no fit between a government and its citizens. In a now widely quoted statement, Luban vividly opposes Walzer's view, arguing that repressive government “fits the people the way the sole of a boot fits a human face: after a while the patterns of indentation match with uncanny precision” (1980b:396). Luban argues that widespread repression is a clear sign that the people are not, in any way, self-determining. More strongly, Luban argues that repression is “an attempt to...eliminate the political process” (1980b:397).

Along with Luban, I find it incomprehensible to say that members of a nation who are repressed into a state of submission are, in anyway, self-determining. What, though, of members of a nation ruled by a non-repressive autocratic government? Imagine a state ruled by an autocracy in which there is not wide-spread political dissent (and this lack of political dissent is not due to fear), where political dissent is not met with repression, and where there is a lack of repression generally (fear and blind obedience are not ingrained). It seems to me that in such a case it can be reasonably argued that the members of the state implicitly support the government and, given this, they are implicitly, or passively, self-determining. Now, admittedly, they are self-determining in a very minimal sense, but I submit that they are, nevertheless, self-determining. Implicit self-determination is distinct from democratic and council-based self-determination not only in the fact that it involves passive rather than active self-determination, but – and this point will prove crucial in Chapter 5 on political reconstruction – in order to detect/confirm its existence, one needs to be able to point to a relatively stable history of passive support by the people. In other words, implicit self-

determination is only available to societies with established governments and established histories of non-repression.

3.3 Nations and the Boundaries of Rights and Duties

The purpose of this section is to analyse the relationship between the bonds of co-nationality, the right to national self-determination, and the claim, made in the previous chapter, that fundamental human rights and the duties required for their fulfillment are universal. There are two extreme understandings of the relationship between nations and fundamental human rights. On one end is an extreme nationalist view which holds that rights and duties are contained within the boundaries of nations and, given this, individuals do not have any duties to non-nationals. At the other end is an extreme cosmopolitan view which holds that co-nationality has absolutely no moral significance in the fulfillment of fundamental human rights. While my position falls closer to an extreme cosmopolitan view, I find both views too extreme and, thus, take a more moderate cosmopolitan position. I argue that individuals have duties in relation to the fundamental human rights of non-nationals but that co-nationality may form a distinct community of right-holders and duty-bearers.

Let us begin by confronting the extreme nationalist claim that the duties associated with fundamental human rights do not extend beyond national borders. If we accept the doctrine of equal respect and its implications (as I argued in Chapter 2 that we must), then we must reject the extreme nationalist claim. Recall that the doctrine of equal respect holds that all human-beings are morally valuable simply as human-beings, that all human-beings are of equal moral worth, and that all human-beings must be treated in ways that respect their moral worth. Based on the doctrine of equal respect, I argued that all individuals have the right to respect which, I explained, is the right of all individuals, (a) to be treated as an end in themselves, (b) to those things necessary for a minimally decent life and, (c) to be treated in ways they could reasonably be expected to consent to. I argued further that the right to

respect and its related duties are universal in scope; this right is held by all individuals regardless of whatever characteristics, affiliations, accomplishments, etc. they may have, and held against all individuals regardless of their characteristics, affiliations, accomplishments etc.. In granting all this, one grants the claim that fundamental human rights – those rights necessary for a minimally decent life – and their associated duties are universal and, therefore, their fulfillment is not, in any way, dependent on nationality. Just as my life is not more valuable than yours because I am a white and you are a black, my life is also not more valuable than yours just because I am American and you are Brazilian. Race, nationality, religion, gender, sexual orientation, occupation, etc.. – these are all morally arbitrary factors when it comes to the fulfillment of an individual's fundamental human rights. For my fellow Americans to claim that they have duties in relation to my fundamental human rights because I am an American and *no* duties in relation to your fundamental human rights because you are not an American, is tantamount to saying that my life is more valuable than yours because of my nationality.⁷³

While I have rejected the extreme nationalist view, so far everything I have said supports an extreme cosmopolitan view. How then do we go from the claim that everything about an individual apart from the fact that he/she is a human-being is irrelevant when it comes to the fulfillment of his/her fundamental human rights to the position that shared nationality may allow individuals to give priority to the fulfillment of the fundamental human rights of their co-nationals? On the most extreme cosmopolitan view, special relationships between individuals – from family to co-nationality – serve a purely instrumental purpose when it comes to fulfilling fundamental human rights. Put simply, special relationships offer

⁷³ This is not the same as if my compatriots claimed that there were certain duties they had to me in relation to my fundamental human rights, which they do not generally have to non-compatriots. As an example, my compatriots might justly argue that they have duties to fellow Americans to create and fund public education in relation to (among other things) their compatriots' rights to autonomy and they do not generally have this duty to non-Americans. There might be several legitimate reasons for this, to include the idea that the right to national self-determination generally precludes Americans interfering/influencing the educational system of other countries (for reasons I discuss shortly).

a convenient and effective way to protect the rights of large numbers of individuals. So *if* we say that my compatriots are the primary duty-bearers when it comes to fulfilling my rights, then it is only because this is the most efficient way of protecting the greatest number of individuals' rights. I do not agree.

I have argued throughout this chapter that human beings are social creatures who, as part of a minimally decent life, form and nurture relationships with other human beings. Individuals, in other words, form special relationships with others that are morally valuable. Since I grant that these relationships have profound moral significance to the individuals who hold them (and for many this includes co-nationality), I disagree with the extreme cosmopolitan view that these relationships are purely *instrumental* when it comes to the fulfillment of fundamental human rights. I am not my daughter's primary protector and caregiver (as opposed to my neighbour's daughter) for purely instrumental reasons. Nor are Kenyans the primary protectors of their fellow Kenyans for *purely* instrumental reasons (though there certainly are some instrumental reasons). Now many (if not most) extreme cosmopolitanists would probably accept the claim that I am not my daughters primary caregiver for purely instrumental reasons, though they would not accept a similar claim regarding co-nationality. Realizing this, though I will continue to use the family as an example of a special relationship as an illustrative point of reference, my concern here is on co-nationality.

So what might a cosmopolitan view which runs between extreme nationality and extreme cosmopolitanism say about the impact of special relationships on the fulfillment of fundamental human rights? First, it is necessary to point out that normally an individual can – and must – fulfill his/her duties to those they are in special relationships with *and* to strangers who are simply fellow members of the human race. When I come upon the child drowning in the shallow pool, I have a duty to rescue him irrespective of whether he is a

stranger, a fellow American, or my son. Here special relationships play no role, the drowning child's life is in jeopardy and I must fulfill my duty to aid him.

Even so, it seems to me that the characteristics/dynamics of some special relationships justify delineation between primary and secondary duty-bearers and thereby impact (limit/expand) the duties one generally has to particular individuals. The special relationship between a parent and a child, for example, justifies the distinction of the parent as the primary duty-bearer in regards to most aspects of the child's fundamental human rights and others as secondary duty-bearers. I not only have a duty to save my son from the shallow pool, I have a duty to teach him to swim in order to prevent him from drowning. While, as discussed, I also have a duty to save another person's child from the shallow pool, I do not have the duty to teach my neighbour's child to swim. More strongly, I have a duty to feed, shelter, and clothe my child and, generally, no such duties to my neighbour's child because I am the primary duty-bearer to my child and only a secondary duty-bearer to my neighbour's child. To be clear, the argument is not that I have no duties to my neighbour's child in association with that child's fundamental human rights. I maintain my duty to avoid and my duty to institutionalise above the family level, but my duty to aid – my duty to directly supply material goods or physical protection – only kicks in when my neighbour is unwilling or unable to provide such aid.⁷⁴ For me to step in and try to feed, clothe, shelter, etc., my neighbour's child when my neighbour is fully capable seems to be an unjustifiable imposition into the special relationship between my neighbour and her child. The parent-child relationship is useful in showing, in a fairly non-controversial way, how special relationships might impact duties associated with the fulfillment of fundamental human rights; but now we move to the more challenging question of how the dynamics of the special relationship between co-nationals might justify the delineation of primary and secondary duty-bearers.

⁷⁴ See Chapter 2 for discussion on the duty to aid and the duty to institutionalise.

As discussed in Chapter 2, one of the primary ways of fulfilling fundamental human rights is through the duty to institutionalise – the duty, that is, to create, support, and maintain institutions that protect and promote individuals’ fundamental human rights. The right to national self-determination allows members of a nation a sphere of political autonomy in which they can maintain, shape, and protect their collective way of life free from unjust interference from outsiders. Part of this process involves building and maintaining national institutions which reflect the national culture and, accordingly, it seems to follow that members of a nation ought to have the opportunity to build/maintain national institutions which fulfill their members’ fundamental human rights in ways that are consistent with/conducive to their collective way of life. Through the right of national self-determination, Kenyans work together to establish their own government and rights protecting/advancing institutions. This process allows Kenyans to continue to protect and shape their nation, and both the process and the nation itself, as I have argued throughout this chapter, hold significant moral value in the lives of the Kenyans. If the UN came in and designed the Kenyan government and all the Kenyan institutions with the aim of fulfilling the duty to institutionalise, it seems that something morally valuable would be lost even if those institutions were successful in protecting rights. Thus, I find that when it comes to the duty to institutionalize, co-nationals are not the primary duty-bearers for their fellow nationals for purely instrumental reasons. More strongly, when it comes to the duty to institutionalise, nations are the primary duty-bearers regarding their members’ fundamental human rights.⁷⁵

The same argument can be given for the duty to aid which holds, recall, that we have a duty to aid those in danger, if we can do so without unacceptable risk to ourselves. Again, it seems that if members of a nation are in need of aid, co-nationals may be able to provide this aid in a way that is more conducive to the national way of life than if non-nationals

⁷⁵ Though, both nationals and non-nationals would maintain their duty to institutionalise at the international level by, for example, creating international institutions which supported national self-determination.

provided such aid or did so without consulting the nation as to the best way to provide aid. Imagine a nation facing severe crop failures and potential famine. In one scenario, co-nationals provide aid to each other in a way that supports and sustains their small agricultural communities. In another scenario, the international community comes in and, without consulting the target-population, plants huge corn crops which negatively impact the traditional agricultural system of the target-state. While some benefits may result from both scenarios, it seems that something morally valuable might be lost in the case of imposed UN aid. As in the parent-child relationship, for non-nationals to try to impose aid when co-nationals are able and willing to do so seems to be an unjust imposition of the special relationship between co-nationals (a point to bear in mind when we return to the issue of democratization in Chapter 5 and economic aid in Chapter 6). It is only when nations are either unwilling or unable to protect the fundamental human rights of their members, or when they explicitly request/accept assistance from non-nationals, that non-nationals take the role of primary-duty bearers.

So, though fundamental human rights are universally held, I submit that the right to national self-determination requires nations be given the primary responsibility for fulfilling these rights for their members (save for the duty to avoid, which is held by all at all times). This is the case, however, only so long as the nation does actually fulfill these duties. When the members of a nation are either unwilling or unable to carry out their primary duties to each other, the reason for the distinction between primary and secondary duty-bearers breaks down and, consequently, so too does the distinction. When this occurs, non-nationals must step in and protect the fundamental rights under threat. The important point to take away from this discussion is that the boundaries of nations do not equate to impenetrable boundaries of right-holders and duty-bearers; I have duties in relation to your fundamental human rights whether you are a member of my nation or not. The range of my duties to you,

a non-co-national, may vary depending on circumstances and my related status as either a primary or secondary duty-bearer, but our lack of shared nationality never fully negates the fact that I have duties to you. This point will prove particularly important in the next chapter where I argue that states have a duty to intervene in atrocities which occur outside of their borders. For now, let us move on to discuss the duties associated with the right to national self-determination.⁷⁶

3.4 Duties Required by the Right to National Self-Determination

In Chapter 2, I argued that fundamental human rights correlate with duties, and that these duties can be divided into three general categories: (D4) the duty to avoid, (D5) the duty to institutionalise, and (D6) the duty to aid. As I have discussed the reasoning behind each of these categories at length in Chapter 2, I will not repeat that discussion here. My purpose in this section is to identify how these duties apply to the right to national self-determination and, more specifically, to this right in cases of intervention. This examination will provide us with principles of guidance as we move on to discuss more specific questions of post-atrocity justice.

(D4) is the duty to avoid actions which deprive right-holders of their right to X. Thus, we have the duty to avoid actions which deprive a nation of their right to national self-determination (Margalit & Raz 1990:460; Miller 1999:104). This includes such obvious duties as the duty not to commit genocide or suppress a group's national-identity. It also includes the duty not to intentionally block the process of self-determination. Less obvious, and more relevant to intervention, this also means that those who carry out interventions have a duty not to impose a particular form of government or way of life on the nation either

⁷⁶ Another way that nationality may play a role in the fulfillment of fundamental human rights is when there is a conflict of rights; one can fulfill the rights of only a co-national or a non-national. I do not discuss this herein as, whatever one thinks of this possibility, in our world of relatively plentiful resources it seems that we will rarely face the dilemma of either intervening to protect non-nationals or protecting the fundamental rights of co-nationals. For further discussion on rights, duties and the (possible) significance of nationality see (Hurka 1997:139; McMahan 1997:130-131; Miller 1999:23; Tan 2006).

overtly or through unjust conditions of aid. As we move forward, then, we must keep in mind that those who carry out post-atrocity activities have a duty, (D4), not to deprive the target population of their right to national self-determination.

(D5) is the duty to create and maintain social (to include political and economic) institutions which uphold, insofar as reasonably possible, the right of right-holders to X, by providing protection, enforcement and, if necessary, aid to the right-holder. Again we can plug national self-determination into the equation, to read: we have the duty to create and maintain social institutions which uphold the right of a nation to national self-determination by providing protection, enforcement and, if necessary, aid to the nation. As interventions involve nations, states, and the international community in general, it follows that this duty applies to creating and maintaining institutions at each of these levels which support a nation's right of self-determination. For outsiders who participate in post-atrocity interventions, this duty is limited by the duty to avoid, such that outsiders have a duty to help create and maintain national (within a nation) and state institutions to the degree consented to by the nation/s of the target-state. Fulfilling this duty may include providing expert advice on constitution building, providing material resources for elections, or providing guarantees to defend (using military force if necessary) the results of a post-atrocity election (I return to these in later chapters). With this, we add to our list of guidance, that we have a duty, (D5), to help create and maintain social institutions which uphold the right of a nation/nations to self-determination.

(D6) is the duty to provide security and aid to those in grave danger when they are unable to aid themselves and when the institutions designed to provide such protection are unable or unwilling to do so, or when it is unreasonable to rely on them to do so. How does this duty apply to national self-determination? Campbell writes that an actor that “does not have the capacity to make choices...cannot...be self-determining” (2006:174). It is likely

that members of a nation recovering from atrocities will be too preoccupied rebuilding their lives and reestablishing a degree of normalcy for the group to have the capacity to self-determine their collective future in the immediate post-atrocity period. In such a case, outsiders may have a duty to protect and secure the nation's right to self-determination simply by helping the nation reestablish normalcy, providing aid, and ensuring that others do not 'determine' for them while they are in recovery. I return to what this might entail in Chapters 5 and 6. With such possibilities in mind then, I add that we have the duty, (D6), to provide security and aid to nations within the target country, if they are not in a position to provide their own, with the aim of protecting and aiding their right to self-determination. It might also be argued that the duty to aid involves the duty to militarily intervene when a nation's right of self-determination is under threat if such an intervention was likely to meet the just war requirements – I return to this argument in Chapter 5.

3.5 Conclusion

My aim in this chapter has been to define the right to national self-determination, examine its scope and practical application, and explore some of the initial implications of this right on the subject of intervention. When outsiders are involved in the reconstruction of post-atrocity states they must perform a delicate balancing act of helping to empower the target-population to exercise its right to national self-determination without, in the process, violating this very same right.

Understanding what it means for members of a nation to be self-determining, then, is crucial for the larger discussion of post-atrocity activities. To this end I have argued, first, that national self-determination is the right of nations to a degree of political autonomy. Second, the degree of political autonomy that each nation has a right to will be determined, in large part, by proportionality. Third, the right is exercised, in the first instance, by citizens of a state. Fourth, a nation can be democratically self-determining, council-based self-

determining, or implicitly self-determining. Fifth, the nation is the primary duty-bearer regarding its members' fundamental human rights so long as it is willing and able to fulfill its duties. Sixth, non-nationals have duties in relation to each other's fundamental human rights. Lastly, I argued that the right to national self-determination grounds a number of duties and these include:

(D4) the duty not to deprive the target population of their right of national self-determination;

(D5) the duty to help create and maintain social institutions which uphold the right of a nation/nations to self-determination;

(D6) the duty to provide security and aid to nations within the target-state, if they are not in a position to provide their own, with the aim of protecting and aiding their right to self-determination.

In cases of mass-atrocity the target-state is often both unable and unwilling to carry out these duties (the target-state government is usually unwilling because they are one of the perpetrators and the target-population is usually unable because they cannot effectively defend themselves against the government and/other perpetrators) and, accordingly, the international community becomes the primary duty-bearer of these duties. Thus, we have identified three additional post-atrocity duties. These are still quite general, but when applied, in later chapters, to particular issues of post-atrocity justice they will help us to identify and refine more specific duties.

Chapter 4: Stay or Go?

As noted in the Introduction, a large portion of the post-atrocity policy-oriented literature pragmatically analyses the policies, failures, and successes of international transitional authorities (ITA). ITAs, as the name suggests, are made up of various international actors who, backed by military force, temporarily assume the responsibilities of governance and security over the target-state until the target-population is able to re/establish its own government. The aim of this chapter is to take a step back from the discussion in the policy-oriented literature and examine the morality of establishing ITAs in the first place. My normative analysis of ITAs addresses a preliminary question: Do interveners have a duty to maintain military force in the target-state beyond the initial intervention (the initial intervention being the one carried out to stop mass-atrocities) or, conversely, do they have a duty to immediately withdraw? In what follows, I argue that, in most cases, interveners have a duty to keep military forces in the target-state beyond the initial intervention and to temporarily assume responsibility of governance and security in the target-state (herein termed the duty to stay).⁷⁷ This question, you will note, assumes that an initial intervention to stop the mass-atrocities has taken place. Thus, before focusing on post-atrocity intervention specifically, I argue that members of the international community have a duty to intervene in order to stop imminent or ongoing mass-atrocities (herein termed the duty to intervene). This argument not only addresses the assumption made in our question on the duty to stay, it also provides the basic framework upon which my argument for the duty to stay is built.

The chapter proceeds as follows. In Section 4.1, I lay out the basic argument for and qualifications of the duty to intervene. In Section 4.2, I review some of the most common

⁷⁷ Two points. First, the duty to stay does not deny that interveners will have a duty to withdraw eventually; it simply holds that withdrawal, in most cases, is not morally justifiable immediately after mass-atrocities have ended. Second, this assumes that an initial intervention to stop mass-atrocities took place. However, the arguments made herein are also applicable to those post-atrocity situations in which no initial intervention took place. In these cases, the question would be: Do international actors have a duty to deploy military forces in the aftermath of mass-atrocities?

arguments offered by political theorists in support of the duty to stay. I then adopt the basic claims of these theorists, but argue that because these claims are usually left undefended, they do not adequately support the duty to stay. Building on the arguments made in Section 4.1, I then present a defence for the duty to stay which, I believe, fills the gaps left by current arguments. Sections 4.3 and 4.4 address two complications with the duty to intervene and the duty to stay, so argued, which arise when we focus more closely on *who* has these duties. In Section 4.3, I address the diffusion of responsibility dilemma by tackling the question of which particular actor/s within the international community ought to intervene. In Section 4.4, I address the excessive risk proviso (which holds, recall, that individuals have a duty to aid others unless doing so exposes them to unacceptable risk) and argue that the fact that interventions risk the lives of intervening soldiers does not negate the duty to intervene or the duty to stay. Lastly, in Section 4.5, I analyse one of the most common arguments made against intervention and conclude that while this argument provides some useful cautions for the need to limit what interveners are permitted to do while in the target-state, it does not convincingly counter the argument for the duty to stay.

4.1 The Duty to Intervene

In Chapters 1, 2, and 3, I discussed fundamental human rights, their corresponding duties, the scope of those rights and duties, and the moral guidelines regarding the use of military force. Given the arguments made in those chapters, I submit that we have actually already established the grounds for the duty to intervene. In Chapter 2, I argued that all individuals have the right to physical-integrity and that this right necessitates, among other duties, the duty to aid – (D6). (D6), recall, holds that all individuals have a duty to aid right-holders who are in grave danger if: (1) the duty-bearer is in a position to aid/rescue the right-holder, (2) the duty-bearer can perform the rescue at an acceptable risk to him/herself (the excessive risk proviso), and (3) social institutions are unable/unwilling to aid the right-holder

and/or when it is inappropriate to rely on them to do so. I further argued that under certain circumstances (D6) includes the duty to use force, including lethal force, to save a right-holder from an unjust attacker. In Chapter 3, I argued that the right to physical-integrity and its corresponding duties are not bound by group identifications such as race, religion, nationality, etc.; they are universal. However, I also argued that, for reasons of efficacy and reasons relating to the right to national self-determination, the duties relating to the right to physical-integrity are *usually* held primarily by members within a self-determining state/nation and secondarily by individuals outside of that state/nation (except for the duty to avoid which is held equally by all at all times). I further argued that when the self-determining state/nation is unwilling or unable to carry out its primary duties, the distinction between primary and secondary duty-bearers breaks down and the duties relating to the right to physical-integrity, to include (D6), are placed upon all individuals.

Now, if we agree that (a) the right to physical-integrity requires the duty to aid (using force if necessary) those in grave danger so long as one can do so at an acceptable risk to oneself, and if we agree that (b) the right to physical-integrity and the duty to aid extend internationally in circumstances where the primary duty-bearers fail, then it follows that (c) states have a duty to aid, using military force if necessary, populations facing mass-atrocities when the target-state government/population is unable or unwilling to do so, if they, the interveners, can do so at an acceptable risk to themselves. Here we arrive at the duty to intervene.⁷⁸

The duty to intervene must be qualified by the moral parameters regarding the just use of force examined in Chapter 1. From the guidelines established in that chapter, we can conclude that the duty to intervene is such that in order to be justifiable and obligatory the

⁷⁸ My argument here maps onto what Caney terms the “standard cosmopolitan argument” put forward by several political theorists (2006:232). See, for example, (Buchanan 1999; Caney 1997a & 2006:227-256; Luban 1990 & 2002; Lucas 2001:10, 40-41; Shue 2003; Teson 2008).

goal of the intervention must be to defend and secure fundamental human rights (G1), it must be proportionate (G2), it must respect non-combatant immunity (G3), it must have the consent – literal or reasonably assumed – of those on whose behalf it is carried out (G4), and it must not expose the interveners to an unacceptable level of risk (G5). These qualifications added, there remain a number of complications which must be addressed and we will return to these in later sections. First, with this basic framework for the duty to intervene in mind, let us turn to the main question of this chapter: Do interveners have a duty to maintain military force in the target-state beyond the initial intervention?

4.2 The Duty to Stay

Consulting the academic literature on intervention, one finds very little extensive normative discussion on the duty to stay. To be sure, there are several proponents of the duty to stay. However, current arguments for this duty often take the form of brief remarks, left largely undefended, within works which concentrate on broader issues of intervention and war. Walzer's argument in *Arguing About War* is representative, both because he captures the key points most commonly presented in defence of the duty to stay, and because he does so with brief and, for the most part, underdeveloped statements (2004). Walzer's argument contains two distinct claims. His first claim runs as follows. In most post-atrocity cases, the target-state will be left in a dangerous condition of "anarchy and ruin" (Walzer 2004:21). It will be left in *anarchy*, either because the target-state's government collapses in the events leading up to or during the atrocities or because the target-state's government is committing the atrocities, in which case, interveners *must* remove the government from power. The target-state will be left in *ruin* on account of the large-scale physical and economic damage that usually occurs during the course of atrocities. In the conditions of anarchy and ruin, the lives of the target-population remain under serious threat and, therefore, in order to protect

the target-population from these threats, interveners have a duty to remain in the target-state beyond the initial act of intervention (Walzer 2004:19-20, 70-71).⁷⁹

Walzer's second claim is that because atrocities often represent the apex of a culmination of serious problems within the political, social, and/or economic structures of the target-state, in order to achieve a long-term end to the atrocities – in order to prevent their re-emergence – these underlying problems must be remedied through some degree of political, social, and/or economic reconstruction of the target-state. Further, this reconstruction will most often require the participation of interveners (Walzer 2004:70-72, 76).⁸⁰

Walzer explicitly states that his argument for the duty to stay – comprised of these two claims – is not a complete argument but, rather, is the beginning of an argument still very much in need of development (2004:21-22). In this chapter I take on the task of defending Walzer's first claim and, in so doing, provide what I believe to be a convincing argument for the duty to stay. For now I leave Walzer's second claim unexamined. The omission, however, is only temporary, as questions of addressing root causes through political, social and economic reconstruction are the focus of the next three chapters.⁸¹

In order to grant the argument that, in *most* atrocity cases, the target-state will be left in anarchy and, therefore, in *most* cases, interveners have the duty to stay, it must be shown that: (1) most cases of mass-atrocities lead to a post-atrocity condition of anarchy in the target-state, (2) the post-atrocity condition of anarchy poses a grave threat to the lives of the target-population, (3) interveners can protect the target-population from this grave threat, and

⁷⁹ For similar arguments see (Chatterjee and Scheid 2006:4; Evans, G. 2008:148; Frank & Rodley 1973:283; Hoffmann 2006:24; Recchia 2009; Wheeler 2002:306).

⁸⁰ For similar arguments see (Bass 2004; Bellamy 2008; Keohane 2008:281; Recchia 2009).

⁸¹ There are other arguments given for the duty to stay which differ from the most common arguments I present, via Walzer, here. These other versions ground the duty to stay on: the duties purportedly acquired as the consequence of using military force (Bellamy 2008:615; Gheciu & Welsh 2009:123; McCready 2009:68), the duty to protect one's own citizens from serious threats, such as terrorism, that are likely to flourish in a failed target-state (Gheciu & Welsh 2009:129-131), the duty to uphold one's values (Gheciu & Welsh 2009:127), and the need to rehabilitate/reconstruct the target-state in order to secure international order (Fox 2008:7).

(4) interveners have a duty to provide this protection. In what follows, I develop and defend each of these statements.

Let us begin with the task of showing that, in most post-atrocity cases, the target-state is left in a condition of anarchy. Post-atrocity anarchy may come about in two ways. First (scenario-one), because the target-state's government is committing the atrocities (either directly or via intermediaries), interveners remove it from power; an action which has the effect of creating post-atrocity anarchy in the target-state (which I argue below they have a moral duty to do). Second (scenario-two), in the events leading up to or during the atrocities, the target-state government collapses. Both claims must be supported by empirical evidence to show their likelihood, but scenario-one also requires a strong normative argument to show that interveners have a moral duty to remove atrocity-committing regimes from power.

A survey of the atrocities which have occurred since 1970 gives a good indication of the likelihood of either of these scenarios. Appendix-1 (column-S) shows that scenario-one is the most likely scenario in mass-atrocity cases. In 87.8% of these cases, the target-state's government was responsible, in whole or in part, for the atrocities. Scenario-two cases occur 6.1% of the time. If this data is correct, this means that there is 93.9% chance that an atrocity will occur in circumstances of either scenario-one or scenario-two. Granting the claim that most atrocity cases fall under the scenario-one category, the next step is to show *why*, in these cases, the target-state will be left in a state of anarchy.

As noted earlier, the claim that there is a duty to stay in scenario-one cases is based on the normative argument that when a target-state government commits mass-atrocities, interveners have a *moral duty* to remove that government from power. I believe that the duty to remove atrocity-committing regimes can be justified on the same grounds used to justify the duty to intervene. As is clear from Section 4.1, the core of the argument for the duty to intervene is (D6): if V is in grave danger and R has the ability to aid V without significant

risk to himself, then R has a duty to provide this aid, using force (including lethal force) if necessary. Likewise, if a regime is committing mass-atrocities, and if the only way to end those atrocities and/or prevent the re-emergence of atrocities is to forcibly remove the regime from power, and if the interveners can do so without unacceptable risk to themselves, then the interveners have a duty to remove the regime.

The inclusion of atrocity prevention is based on the intuition, common among political theorists and conflict-resolution experts, that if interveners have successfully ended mass-atrocities but do not remove the atrocity-committing regime from power, then upon the interveners' withdrawal, the atrocities will begin again (Bass 2004:396-397; Chatterjee & Sheid 2006:3; Evans, G. 2008:148; ICISS 2001; Ignatieff 2008; Keohane 2008; Wheeler 2002:257). Imagine, a country in which government-P, the perpetrator, is carrying out genocide against group-V. Group-R, an intervening (rescuing) force, enters the country and forcibly stops P from killing V. R, having accomplished the immediate goal of stopping genocide, withdraws from the country, leaving P in power. While there are numerous possible outcomes to this scenario, the most likely seems to be, intuitively, that P will begin the genocide of V anew.

To what degree do the empirical cases support the intuition that, if left in power, atrocity-committing regimes will commit more atrocities? The murderous regimes of Omar al Bashir, Pierre Buyoyo, Slobodan Milosevic, and Charles Taylor are vivid examples of governments left in power after an episode of mass-atrocity who then went on to commit further atrocities. Appendix-1 shows that in 65% of all scenario-1 cases, atrocities continued *until* the regime was removed from power.⁸² In other words, well over half of the scenario-one cases show that so long as an atrocity-committing regime remains in power, atrocities will continue. Moreover, in 80% of those cases where atrocity-committing regimes were left

⁸² I include here all outcome-1 cases in column-O of Appendix-1.

in power after an episode of mass-atrocities ended, atrocities recurred (though atrocities were not always committed against the same group).⁸³ Though these findings are preliminary and suggestive rather than conclusive – more research needs to be done on other possible contributing factors – both statistics strongly support the claim that atrocity-committing regimes left in power are likely to commit more atrocities.

The reasonably high empirical evidence that atrocity-committing regimes will resume atrocities if left in power supports the inclusion of atrocity prevention into the normative argument for forcible regime change. My claim, then, is that interveners have a duty to forcibly remove an atrocity-committing regime from power, even if that regime has temporarily stopped committing atrocities, in order to prevent the re-emergence of atrocities. Consider another common scenario used to illustrate the duty to aid: if R sees V tied to train tracks, and if R knows that it is highly likely that a train will soon come along those tracks and kill V, then R has a duty to untie V (if he can do so without putting his own life in serious danger). Unlike the drowning scenario, the threat to life in the train scenario is imminent rather than occurring. The preventative aspect of the duty to remove atrocity-committing regimes from power, even if they have temporarily stopped committing atrocities, is based on similar considerations as that in the train scenario – though we must change the scenario slightly.

Imagine that R sees A tie V to the train tracks. R then watches as A runs down the train tracks, commandeers a train, and begins driving towards V. R notices that there is a split in the tracks between the train and V, meaning that if A changes his mind about killing V, he can take the alternate tracks and not kill V. At the moment the tracks are set so that the train will not run over V unless A pushes a button to move the tracks. R is unable to get to V

⁸³ Out of all scenario-one cases on Appendix-1, there were 15 cases in which atrocity-committing regimes were left in power and of these, 12 committed further atrocities. This statistic does not include the regime of Milosevic (who was technically removed from power in Bosnia, though remained in power in Serbia) or Charles Taylor's involvement in Sierra Leone.

and untie him because there is a river with a heavy current between him and the train tracks and he cannot swim (the point being that V cannot simply be removed from the situation). R is faced with a dilemma. He can shoot A and prevent him from pushing the track-changing button and killing V or R can do nothing and hope that A changes his mind about killing V (let us assume these are R's only options). Here the threat to V is imminent and highly likely based upon A's past behaviour, but not absolute. Nevertheless, it seems to me that, given this high likelihood, R has a moral duty to shoot A and rescue V. Similarly, if interveners know that the target-populations' lives remain in imminent danger so long as the atrocity-committing regime remains in power – which the empirical cases suggest is most likely – then the interveners have a duty to remove the regime. Like the homicidal train driver scenario, an atrocity-committing regime left in power is an imminent and highly likely threat rather than an occurring and absolute threat.⁸⁴

One possible objection to the argument that interveners have a moral duty to remove atrocity-committing regimes from power is that, in so doing, the target-state is left in a condition of anarchy – a condition which itself (as I will argue below) poses serious threats to the lives of the target-population. This suggests that we may have a moral dilemma on our hands. On the one hand, leaving an atrocity-committing regime in power clearly leaves the target-populations' lives in danger. On the other hand, anarchy also threatens the lives of the target-population. How then can one argue that there is a duty to remove the atrocity-committing regime? A medical analogy is quite helpful in solving this dilemma. Imagine that there is a man who has a fatal and highly infectious disease, but this disease, for the moment, is isolated in the lower portion of his left leg. A doctor can remove this portion of the man's leg and thereby save the man's life and prevent the disease from infecting others.

⁸⁴ A convincing argument might also be made that atrocity-committing regimes must be removed from power because justice demands that those responsible for atrocities be held accountable for their crimes. We return to issues of post-atrocity justice in Chapter 7.

When the doctor removes the man's leg, however, the man will be at risk of bleeding to death if the doctor does not take further action. The fact that the amputation poses a threat to the man's life does not mean that the amputation should not be carried out. Rather, it means that the doctor will need to do more than just amputate the diseased leg.⁸⁵ The same is true in regards to the removal of atrocity-committing regimes. Regime change, like amputation, is a necessary step in a life-saving process, but more needs to be done. *What* more needs to be done is a point I will return to (in this section and in later chapters).

In conclusion, the likelihood that post-atrocity societies will be left in a state of anarchy is extremely high. The empirical data shows that in 6.1% of mass-atrocity cases the target-state government collapsed before or during the atrocities (scenario-two). It also shows that in 87.8% of the cases, mass-atrocities were committed by the target-state's government (scenario-one) and that in 80% of those cases where atrocity-committing regimes were left in power, atrocities recurred. Taking this empirical data into consideration, I argued that in scenario-one cases interveners have a moral duty to remove the atrocity-committing regime from power. Of course, in reality regime change does not always happen, but I move forward with the normative claim that in most cases regime change is morally required.

Having established that in *most* post-atrocity cases the target-state will be left in a condition of anarchy, the next step in defending the duty to stay is to show that this condition poses serious threats to the lives of the target-population. Let us turn to this task. The condition of anarchy creates two sorts of serious threats for populations living in post-atrocity societies. First (threat-one), anarchy may lead to widespread hunger, disease, and death as a result of the destruction caused during the atrocities and lack of services such as hospitals, water purification, food distribution, monetary systems, etc., which are absolutely essential in the wake of atrocities (Bass 2004:385; Recchia 2009:176). Second (threat-two), even in

⁸⁵ I am thankful to Liz Cripps for this example.

cases where the atrocity-committing regime has been removed from power, anarchy leaves the target-population “at the mercy of armed factions” who are likely to renew violence and atrocities (Bass 2004:403; Caplan 2005:45).

Threat-one is based largely on the observation that in most mass-atrocity cases, perpetrators not only kill, rape, and mutilate, they also destroy homes, water supplies, agriculture, public-service institutions, economic institutions, and infrastructure on a massive scale. Many of the cases listed in Appendix-1 fall under the category of so-called new wars. As noted in the Introduction, these conflicts are distinguished from conventional wars because the tactics of the belligerents are dramatically different from those typical of conventional war. In conventional, or ‘old,’ wars, the primary tactic of belligerents is to engage in battle with each other; the aim being to defeat enemy combatants and, thereby, win the war. In new wars, belligerents intentionally avoid battle with enemy combatants and, instead, direct their violence at the civilian population (Kaldor 2006:8; Munkler 2005:2). The aim of these new wars is not to win any sort of final victory or settle a conflict, rather it is to control the state, or an area within it, in order to exploit state resources for personal/group gain (Kaldor 2006:105; Munkler 2005:14). In order to gain control of an area, actors carry out large-scale massacres, forced famines, forced population displacements, and/or render areas physically uninhabitable (Kaldor 2006:105).⁸⁶ The techniques of population displacement and area destruction continue to leave the target-population at great risk long after atrocities have ended.

In nearly all of the cases listed in Appendix-1 population displacement and area destruction took place on a massive scale. For the sake of space, I offer only a few examples here. In Bosnia, where over 2 million people were displaced, after Serbian forces finished

⁸⁶ As also noted in the Introduction, the characteristics of new wars reveal that they are hardly wars at all. These wars, in which civilians make up as much as 90% of the death-tolls, are better classified as episodes of mass-atrocity in which conflict between belligerents is a secondary and rare occurrence. Further, the belligerents in these new wars are not combatants, but are criminals and murderers.

killing and/or driving out the residents of a town, they sent “mop up” crews to destroy homes and kill livestock (Power 2002:251, 266). In Kosovo, where over 90% of the population was displaced, Serbian forces used scorched-earth tactics to ensure the long-term destruction of towns (Caplan 2005:19; Seybolt 2008:83). In East Timor over 75% of the population was displaced and government forces destroyed “homes, crops, public buildings and public utilities” at such a rate that within one month over 70% of East Timor’s physical structures were destroyed (Caplan 2005:20; Seybolt 2008:88). In Darfur (Sudan (b)), where over 1 million people are displaced, government backed militias level villages and poison water supplies to ensure that the areas they attack remain uninhabitable for years (Lebor 2006:145; Meredith 2006:599).

Population displacement and area destruction pose serious threats to the lives of the target-population. Individuals who have either been displaced or who live in areas rendered uninhabitable, have limited or no access to shelter, food, and/or clean water. In many cases, the make-shift camps which become home to a large portion of these individuals lack sanitation and become breeding grounds for disease. The destruction of hospitals leaves many of those exposed to disease without life-saving medical care. On top of all this, the collapse of industry, infrastructure, economic institutions, and (especially) government institutions makes recovering from this state of ruin very difficult. Since area destruction is common in most mass-atrocity cases, it can be reasonably argued that, in most post-atrocity societies, the lives of the target-population will be threatened by lack of food, water, shelter, and medical care. The likelihood of threat-one, in other words, is extremely high.

Threat-two, the threat of renewed violence and/or atrocity, is based on the observation that one of the best indicators that an atrocity will occur in a given state, is that one has recently ended there (Evans, G. 2008:148). After mass-atrocities have ended, even when the atrocity-committing regime has been removed, the security conditions within the target-state

remain extremely volatile; the likelihood of renewed violence remains high and, therefore, the lives of the target-population remain in jeopardy. Imagine, again, the situation in which P is carrying out genocide against V and R intervenes and forcibly stops P from killing V. Imagine that R removes P from power and then withdraws from the country, leaving the target-population to begin the recovery process and settle any lingering hostilities amongst themselves. While there are many possible outcomes to this scenario, five immediately come to mind. First, as soon as R withdraws, forces associated with the former government, P, begin the genocide of V anew. Second, after R withdraws, members from V carry out revenge massacres against members of the community with whom P is identified. Third, in the power vacuum left after the removal of the state-government, individuals from groups P, V, O (any other group), or individuals not associated with a group, begin a struggle for control over power and state resources, which leads to violent conflict and atrocities. Fourth, members of groups P, V, and O come together to resolve lingering problems and prevent the re-emergence of atrocities, but negotiations fail, violent conflict breaks out, and atrocities begin again. Fifth, members from groups P, V, and O peaceably settle their differences and the re-emergence of atrocity is avoided. Many conflict experts agree that the first four possible outcomes (all of which lead to renewed violence and atrocity), either individually or combined, are most likely (DeFigueiredo & Weingast 1999; Evans, G. 2008; Miall, Ramsbotham & Woodhouse 2001; Munkler 2005; Walter 1999b). The first three outcomes result from elites/predators resuming atrocities either for revenge or, more likely, for their own personal gain (herein termed the predatory-factor). The fourth outcome results from an intrastate security-dilemma. In what follows, I will explain each of these possibilities – the predatory-factor and the security-dilemma – and discuss their likelihood.

The security-dilemma is a key feature in many international relations theories, especially realist and neo-realist theories. First to use the term in 1950, John Herz explains

that a security-dilemma is created when “groups live alongside each other without being organized into a higher unity” (1950:157).⁸⁷ In such situations, each group must ensure its own security and is perpetually concerned with “being attacked, subjected, dominated, or annihilated by other groups” (Herz 1950:157). The concern for security creates a spiral of actions which lead the groups into violent conflict. This spiral effect works as follows:

Group 1 takes defensive measures to bolster its security → Groups 2, 3, and 4 perceive Group 1’s actions as a threat to their own security and take actions to increase their security in response → Groups 2, 3, and 4 perceive each other’s reactions to Group 1 as security threats and take additional steps to increase their security → Group 1 sees the actions of Groups 2, 3, and 4 as security threats and takes further actions to increase its security → Security build-up between the groups continues until eventually Group 1, 2, 3, and/or, 4 reaches a point at which it believes that pre-emptive attack is the best or only defensive option left → violent conflict breaks out.

As Rui DeFigueriedo and Barry Weingast explain, groups caught in the security-dilemma act contrary to their best interest – cooperation and the avoidance of conflict – because they perceive the risks involved in acting otherwise to be too high (1999:294). The case of the Serbian populations in Bosnia and Kosovo help to illustrate this point.

Studies show that up until 1990 most Serbs living in the republics of the former Yugoslavia did not believe that the survival of their ethnic/religious group was threatened by members of the other groups – the Croats and Muslims – living in these republics, and, in fact, were largely against restructuring Yugoslavia along ethnic/religious lines (Snyder & Jervis 1999:22; Woodward 1999:84). By 1991, however, these feelings dramatically shifted. This shift occurred largely because of the rhetoric used by Milosevic to convince the Serbian population that their security was dependent upon the security of the group and, further, that the survival of the group was in grave danger (Snyder & Jervis 1999:22; Woodward 1999:83). Milosevic repeatedly referred to the massacres of Serbs committed by Muslims in

⁸⁷ Though Herz coined the term security-dilemma, the ideas behind this dilemma were in existence long before 1950. Hobbes’ war of all against all in the state of nature and Rousseau’s Stag Hunt, for example, are often cited to explain the security-dilemma.

1389 and by Croats during World War II and warned the Serbian population that similar genocides were imminent (Kaldor 2006:41-42). Further, he worked to convince Serbs that the only way to avoid genocide was to actively work against the Muslims and Croats; cooperation with these groups, he argued, would lead to the certain annihilation of the Serbian population. As many Serbs became convinced that there was a chance that their survival was in jeopardy, they grew increasingly suspicious of all actions taken by Muslim and Croats and they began to view cooperation with these groups as extremely risky. In short, the Serbian population was pulled into a security-dilemma which led them into violent conflicts which were in their best interest to avoid. Milosevic's actions, carried out to solidify his position of power, also provide an example of the predatory-factor – which I will discuss shortly.

Traditionally the security-dilemma has been used to describe the relations between states in an anarchic international environment but, as the Serbian case shows, it can also be applied to anarchic post-atrocity societies within a state (De Figueiredo & Weingast 1999; Snyder & Jervis 1999; Walter 1999a). As Barbara Walter explains, governments prevent intrastate security-dilemmas by providing groups living within the state with a reasonable degree of security (1999a:5). When a state government collapses, however, if intrastate groups are relatively heterogeneous and identifiable, these groups are liable to be pulled into the security-dilemma and the subsequent spiral towards violence. This is so because with the collapse of the government, the groups lose their primary source of physical security. Furthermore, when the government collapses, state power and resources must be reallocated. While the opportunity to redistribute power and resources is potentially a positive opportunity for all the intrastate groups, it may also threaten the security of these groups if any group/s takes control of too many resources and excludes or otherwise abuses the other groups. The fear of this latter situation pulls the groups into the security-dilemma.

In an anarchic post-atrocity society, groups are often relatively heterogeneous and identifiable. At a minimum there are usually at least two such groups: those identified with the perpetrators and those against whom the atrocities were carried out. Often there are several more groups. In the aftermath of an atrocity, these groups are especially distrustful of each other – the victimized group likely fears the re-emergence of atrocities, the group associated with the perpetrators may fear reprisals, and other groups may fear becoming new targets of atrocity. Though all groups may sincerely want to peaceably resolve lingering problems and begin to rebuild the state, because the chief priority of each group is its own security and because each group distrusts the others, the groups will likely be sucked into the security-dilemma spiral and violence will breakout (Walter 1999a:4-5). Walter argues that, after an atrocity, avoiding this spiral is even more difficult than resolving grievances or restructuring political, social, and economic institutions (1999b:39). According to Walter, in 53% of anarchic post-atrocity societies in which groups begin peace negotiations, violent conflict re-emerges (largely) because groups are unable to resolve the security-dilemma (1999b:38). Accepting this data, I conclude that there is a reasonable chance that post-atrocity anarchy will lead to violent conflict as the result of the security-dilemma.

While the security-dilemma poses a threat to the lives of the target population, the predatory-factor is an equally significant threat. The predatory-factor takes two general forms. First, elites still holding positions of power within each intrastate group, despite the removal of the official state government, see the prospect of state re/building and the reallocation of resources as an opportunity to increase their power and accrue personal wealth. Second, individuals not already in positions of power see the collapse of the state government as an opportunity to seize power and resources for personal and/or group gain. In both cases, the individual (or group) is considered predatory because he exploits and fuels

the conditions of insecurity for his own material gain, usually at the expense of the civilian population (Snyder & Jervis 1999:16; Walter 1999a:9).

The predatory-factor is also a defining feature of so-called new wars. Perpetrators view conflict and atrocities as personally advantageous and so actively avoid peace (Munkler 2005:3). Individuals and groups involved in these conflicts create lucrative war economies through which they amass riches and because of this their priority is to keep conflict and atrocities going for as long as possible (Kaldor 2006:10). This means that when an episode of mass-atrocity has stopped, even if the atrocity-committing regime is removed from power, many individuals will have a vested interest in resuming atrocities as soon as the interveners withdraw in order to maintain their war economies.

The predatory-factor is evident (to varying degrees) in most of the cases listed in Appendix-1. However, again for the sake of space, I offer only a few examples. In Somalia, after the collapse of the government, warlords and clan leaders began a violent struggle for individual empowerment and enrichment in which the civilian population became the primary target (Laitin 1999:152-153). To date, Somalia remains in a state of violent anarchy and thousands of civilians continue to die largely because “war has proven more lucrative” for warlords than peace (Osman & Souare 2007:7; Swart 2007:110). In the DRC, one of the factors at the heart of the atrocities is a battle between rival warlords for control over lucrative tin mines. Those groups who gain control of the mines then terrorize the population into submission (through murder and forced labour among other things). With profits from tin (a metal used to build the electronic circuit boards needed for all the electronic gadgets sold and used worldwide) warlords are able to get rich while building ever greater arsenals with which to massacre and torture the civilian population. In Sierra Leone, under the control of Charles Taylor, the RUF murdered, mutilated, enslaved and raped the civilian population for 11 years in order to render it submissive and, thereby, guarantee the RUF’s control over the country’s

diamond mines (Meredith 2006:561). Given that the predatory-factor existed, to some degree, in most cases from Appendix-1 and given the high incentive that predators have to resume atrocities, I conclude that the predatory-factor poses a significant threat to the lives of the target-population in most post-atrocity societies.

In summary, the condition of anarchy in post-atrocity societies leaves the target-population susceptible to serious threats despite the fact that the initial atrocities have stopped. This is so both because of the state of ruin that most post-atrocity societies are left in and because chances are reasonably high that violence and atrocities will re-emerge as the result of the intrastate security-dilemma and/or the predatory-factor.⁸⁸

So far I have argued that in most cases post-atrocity societies will be left in a condition of anarchy and that this condition leaves the target-population exposed to a number of serious threats. The next step in my defence of the duty to stay is to show that interveners can protect the target-population from these threats by remaining in the target-state beyond the initial act of intervention.

Many conflict experts agree that interveners can protect target-populations from post-atrocity threats by temporarily filling the governance void and, thereby, providing the population with security until the target-population is able to do so on its own. Concerning the threats created by the state of ruin in which the target-state is often left after mass-atrocity (threat-one), interveners can provide food, shelter, clean water, medical supplies and the resources with which to begin the process of rebuilding (Munkler 2005:2, 76-77). Despite the fact that many of these resources could probably be flown into the target-state, the continued presence of the interveners is necessary in order to ensure the delivery of aid and the organization of rebuilding projects; tasks which are extremely difficult, if not impossible, for

⁸⁸ As Snyder and Jervis note, in most cases the security-dilemma and the predatory-factor are “intertwined” to such a degree that it is often difficult to distinguish between the two (1999). Predators, as the Milosevic example shows, often instigate and take advantage of the security-dilemma.

the target-population to achieve on their own without a state government. This difficulty increases if the security-dilemma and/or the predatory-factor exist in the post-atrocity society.

Concerning the threat of renewed violence (threat-two), the presence of interveners can prevent the security-dilemma and the predatory-factor from leading the target-state back into a situation in which the re-emergence of atrocities becomes likely. Interveners can break the security-dilemma's spiral towards violence by taking temporary control of the state and ensuring the fair distribution of resources, enforcing agreements made between the intrastate groups, openly monitoring the activities of each group, and guaranteeing that groups who work collectively in the post-atrocity recovery process will be protected from any groups which defect from this process (Jervis 1978:174; Snyder & Jervis 1999:17; Walter 1999a:4). Additionally, the continued presence of the intervener's military can successfully prevent predators from renewing atrocities either by rendering these predators incapable of violence (by disarming them) or by making the costs of violence much higher than the benefits (Munkler 2005:13, 76-77; Snyder & Jervis 1999:27).

The claim that interveners can protect the target-population by preventing the recurrence of atrocities is backed by a number of empirical studies which have found a direct correlation between post-atrocity stability and the presence of interveners. In her study of post-conflict societies, for example, Walter found that in cases where interveners enforced agreements between intrastate groups, post-conflict stability was likely, but in cases where interveners "did not show" or "decided to leave early" negotiations between groups failed (1999b:60). In another study, Michael Doyle and Nicholas Sambanis also found that the probability of post-conflict stability significantly increases if interveners are "employed" in the target-country after an atrocity. Further, they found that this probability increases even more "the more extensive" the interveners' mandate is (Doyle & Sambanis 2000).

Accepting the claims that interveners can protect the target population from post-atrocity threats, I now move on to the argument that interveners have a moral duty to provide this protection.

The final step in my defence of the duty to stay employs the same basic principle – (D6), the duty to aid – which I used to justify the duty to intervene and the duty to remove atrocity-committing regimes. I submit that so long as the security situation within the target-state remains such that the target-populations' lives are in imminent danger, and so long as the interveners can protect the target-population from this danger without significant risk to themselves, interveners have a duty to temporarily assume the responsibilities of governance over the target-state and provide such security. Here we arrive at the duty to stay. Again, there are a number of complications with this argument and it is to these that we now turn.

4.3 Whose Duty?

The claim that states have a duty to intervene and a duty to stay in mass-atrocity cases leaves open the question of which state/s ought to intervene? We have established (in Section 4.1) that only those states which meet just war requirements are permitted to intervene and, accordingly, only these states can be said to have a *prima facie* duty to intervene/stay. However, the generality of this claim is problematic. Recall the case of the drowning child which you have a duty to rescue. This time let us pretend that the child is drowning in the ocean at a crowded beach instead of a pool. There is no lifeguard, but you and dozens of other adults would be able to rescue the child without exposing yourselves to unacceptable risk. Who, out of all the potential rescuers, should jump in and save the child? We face the same question with the duty to intervene and the duty to stay: Who out of all the possible candidates ought to intervene? Where this question is left unaddressed we run the risk that either no one will intervene – termed the diffusion of responsibility dilemma in which everyone waits for someone else to take action – or the wrong actor, from a moral point of

view, will intervene.⁸⁹ So the first complication we must address in regards to duties of intervention is which state/s ought to intervene? For ease of exposition, all references to intervention and duties of intervention will, henceforth, refer both to the initial intervention and post-atrocity intervention – the duty to stay – unless otherwise indicated.

Most of the literature surrounding the question of who ought to intervene pivots around the just war requirement of legitimate authority and, more specifically, around whether states acting unilaterally can legitimately intervene to stop mass-atrocity or whether interveners must obtain UN Security Council authorization. Legitimate authority, in these discussions, takes the form of both moral and legal legitimacy and there seems to be a growing consensus that while a state that intervenes without Security Council authorization lacks legal legitimacy it may, nevertheless, be morally legitimate. I will not, however, focus on this debate. As discussed in Chapter 1, I find understandings of legitimate authority based on whether an agent simply *is* a state or an international organization such as the UN to be morally arbitrary and, thus, unsustainable.⁹⁰ Contrary to such views, I argued that legitimate authority requires only that an agent act on behalf of and with the consent of those whom it purports to protect. This conception of legitimate authority takes us beyond the question of whether states or the UN has the authority to carry out interventions based upon their status as such. Instead, this section concentrates on what is morally important to require of potential interveners and addresses the question of which morally qualified agent ought to intervene.

To date, the most extensive examination on the required moral qualities of interveners is provided by James Pattison in *Humanitarian Intervention & The Responsibility to Protect* (2010b). As Pattison's arguments are convincing and quite thorough, I will not rehash and

⁸⁹ See Miller for an interesting article describing the diffusion of responsibility dilemma (2006).

⁹⁰ This does not negate the claims (which I agree with) that it may be pragmatically advisable and/or morally *preferable* for an actor to obtain UN authorization. My claim is simply that this is not a *necessary* requirement. For the suggestion that defending one's intervention retrospectively may be necessary where prior approval was not obtained see (Lucas 2003:134; Shue 1998). For discussion on the UN Security Council's reactions to mass-atrocities over the last few decades (and some of the moral dilemmas their inaction has created), see (Brown 2007:149; ICISS 2001:48-55; LeBor 2006:204-205; Lucas 2006:85-87; Pattison 2010b:57-58, 154-161; Shawcross 2001:21, 371; Welsh 2008b, 2010:423).

defend them in great detail here. Rather, I offer a concise summary of Pattison's position and then focus on those areas which need either minor revision or to be refined for post-atrocity situations.

Pattison's bottom-line is that the agent who ought to intervene in mass-atrocity cases is the agent who is likely to be the most effective at protecting and securing fundamental human rights. His argument encompasses the following claims. First, in order for a state to be *permitted* to intervene, it must be reasonably sure that carrying out the intervention will not be excessively costly to the intervening state's citizens (one aspect of *jus ad bellum* proportionality).⁹¹ Among all those states who are then permitted, the "most legitimate agent" has the *duty* to intervene/stay. An agent is legitimate, first, if it is likely to be effective. Effectiveness is estimated by the agent's likely ability to achieve long-term protection of the fundamental human rights of individuals within the target-state, individuals within the interveners own state/s, and individuals in the world at large (Pattison 2010b:72-76). Pattison adds to this three additional criteria: the most legitimate agent will be the agent who, (1), is most likely to adhere to the rules of *jus in bello*, (2), possesses "internal representativeness" (where the decision to intervene "reflects the opinions of its citizens") and, (3), has "local-external representativeness" (where the intervention "reflects the opinions" of those on whose behalf the intervention is taking place) (2010b:100, 129). None of these added conditions, he argues, are necessary or sufficient in extreme cases, but work to increase the moral legitimacy of the intervener and serve as a sort of tie-breaker when there is more than one legitimate agent. If the most legitimate agent fails in its duty, then the duty to intervene "falls on the next most legitimate intervener, and so on" (Pattison 2010b:12).⁹²

⁹¹ Pattison does not focus his account *primarily* on states. Rather he considers supra-states, coalitions of states, and states.

⁹² The view that the state (or states) who is most likely to be effective is the agent who ought to intervene finds a great deal of opposition in the literature. The most challenging (and common) objections concern unilateral interventions – interventions not authorized by the UN Security Council. These objections include the claims that unilateral interventions may result in neo-colonialism/imperialism, and/or may threaten international order, and/or may not meet the just war requirement of right intention (see Chapter 1 for discussion of the problems associated with right intention). I do not discuss these objections

While I agree with and adopt the main premises of Pattison's argument, there are a few issues that need to be more closely addressed and refined/revised for the purpose of this thesis. First, the claim that local-external representativeness is not a necessary requirement goes against the just war requirement (on my understanding of legitimate authority) that agents must have the consent (either literal or reasonably assumed) of those on whose behalf the agent alleges to act. As this is a necessary condition for the just use of force, I believe it must be a necessary condition for interveners to meet. My disagreement with Pattison on this point may be, in part, attributable to the fact that Pattison does not seem to include the possibility of reasonably assumed consent into his account (2010b:140-142). Rather, he seems to expect an intervener to actively seek the opinions of members within the target-population so as to affirm that those facing mass-atrocity do, in fact, want to be helped – a requirement which, as I argued in Chapter 1, seems unrealistic if not impossible in the initial stages of mass-atrocities. However, there are fewer obstacles to obtaining explicit consent regarding many (but certainly not all) of the activities which take place during the post-atrocity phase of intervention and, given this, I submit that the intervener's actions in the post-atrocity reconstruction phase are (in many instances) bound by the target-population's explicit consent (this point is particularly relevant for later chapters, however it may still be necessary to rely on reasonably assumed consent for many of the activities associated with the duty to stay discussed herein given the extremely disorganized and volatile conditions which persist during this initial post-atrocity period). This requirement of consent, as I will argue in Chapter 5, is necessitated not only by the just war requirement of legitimate

herein, as I think Pattison successfully meets them (2010b:57-66,153-180). Caney also offers particularly strong counter-arguments to these objections (2006:239-240). For additional discussion, normative and empirical, see (Archibugi 2004:8; Charvet & Kaczynska-Nay 2008:261; Cunningham 2011; Dobos 2010a; Holzgrefe 2008:24; ICISS 2001:48-55; Lucas 2006:85-87; Jackson 2005:291; McMahan 1996; Shue 1998; Slater & Nardin 1986:94; Teson 2008:111; Welsh 2011; Wheeler 2001:19). I would add to these discussions, however, that I think that the creation of clear requirements for intervention – such as those I am constructing herein – further counter these objections because these requirements make it clear what conditions the interveners must meet, what they must/must not do, and offer a means by which others can critically scrutinize interveners at every stage of intervention. In short, they make it more difficult for actors to use rhetoric of humanitarian intervention as a façade for non-humanitarian actions.

authority, but by the target-population's right to national self-determination. So, in short, I hold that local-external representativeness is a necessary condition for an intervener to meet, though in the initial stages of intervention this can usually be assumed.

Let us move on to the question of what makes a particular agent effective. Pattison discusses this at great length. First, Pattison stresses that effectiveness must be understood in the long-term (beyond the immediate cessation of atrocities); it must include the intervener's ability to support the re/establishment of sustainable security within the target-state (2010b:82). Further, the determination of effectiveness considers "whether the intervener promotes or harms the enjoyment of human rights of those" in the target-state, in the intervening state, and in the world (Pattison 2010b:75-76). This is, essentially, adherence to the just war requirement of proportionality. Pattison then specifies eight elements which go into the calculation of an agent's effectiveness (2010b:85-90). First is military capability. In order to be effective an agent must have able military personnel, proper equipment, and, in most cases, strategic lift and long-distance logistical capability (to deploy and sustain forces in the target-state). Second, an agent must have civilian personnel able to carry out the non-military, mainly post-atrocity, rebuilding aspects of intervention. Third, an agent must have the economic and political resources necessary to maintain the military and civilian operations. Fourth, an agent must have "a suitable strategy" for both the military and civilian aspects of the intervention and for the short and long-term goals of intervention (initial and post-atrocity activities). Fifth, the agent needs to be willing to commit all these resources to the extent necessary to successfully complete the intervention. Sixth, the agent must have the ability to respond – to employ all these resources – in a timely manner. Seventh, an intervener's effectiveness increases as the approval/support of the target-population for the intervener increases (this reinforces the necessity of local-external representativeness).

Lastly, an agent will likely be more effective if its actions are supported (either materially or simply in opinion) by the international community.

I agree with Pattison's elements of effectiveness. I suggest that an agent's knowledge of the target-state's culture, terrain, history, and social, economic, and political institutions generally and of the background to the atrocities more specifically also contribute significantly to an agent's effectiveness. This is a significant but minor addition. Other important issues that I want to address are, first, the possibility of multiple intervening agents and, second, the possibility of a division of duties.

Throughout most of Pattison's argument, the impression given is that *one* agent – be it one state, a coalition of states, a regional organization, or an international organization – will be deemed the most effective agent prior to an intervention based on the fact that this agent possesses *all* of the elements of effectiveness to a greater degree than any other agent. Towards the end of his book, however, Pattison allows for the possibility that hybrid interventions – interventions in which multiple actors carry out a wide range of separate activities – may very well be the most effective form of intervention (2010b:210). The acknowledgement that different actors may be the most effective agents in different aspects of interventions is crucial and this is particularly so when it comes to post-atrocity activities. To be clear, I am not disagreeing with Pattison here. Rather, I am emphasizing a point which I think he underemphasises; to wit, the most legitimate agent – the agent who ought to intervene – need not be a single agent and need not be the same agent/s in each stage of intervention. My worry is that without emphasizing this point there may be cases where mass-atrocities are needlessly allowed to continue/resume because no *one* agent can be deemed sufficiently effective.

The second issue I want to address is the relationship between time, effectiveness, and the various duties involved in an intervention. If the scope of the calculation of effectiveness

includes post-atrocity activities (as I think it must) and if the calculation of effectiveness is a one-time calculation made *prior* to the initial intervention then mass-atrocities may be needlessly allowed to continue because an agent (or group of agents) who would be very effective in the initial intervention would not be effective in the post-atrocity phase. To illustrate this worry (and how it is distinct from the above point about multiple agents), imagine the following: It is April 1994 and the Rwandan genocide is proceeding. A number of African states, under the banner of the OAU, have volunteered to intervene and stop the genocide. Due to their proximity to the genocide, their knowledge of the history of conflict in Rwanda and the Rwandan culture, terrain, etc., and their well-equipped and highly trained military forces, they are likely to be the most effective at stopping the genocide. However, the OAU has no civilian political experts and lacks the economic resources to conduct post-atrocity reconstruction in Rwanda. Should the OAU intervene? .

Let me expand the fictional Rwandan scenario so that we have three different cases. In the first case, the OAU forces know that the UN has the civilian capability and economic resources to carry out post-atrocity reconstruction in Rwanda more effectively than any other agent (but lacks the military capability to stop the initial atrocities or provide post-atrocity security). Knowing this, the OAU gets agreement from the UN that UN peacebuilders will take the leading role in the post-atrocity phase of intervention. Here we have the case of a hybrid intervention, as discussed above, where two agents act collectively to carry out an effective intervention but where neither agent would be effective, overall, on its own. We have already established that this is acceptable.

The second case, however, is a bit more problematic. Imagine that the OAU does not know if or when the UN or any other agent will take responsibility for the post-atrocity phase of intervention. They have requested post-atrocity support from the UN, the US, the UK, and Japan, but all these actors are so concerned with avoiding the issue of genocide (so that they

will not have to intervene in the actual genocide) that none are willing to openly commit to post-atrocity rebuilding. Ought the OAU to intervene? Or, more bluntly, should the OAU do nothing, despite the fact that they could stop the ongoing genocide, because they are not qualified to carry out post-atrocity reconstruction and have not secured an intervention partner to pass this task along to? I am inclined to say intervene now – save lives now – and find a partner later and, if need be, maintain physical security within the target-state until such a partner can be found. Now if this scenario took place thirty years ago, the OAU might be waiting a long time for a partner to come along. Luckily, though, we have reached a point in time where there are many potential partners and, therefore, the policy of save lives now and find a partner later seems less risky (I will return to the issue of supportive duties – duties that non-intervening states have to support intervening states).

This second scenario brings us to an important point about the dispersion of duties. In this scenario, the OAU is the most effective intervener in the initial phase and the UN is the most effective intervener in the post-atrocity phase. The question we must ask is whether or not OAU's duty to intervene is dependent upon the UN's willingness to fulfill its post-atrocity duties. I am inclined to say that it is not. Let us return to the drowning child. You come upon the child drowning in a pool. You realize that in order to save the child, in the short-term, you must pull him from the pool. In order to keep him safe in the long-term, however, someone will need to build a fence around the pool and/or teach the child how to swim. You cannot do either of these long-term oriented tasks but the child's parent can. Is your duty to pull the child out of the pool dependent upon you securing the parent's agreement that he will teach his child to swim? It seems clear, in this case, that it is not. There are two duty-bearers in this situation with separate duties to the *child*. Of course, the parent's duty to teach his child to swim is dependent upon the child being alive and, therefore, the fulfillment of this duty is dependent upon your rescuing the child. The reverse,

however, cannot be said. Likewise in cases of mass-atrocity; the OAU forces have a duty to the Rwandans which is not dependent upon the UN fulfilling its duty to the Rwandans.⁹³

The third scenario is even more problematic than the previous ones. Let us imagine that the OAU knows that it is likely that no agent will take over the post-atrocity phase of intervention. Further, let us imagine that while the OAU can stop the genocide, they have only enough resources to stay in Rwanda for a few months after the genocide has been stopped. In other words, the OAU will be effective in the short-term, but it is far from clear whether their intervention will secure human rights in Rwanda for the long-term. Do they have a duty to intervene or does their possible lack of long-term effectiveness prohibit intervention? Again, I think they must intervene. It seems intuitively wrong for the OAU to say to Rwandans facing slaughter, “sorry but we cannot save you today because we will not be able to protect you a year from now.” Now, if it is clear that a short-term intervention will simply serve as a pause in the genocide and more harm will be done as a result of the short-term intervention (for example, because the intervention simply allows perpetrators to take a break, regroup, resupply, etc.) then the lack of long-term success does seem prohibitive. However, I think that in most cases there is an imperative to do all that one can to stop the atrocities.

From the above discussion, the question of who has duties of intervention is answered such that the agent/s who are likely to be the most effective at stopping mass-atrocities, protecting fundamental human rights, and establishing long-term security within the target-state have the duty to intervene/stay (and where these agent/s fail in their duties, the next most effective agent/s ought to intervene).⁹⁴ In addition to this, we clarified that the agent

⁹³ The comparison of a drowning child and the Tutsi population of Rwanda is not, in any way, meant to imply that Rwandans, or any victims of mass-atrocity, are childlike in any way other than being, for the moment, in desperate need of help and dependent upon someone else for that help.

⁹⁴ For analysis on which actors, currently, are most likely to be effective, see (O'Hanlon & Singer 2004; Pattison 2010b:181-218) and the special issue of Global Governance which discusses the capabilities of NATO (Global Governance 2011).

likely to be most effective – the duty-bearer – may change as the circumstances in the target-state change and, particularly, as the stages and tasks of intervention change. Thus, the agent who ought to initially intervene to stop mass-atrocities may not be the same agent/s who ought to continue the military and/or non-military tasks of post-atrocity intervention. We have also established that while it is certainly preferable that interveners possess post-atrocity effectiveness (or at least have an intervening partner who possess this effectiveness), the initial duty to intervene – to stop mass-atrocities – is not dependent upon the agent’s ability to carry out post-atrocity activities or the willingness of some other agent to carry out its post-atrocity duties. All three points are important to keep in mind in later chapters.

4.4 Risking the Lives of Soldiers

The second area of concern with intervention centres on the qualification that interveners have the duty to intervene/stay only if they can protect the target-population without exposing themselves to unacceptable risk. Military intervention – as a form of warfare – is inherently dangerous. Though each individual case will pose a different degree of risk, the fact is that every intervention puts the lives of the intervening soldiers at risk. The question that must be answered is whether or not a state can be under a duty to do something which puts the lives of its citizens at risk. The answer to this question, hinges on the answer to another: Can a state force its citizens to risk their lives to save the lives of others? For if it is unjust for a state to force its citizens to risk their lives to save the lives of others, then it is also unjust to put a state under a duty to do so. The view that it is unacceptable for a state to force its citizens to risk their lives in interventions may take two forms. The first holds that a government cannot justly force its citizens to risk their lives to save the lives of *others*. The second position holds that a government cannot justly force its citizens to risk their lives to save the lives of *foreigners* (Teson 2008:124). The use of the word “others” in the first claim

indicates that it is not the beneficiary of the action which is unacceptable, but the action – forcing citizens to risk their lives – itself (henceforth the unjust-action argument). The use of the word “foreigners” in the latter claim implies that a government may force its citizens to risk their lives in defence of fellow compatriots but not in defence of non-compatriots (henceforth the unjust-beneficiary argument). Let us assess each.

The unjust-action argument holds that a government cannot force an individual to risk his life in order to save the life of another. We have come across the grounds for this argument before in the now familiar excessive risk proviso: individuals have the duty to aid right-holders in grave danger if they are able to do so without serious risk to themselves. A duty-bearer cannot be obligated to risk his own life or suffer severe injury in order to save the life of another because to do so would be to treat the duty-bearer merely as an object rather than as valuable human being and, thus, would deny the duty-bearer his own right to a minimally decent life. According to the unjust-action argument, if we agree that it is unjust to force a duty-bearer to risk his life to save the life of another, then we must also agree that it is unjust for a government to force its citizens to risk their lives to save the lives of others.

Though I think the unjust-action argument is sound, I do not think that it necessarily negates the claim that states have duties of intervention in mass-atrocity cases. Rather, what the unjust-action argument does negate is the claim that states can be under a duty to force their citizens – to conscript individuals – to carry out such interventions. As Moellendorf explains, we may grant the claim that a state cannot justly force its citizens to risk their lives “without damaging the claim that justice may require military interventions” (2002:125). Moellendorf uses a domestic analogy to demonstrate the point: a state “may not require certain of its citizens to be police officers and thereby risk life and limb,” but “justice may still require that a police force exist” and that those who volunteer to become policemen risk their lives to save the lives of others (2002:125). The analogy translates to the duty to

intervene/stay in this way: a state may not force its citizens to become soldiers, but justice still requires that a military exists and that those who volunteer to become soldiers risk their lives to save the lives of others. What this means is that while it is unjust to place states under a duty to conscript soldiers to carry out military interventions, it is not unjust to place states under a duty to use voluntary soldiers to do so. So the unjust-action argument necessitates a qualification of the duty to intervene and the duty to stay: a state has these duties in mass-atrocity cases if that state has a voluntary military.⁹⁵

There is a further point to be made on the matter of risking the lives of voluntary soldiers that is important to address and which will prove relevant later in this section. The point is this: volunteer soldiers have knowingly chosen a demanding career that puts them in dangerous situations and we should recognize and respect their choice. When analysing claims that states cannot risk the lives of soldiers to save the lives of others, we must remember that risking one's life is, in many ways, the job of the soldier – a job that each volunteer soldier has chosen. All volunteer soldiers, whatever their various reasons for becoming soldiers, have, at some point, had to ask themselves whether or not they are willing to die or suffer serious injury in order to protect the lives of others or to serve a cause greater than themselves. Those who answer this question in the affirmative undergo an intense regimen of training to prepare them for the various combat situations they might encounter (those who answer in the negative hopefully do not remain soldiers). This does not mean that the lives of soldiers should be risked carelessly by putting these men and women in hopeless and/or reckless situations (remember, I am working under the assumption that a military intervention meets the just war conditions). However, the fact that military intervention is

⁹⁵ One might ask whether or not states with pre-existing conscripted military forces, such as Israel, can also be held under duties of intervention. Though I will not herein include a discussion of this question, I am inclined to argue that even pre-conscripted soldiers should not be forced to risk their lives to save the lives of others. However, if conscripted soldiers volunteer to take part in interventions, as has been the case in several recent humanitarian operations, I see no moral dilemma with sending them.

dangerous and may cost a number of soldiers their lives does not mean that we should not send soldiers to intervene. Quite the contrary. When atrocities occur, it does not make sense to prevent soldiers from intervening on the grounds that doing so will risk their lives. Rather, we should expect them to intervene, to stop those responsible for the crimes, and to help as many individuals as they can – this is their job and we should allow them to do it. Voluntary soldiers may justly be deployed to carry out interventions, even though such interventions undeniably put the lives of the soldiers at risk, because that is precisely what soldiers have volunteered to do.⁹⁶

The preceding discussion of the unjust-action argument brings us to the following conclusion: states with voluntary militaries have the duty to intervene/stay (subject to just war criteria) in mass-atrocity cases even though such interventions necessarily put the lives of soldiers at risk. The unjust-beneficiary argument challenges this claim. The essence of the unjust-beneficiary argument is captured by Samuel Huntington who, in the wake of the UN-US intervention in Somalia, argued that it was “morally unjustifiable and politically indefensible that members of the [US] Armed Forces should be killed to prevent Somalis from killing one another” (quoted in Holzgrefe 2008:30). As Nicholas Wheeler notes, “[p]ushed to its logical extreme, the implication” of arguments like Huntington’s is that “governments should not risk the life of even one [of their] soldier[s] to save hundreds or thousands or even millions of non-nationals” (2002:31). The question that needs to be asked is why not? Ultimately, the unjust-beneficiary argument says that we cannot risk our soldiers to save the lives foreigners *because* they are foreigners; but this “because” lacks substance.

⁹⁶ Two notes: First, regarding the risks to soldiers, I think an argument must also be made (though it is beyond the scope of this chapter to make it) that government and military leaders have a *duty* to ensure that soldiers are properly educated and trained for the unique aspects of intervention. For such arguments see (Carrick, Connelly, & Robinson 2009; Lucas 2001:16-17, 2009b).

Second, such a statement inevitably faces the objection that not all volunteer soldiers volunteer in any real sense. Many soldiers, so the objection goes, join the military because they are poor and/or are from minority groups and have few other choices. Though I find this objection is usually backed by little or sub-par research when made in reference to developed countries like the US or the UK, I think the objection – if granted – could be met by the system of twice-volunteering discussed shortly. For further discussion see (Baron 2010; Smith 2005:504).

On what grounds can one argue that the US can force an American soldier to risk his life to save the lives of fellow Americans but not the lives of Somalis? Here the unjust-beneficiary argument splits into two variations, what I term the unjust-beneficiary argument (A) and (B).

The unjust-beneficiary argument (A) holds that national borders create distinct communities of right-holders and duty-bearers and duties do not extend beyond these borders. So while a government may force its citizens to risk their lives for fellow compatriots, a government cannot force its citizens to risk their lives for foreigners because foreigners fall outside of the scope of a citizen's duties. I argued against such a claim in Chapter 3, so I will only briefly re-sketch that argument here. In Chapters 2 and 3, I argued that fundamental human rights and their correlated duties are universal in scope – such that all individuals have these rights and all individuals have duties in regards to all other individuals' rights. In Chapter 3, I qualified this claim and argued that for reasons of efficacy and reasons relating to the right to national self-determination, the duties relating to fundamental human rights can be delegated such that members of a nation become the primary duty-bearers and non-members hold only secondary duties. So, ordinarily, Somalis are primarily responsible for providing aid to Somalis and Americans only have secondary duties of aid to Somalis. This conclusion, however, does not support the unjust-beneficiary argument (A). In Chapter 3, I further argued that the establishment of primary and secondary duty-bearers only holds so long as the primary duty-bearers are able and willing to carry out their duties. If the primary duty-bearers fail, the distinction between co-nationals and foreigners and primary and secondary duty-bearers breaks down and outsiders take on the full extent of duties. Therefore, when the Somali government collapsed, Somali warlords began mass-atrocities, and most Somali citizens were unable to defend themselves, Americans (and the international community as a whole) became the primary duty-bearers regarding the protection of Somali citizens. The crucial point here is that when primary-duty bearers are unwilling and/or unable

to carry out their duties, the moral justification for distinguishing duty-bearers on the basis of nationality fails and so too, then, does the unjust-beneficiary argument (A).

The unjust-beneficiary argument (B) is based on the more narrow claim that soldiers are entitled to choose for whom they will risk their lives and most soldiers, so the argument goes, are only willing to risk their lives for compatriots. Given this, a state cannot justifiably make soldiers risk their lives to save foreigners. In a frequently quoted article, Martin Cook argues that there is an “implicit moral contract” between soldiers and their military/political leaders under which both parties agree that soldiers will only be called upon to risk their lives (and risk having to take the lives of others) for the purpose of defending the state – its citizens, territory, sovereignty and interests (2000). American soldiers, Cook explains, volunteer to accept the risks of military life in the service of America, so that American soldiers sent to carry out interventions “may say with moral seriousness, 'This isn't what I signed up for’” (2000:62). If soldiers have the right to choose for whom they will risk their lives and if soldiers are not willing to risk their lives for foreigners, then, according to the unjust-beneficiary argument (B), it is unjust for states to send their soldiers into other countries to stop mass-atrocities.

On the surface the unjust-beneficiary argument (B) may be appealing but ultimately it fails. Firstly, the unjust-beneficiary argument (B) suggests that most soldiers are not willing to risk their lives for foreigners. Fortunately this does not appear to be the case. Rather, the reality is that while some soldiers do not want to risk their lives for foreigners, a significant number of soldiers are willing and motivated to do so. To offer just a few examples: In 1992 and 1993, many of the American troops sent to Somalia volunteered to take part in the intervention and nearly half (47%) of all those participating – voluntarily and non-voluntarily

– in the operation supported the US mission in Somalia (Miller & Mokos 1995:619, 632).⁹⁷

Similarly, despite that fact that the Italian forces who participated in the Somali operations in 1994 were mainly conscripts, most of those conscripts had volunteered for the particular mission (Battistelli 1997:470-471). That same year, several Tunisian conscripts voluntarily extended their military service in order to take part in the UN mission in Rwanda (Dallaire 2004:152). In recent years there have been four to five times more applications from Swedish soldiers wanting to participate in humanitarian operations than there have been actual positions to fill (Hedlund 1997:181). Finally, consider closely the statements of Lt. General Dallaire, extracted from his memoir of his experience in Rwanda (2004):

I am not being melodramatic when I say that...I personally dedicated myself to bringing a UN peacekeeping mission to Rwanda (64). I...knew that given the ethnic nature of the conflict...and the potential for banditry or ethnic killings...I needed to be able to confront such challenges with military force (72). I actively lobbied for the mission [in Rwanda] (84). I was beside myself with energy, optimism and a sense of purpose. I was finally going to be tested...All those years of reading...All my experience...would culminate in this field command (93). They [the Rwandans] were individuals like myself, like my family, with every right and expectation of any human who is a member of our tortured race (215). [When the UN considered pulling its forces out] I made my stand very clear. I would not leave. We could not abandon the Rwandans in this cataclysm, nor could we desert those thousands of people under our protection (294). And here I was...watching Belgian troops abandon us in the midst of one of the worst slaughters of the century because they had lost some of their professional soldiers to soldierly duties...I gave myself over to hate of a nation that had not only lost its nerve to stay in the fight but that was prepared to sacrifice the names and reputations of its own soldiers (318).

Dallaire's account is particularly important because it highlights three significant points.

First, to reiterate, though the reasons why soldiers are willing to risk their lives for foreigners vary, it is clear that many are, in fact, willing and motivated to do so. Second, we are reminded of the point that risking one's life for the sake of defending others is the job of soldiers – a job that soldiers choose to take, often with great pride, and a job that we ought to allow them to do. Thirdly, Dallaire's rebuke of the Belgian soldiers reminds us that not all

⁹⁷ Meaning that even many of those soldiers who were not given an opportunity to volunteer to go to Somalia, nevertheless, were supportive/approving of the operations they were sent on.

soldiers are willing to risk their lives for foreigners and forces us to address the normative problem that this may create.

Daniel Baer argues that volunteer soldiers ought to be able to choose for whom they are willing to risk/make the “ultimate sacrifice” (2011). Should soldiers be given the discretion to decide for whom they will risk their lives? There are a number of ways to approach this question but we will begin with the approach taken by the unjust-beneficiary argument (B) which holds that those soldiers who do not want to risk their lives for foreigners are contractually protected from doing so by the 'implicit moral contract.' The underlying claim here is that the primary and *exclusive* purpose (implicitly understood) of today's militaries is the defence of the state – its citizens, territory, sovereignty, and interests. It is only as a consequence of the truth of this claim that it can be argued that soldiers enlisting in today's militaries do so under a valid assumption that they will only be called upon to risk their lives in defence of their state. The problem is that we have reached a point in the history of military affairs where such a claim is unsustainable and, therefore, so too is the assumption that soldiers will not be called upon to aid foreigners. Since (at least) World War I, soldiers in many countries have been sent to fight in defence of foreigners. Moreover, for (at least) the last two decades, militaries throughout the world have been taking part in humanitarian operations outside of their borders. In March of 2011, for example, countries all over the world – north, south, east, west, developed, developing – were contributing a total of 82,279 soldiers to UN humanitarian missions (UN 2011). Even those notable states which do not contribute large numbers of soldiers to UN missions, namely the United States, the United Kingdom, and, to a lesser extent, Australia, have established track-records of humanitarian missions, either in separate but cooperative missions with the UN or in fully independent missions. In fact, for many militaries, humanitarian operations have become a predominant military activity; in the last two decades there have been relatively few wars of national

defence. For some states – Italy, Germany, and Sweden for example – humanitarian missions have even become one of the expressed primary focuses of the military's training and/or purpose (Battistelli 1997:467; Hedlund 2011:180; Lucas 2001:2-3; Tomforde 2005:577; Welsh 2009:128). Given these facts, the claim that one joined the military on the implicit assumption that the military one joined would only be used in defence of one's state is an indefensible claim for most soldiers to make (Dobos 2010b:29).⁹⁸ So the argument based on the implicit moral contract fails. Not only that, the established history of states using their soldiers to defend foreigners (either in allied defence operations or humanitarian operations) could be used to support an argument that the implicit moral contract includes the duty to risk one's life for the sake of non-compatriots. What, then, of the more fundamental claim that soldiers ought to be able to decide for whom they will risk their lives?

Now there are two straightforward pragmatic solutions to this potential moral dilemma. First, states could explicitly state in military contracts, oaths, and training that soldiers' duties will include, when necessary, involvement in interventions. Second, we could insist that states have duties of intervention in mass-atrocity cases so long as they have soldiers who explicitly volunteer to take part in interventions – I refer to these soldiers as twice-volunteered. In this twice-volunteered system, states would create special voluntary battalions/units within their militaries specifically trained and deployed for the purpose of humanitarian operations. Once an individual has enlisted/commissioned into the armed forces, he/she would volunteer a second time to become part of these humanitarian units (in much the same way that individuals join the Special Forces in the US Army). It seems to me that these are probably the best solutions and a number of states have already made significant headway in this direction. However, not all militaries have actually established

⁹⁸ I use the word 'most' here because this would not apply to those soldiers enlisting in a military without a track record of humanitarian missions or with an explicit contract limiting their service to national defence.

such units (or have established them to the extent that they are deployable yet) and until that happens we are left with the question of what to do in mass-atrocity cases.

While, to reiterate, I think these pragmatic solutions are best, I submit that even without these solutions, states can justifiably send volunteer soldiers (to include soldiers who do not want to risk their lives for foreigners) on humanitarian missions. The moral legitimacy of sending soldiers (even those who do not want to risk their lives for foreigners) on interventions is, I submit, based upon a moral duty of aid (beyond the duty of aid as it is generally held) associated with the profession of soldiering. Let me illustrate this profession-based duty by way of examples.

First, Doctor-Dan works in an emergency room in El Paso, Texas. One day a terrible car accident happens on the US-Mexico border and all the victims are rushed to the ER where Doctor-Dan is on duty. Some of the accident victims are Americans and some are Mexicans and all are in desperate need of aid. Doctor-Dan has the ability to help them all, but refuses to save the Mexican victims because they are not American and they die. This seems to be a clear case of a moral wrong. It would be a moral wrong even if Dan was not a doctor (but nevertheless had the ability to aid the Mexicans), but, intuitively, the fact that he is a doctor makes the moral wrong Doctor-Dan commits seem worse. There is something about voluntarily taking on a career that entails providing life-saving aid to individuals which makes one's refusal to provide aid to certain individuals based upon morally arbitrary facts especially wrong. This may be because of the extreme moral contradictions in the person's behavior. On the one hand, Doctor-Dan has shown, by his choice to become a doctor (let us assume he did not become a doctor to get rich) that he believes in the need to aid people in desperate situations – thus he signals that he places significant value on human life. On the other hand, Doctor-Dan, by his refusal to save the Mexicans, has also shown that he thinks the value of human life – the need to save human life – varies dependent upon conditions

such as nationality. Morality and the nature of Doctor-Dan's profession, it seems, requires Doctor-Dan to aid both the American and Mexican victims.

Now, of course there is a crucial difference between Doctor-Dan and a voluntary soldier who does not want to risk his life for foreigners. Though both have occupations which entail providing life-saving services, Doctor-Dan's profession does not require him to risk his life to save his patients. Acknowledging this (I will return to this point momentarily), the Doctor-Dan scenario, nevertheless, reveals an important insight about jobs which provide life-saving aid: when individuals willingly take on jobs which require them to help others it is morally indefensible for those individuals to refuse to help certain individuals based on arbitrary facts such as race, religion, nationality, etc..

Now imagine Fireman-Fred. Fred is a fireman in Juarez, Mexico. He is highly trained and has been provided with all the equipment necessary to fight fires. One day a huge fire breaks out in a house in El Paso, Texas (just on the other side of the US-Mexico border from Juarez) only a few meters away from Fireman-Fred's firehouse. The fire threatens the lives of an American family. The El Paso fire-chief calls Fireman-Fred and explains that they cannot get to the fire in time to save the Americans and asks Fireman-Fred to enter the house and save the family. Fireman-Fred knows that he would probably be able to save the family, but refuses to fight the fire or enter the house in order to save the family on the grounds that he does not want to risk his life to save the lives of Americans. Like Doctor-Dan, Fireman-Fred has taken on a job which entails providing life-saving aid to people. Unlike, Doctor-Dan, Fireman-Fred's job also *requires* Fireman-Fred to risk his own life in order to save the lives of others. Fireman-Fred has been given excellent training and equipment which significantly reduces the risks associated with fighting fires, but they do not completely eliminate these risks. Is it morally legitimate, then, for Fireman-Fred to refuse to rescue the American family on the grounds that he ought to be able to decide for whom he will risk his

life? It seems to me that Fireman-Fred's voluntarily choice to take on a job which requires him to risk his life to save others relinquishes his right to decide whether or not he will risk his life for certain individuals on the basis of morally arbitrary facts about those individuals (such as race, sex, religion, nationality, etc.). Therefore, when he refuses to rescue the American family, on the grounds that they are American, he commits a moral wrong. His profession does not allow him to choose for whom he will risk his life (while on duty) based upon arbitrary moral attributes and, therefore, he has a moral duty to rescue the American family.

I submit that the moral intuitions revealed in the Doctor-Dan and Fireman-Fred cases also apply to volunteer soldiers. The job of a volunteer soldier requires soldiers to risk their lives in order to save/defend the lives of others and the decision to carry out one's job cannot be based upon morally arbitrary facts about the individuals in need of aid. Admittedly, it is very difficult to pin-down the exact reasons for these profession linked duties of nondiscriminatory assistance beyond the moral intuitions discussed above. We are stuck, then, with a potential clash of moral intuitions. The first intuition is that soldiers ought to have the right to choose for whom they risk their lives. The second intuition is that people who take on professions which require them to risk their lives in order to save the lives of others cannot choose whether or not to perform their professional duties based upon morally arbitrary facts about the individuals in need of aid. I think the plausibility of the first intuition is based on the moral claim that people, generally, cannot be held under an obligation to risk their lives to save the lives of others and, therefore, they may choose for whom they risk their lives. I have argued – in support of the second intuition – that fireman, policeman, and soldiers are not 'general' people; they are people who have explicitly stated that they are

willing to risk their lives for the sake of others and are, by virtue of this, obligated to assist individuals regardless of those individuals' race, sex, religion, nationality, etc.⁹⁹

Before ending our discussion on risking the lives of soldiers, I would like to address an issue which is frequently brought up in the literature as a challenge to the claim that states have a duty to intervene/stay in mass-atrocity cases. The issue is this: *citizens* are often unwilling to send their soldiers to intervene in mass-atrocity cases because they are not willing to accept soldier casualties and if citizens are unwilling to send soldiers, soldiers ought not to be sent.¹⁰⁰ There are two issues within this position which need consideration. First is the claim that if citizens are not willing to send soldiers to intervene, for fear of casualties, then soldiers should not be sent. This claim goes directly against the argument I made above which holds that volunteer soldiers choose to become soldiers and, in so doing, choose a career that puts them in harm's way for the sake of others and we ought to respect their choice and allow them to carry out the job that they have, thankfully, elected to do.

The second issue in need of consideration reflects the requirement, discussed in Section 4.3, which Pattison calls "internal representativeness" and which Allen Buchanan has termed "internal legitimacy" (Buchanan 1999; Pattison 2010b:129). The requirement of internal legitimacy holds that because the purpose of government is to promote and protect the interests of its citizens, if a state's citizens do not want their state to intervene, it should not. The problem with this claim is that it places too much weight on the idea of citizens'

⁹⁹ The issue of what ought to be done to soldiers who *refuse* to deploy on humanitarian missions is a separate question, and one which I do not have the space to address adequately. I am inclined to say that such soldiers should be discharged from the military (perhaps dishonourably) rather than being physically compelled to deploy or imprisoned. This of course, assumes that just war criteria are met and soldiers are not refusing because of a lack of just cause or failure to meet other just war requirements.

¹⁰⁰ Two points here: First, within this discussion there is a bothersome tendency for theorists to frame the issue as having to convince parents to *allow* their *children* to be sent off to war/intervention. The description of soldiers is bothersome because (a) volunteer soldiers are not children – they are adults who have undertaken a very serious task – and I believe we owe it to these adults to recognize them as such, (b) it adds unwarranted emotional response – very few people will ever want to send children, in the literal sense, off to war/intervention, and, (c), when we recognize soldiers as adults, it makes little sense to speak of the need to convince their parents to *allow* them to do much of anything. Second, there are a number of empirical studies which suggest that citizens are actually less concerned by the risk of casualties than is often supposed. For example, following the death of 18 US soldiers in Somalia, studies at the time showed that 60% of Americans actually wanted to send more troops to Somalia – contrary to the government's decision to withdraw troops because of American's assumed intolerance of casualties (Smith 2005:496).

interests and seems to ignore citizens' duties altogether. Ideally, of course, citizens of a state would consider it in their interests to fulfill their duties to others – compatriots and non-compatriots. The requirement of internal legitimacy assumes that this is not usually the case and, unfortunately, this may be true. So let us grant that citizens of state-X do not find it in their interest for their government to intervene in order to save the lives of non-compatriots in state-Y. Now, much of what we might say about this case hinges on how citizens-X define their interests. If intervention is not in the interests of citizens-X because such an intervention would likely put citizens-X's own fundamental human rights in jeopardy, then it seems they have a just reason for opposing the intervention. Such a circumstance makes the intervention non-obligatory because of the excessive risk proviso and, likely, non-permissible because of the requirement of proportionality. If, however, the interests of citizens-X are something other than the fulfillment/protection of their fundamental human rights, then their reason for opposing the intervention seems unjust and the requirement of internal legitimacy dubious. When citizens' non-fundamental rights related interests go directly against/conflict with their duties regarding the fundamental human rights of others, those interests are outweighed by their duties.¹⁰¹

To sum up, the claim that a state has duties of intervention so long as that state can intervene at an acceptable risk to itself is made difficult by the fact that interventions inevitably put the lives of those who intervene at risk. Acknowledging this inherent danger and granting the unjust-action argument's claim that individuals cannot justly be forced to risk their lives to save the lives of others, requires us to qualify the duty to intervene/stay as follows: states with voluntary military forces are under a duty to intervene/stay in mass-

¹⁰¹ Two notes. First, the claim that states have a duty to intervene/stay can be broken down as follows: citizens of a state have a general duty to aid citizens of other states and this general duty places, among other things, a specific duty on the military (on soldiers) to intervene. Civilians, though not responsible for the specific duty of military intervention, have duties to aid the target-population in other ways such as calling upon their government to carry out intervention and by paying their taxes to support the military and humanitarian monetary aid. Second, for extended discussion on duties of citizens and the state's role in fulfilling these duties see (Baer 2011; Dobos 2010b; and especially Buchanan 1999).

atrocities cases so long as they can do so under an acceptable risk to themselves. That such intervention risks the lives of volunteer soldiers does not constitute an unacceptable risk.¹⁰²

Before we move on, I would like to discuss three concerns which may arise when we consider the arguments made in this section and Section 4.3. The first point of concern focuses on the excessive risk proviso. It is conceivable that an intervener may not be able to shoulder the costs – financially – of a prolonged presence in the target-state. In such cases, the duty to stay could be legitimately unfulfilled or cut-short prematurely if the costs of maintaining a military presence in the target-state would financially burden the intervening state/s to such a degree that the fundamental human rights of its own citizens would be placed under unacceptable risk (in fact, in such a case, the duty to stay would be nullified). However, this conclusion is in need of qualification. We have yet to discuss the duties of those states who do not intervene, either because they do not meet the necessary preconditions or qualifications or because they are not the most likely to be effective. That a state is not obligated to militarily intervene in a mass-atrocity case does not negate its citizens' duties to aid victims of mass-atrocity in whatever other ways possible. Such other ways could include helping to facilitate mediations, giving economic aid to the target-population, and, most importantly for our discussion, supplying those states that carry out intervention with the necessary resources to continue their mission. This last option may take the form of non-intervening actors providing economic support and/or military equipment to the interveners, and/or hiring supplementary military personnel from private military companies to assist the interveners.¹⁰³ With support from other members of the international

¹⁰² For further reading regarding risking the lives of soldiers see (Baer 2011:311; Cook 2000; Dobos 2010a & 2010b; Lucas 2001:23; Shue 2003; Teson 2008)

¹⁰³ For discussions on the practical benefits/drawbacks of using private military companies (mercenaries) in interventions, how they are already being used to this end, and what the current requirements/standards are for their use see (Bures 2005; Cleaver 2000; Gantz 2003; Lucas 2009b; Taulbee 2002). For a normative discussion of some of the moral issues involved in the use of mercenaries see (Bures 2005; Fabre 2010; Pattison 2010a). Though such discussions are beyond the scope of this chapter, it is my view that there is nothing morally wrong with hiring mercenaries for interventions so long as they meet just war requirements and the requirements of effectiveness discussed herein.

community, the likelihood that the excessive risk proviso will suddenly become an issue decreases. There is also the possibility, explored above, of interventions being carried out by multiple actors. If the excessive risk proviso is suddenly an issue for interveners-A, this means that interveners-A no longer have the duty to stay. This does not mean, however, that no one has the duty to stay. On the account given here, when/if interveners-A can no longer carry out the duty to stay, then state/s-B who have not yet intervened, but whom have volunteer military/police forces capable of providing security to the target-population and whom are now deemed the most effective interveners must take over the duty to stay.

Second is the issue of fairness.¹⁰⁴ One might object that if the same agents are always deemed the most effective interveners, it may be unfair for those agents to have to continually shoulder the burden of intervention (Miller 2001a; Pattison 2010b:199-210; Shue 2003:27). These agents may rightly say – ‘we’ve done our share, it is now someone else’s turn.’¹⁰⁵ This is an important point, and it seems to me that the duty to institutionalise demands that these issues be sorted. Beyond the duty to aid, all states – to include the interveners – also have the duty to institutionalise and this, you will recall, requires actors to create, support, and maintain institutions which protect and promote individuals’ fundamental human rights. This has longer-term implications than the duty to aid. In line with this duty, states must actively work to increase their ability and the international community’s ability to respond to mass-atrocities and fulfilling this duty, it seems to me, would address many concerns over fairness.¹⁰⁶ However, the duty to institutionalize is largely a forward-looking duty; it focuses on preparing for atrocities which may occur in the future. Given this, I think issues regarding fairness should be dealt with among the international community apart from their duties to the

¹⁰⁴ I am thankful to Henry Shue for pushing me on this issue.

¹⁰⁵ States making this claim would have to come to terms with the fact that making things more fair would involve either the build-up of other states’ military capacities or the build-up of an international force – two possibilities that the US (one of the most likely candidates for intervention) may ‘like’ even less than being called upon to intervene.

¹⁰⁶ There is a growing body of literature on how the international community may be able to do this and what steps have already been taken in this direction (Archibugi 2004; Dobos 2010b; O’Hanlon & Singer 2004; Taulbee 2002).

victims of *on-going* atrocities. That is, unless carrying out intervention becomes a burden to the degree that the excessive risk proviso comes into play, issues of fairness must be sorted-out outside of the context of ongoing atrocities; individuals should not die while arguments over fairness are resolved.

Lastly, the argument that only states with voluntary military forces have a duty to intervene/stay may create a disincentive for states to have a voluntary military; in order to get out of these duties, they may either opt not to have a military or to maintain a conscripted military.¹⁰⁷ This is a tricky issue. On the one hand, the duty to institutionalise demands that states help create and maintain institutions which uphold and defend fundamental human rights. Based on this duty one could argue that states are obligated to have a voluntary military or, at a minimum, a voluntary intervention unit within their conscripted military. On the other hand, for other reasons, we may not want to demand that all states have voluntary militaries – it may be preferable that some states have *no* military. Though the issue needs consideration beyond what we have space for here, I think the best way to address this potential moral hazard is to say that states with militaries are obliged to create voluntary units which can intervene and/or support other states' interventions. What is clear, though, is that a state violates its duty when, *in order* to avoid having to intervene, it maintains a conscripted military or abolishes its military. I suppose the good news is that it is unlikely that those agents who are currently likely to be called upon to intervene are (for various reasons) not very likely to take advantage of this moral hazard.

4.5 Intervention and National Self-determination

One of the most common arguments made against intervention, generally, and post-atrocity intervention specifically is that intervention violates the target-population's right to national self-determination. The objection is not necessarily that interveners will

¹⁰⁷ I am thankful to Simon Caney for alerting me to this potential moral hazard.

intentionally or maliciously violate this right (though they might); rather the argument is that by intervening in the target-state and dealing with matters of security, even well-intentioned actors will get involved in the political, social, and/or economic affairs of the target-state and this involvement constitutes a violation of the target-state's right to national self-determination (herein termed the national self-determination objection).

The national self-determination objection is problematic because it ignores the preconditions necessary for the fulfillment of this right. As I have defended it, the duty to stay applies to situations in which the *lives* of the target-population are in grave danger. In Chapter 2, I argued that the right to physical-integrity is the sort of right "whose satisfaction is necessary to the enjoyment of any other rights" (Luban 1980a:174-175). Securing the *lives* of the target-population is, therefore, a precondition for securing the right to national self-determination. Thus, contrary to the national self-determination objection, the duty to stay protects the right to national self-determination by protecting a necessary precondition of that right.

The argument that the duty to stay protects national self-determination can be strengthened by reconsidering the condition of anarchy that most post-atrocity societies are left in. In the condition of anarchy, much of the target-state's political and social institutions – institutions which provide mechanisms necessary for the self-determination process – are left in ruin. Furthermore, in the condition of anarchy intrastate groups are likely to be caught in the security-dilemma – a dilemma which inhibits cooperation and, therefore, inhibits the collective task of national self-determination. In such circumstances, interveners may offer the only reliable means (by temporarily filling the governance void, providing material and physical security, and beginning the rebuilding process) by which the target-population can either directly realize their right to national self-determination or, at least, pull themselves out

of the state of anarchy which prevents the realization of this right (Recchia 2009:176; Stirk 2009:45; Zaum 2009:205).

Arguing even further against the national self-determination objection, I propose that the right to national self-determination places a *moral duty* on interveners to stay in the target-state beyond the initial act of intervention and thereby reinforces the duty to stay. Here I call upon (D6), from Chapter 3, which states that agents have the duty to protect the target-populations' right to national self-determination by providing security and aid to nations within the target-state, if the latter are not in a position to provide their own. Accepting the claims made in the above sections, it seems clear that most target-populations are not in a position to exercise or protect their right to national self-determination and, therefore, interveners have the moral duty to protect this right, insofar as they are able. For the same reasons deployed in Section 4.2 regarding the protection of the target-populations' lives, in most cases protecting the right to national self-determination will require the continued presence of the interveners in the target-state beyond the initial act of intervention.

4.6 Conclusion

The aim of this chapter was to analyse the moral legitimacy of establishing international transitional authorities. I have argued that in most cases, the establishment of such authorities is not only morally legitimate, it is morally obligatory; interveners have a duty to stay in the target-state beyond the initial act of intervention and assume, temporarily, the responsibilities of governance and security. I began this discussion with a defence of the duty to intervene, generally, and then, building upon this defence, presented my argument for the duty to stay. This argument began with the claim that in most post-atrocity cases, the security-conditions in the target-state are such that lives of the target-population remain insecure. I then argued that if, by remaining in the target-state, interveners are able to protect the lives of the target-population – by providing material and physical security – then they

have the duty to stay (and in cases where they are not already in the target-state, this becomes the duty to go to the target-state). I then discussed two qualifications to the duty to stay. First, while all members of the international community have duties of aid to the victims and survivors of mass atrocities, the state/s who ought to intervene are those who are likely to be most effective. Second, I argued that the duty to stay is only held by those actors with voluntary military forces. Finally, I discussed one of the most common objections made against the duty to stay – based on the right to national self-determination – and concluded that this objection does not provide a successful case against the duty to stay. In fact, I argued that, in many cases, the target populations' right to national self-determination also places a moral duty on the interveners to stay in target-state beyond the initial act of intervention.

As it stands, the duty to stay leaves many questions unanswered: Do interveners have additional duties to contribute to the political and economic reconstruction of the target-state? What, if anything, are the obligations of interveners and the wider international community regarding war crime trials? It is to these questions that I now turn.

Chapter 5: Democratization

Since the end of the Cold War, democratization of post-atrocity target-states has been one of the stated and pursued aims of peacebuilders. The ultimate goal of post-atrocity peacebuilding is to prevent the recurrence of violence and, conversely, to secure the fundamental human rights of the target-population by creating a stable environment within the target-state. Building democracy is seen as an integral part of achieving this goal because, it is argued, democratization directly addresses one of the root causes of conflict and offers a solution that is more likely than other forms of political reconstruction to last. Though the circumstances which give rise to mass-atrocities vary widely, nearly every case involves a conflict over government – over who controls power and how that power is used in relation to the population and resources (Annan 2002:137; Evans, G. 2008:88). Political reconstruction of some sort, therefore, is necessary in order to address these conflicts. Moreover, it is argued that democratization is the optimal form of political reconstruction because it provides an effective means by which former rivals, as well as members of society at large, can non-violently resolve issues of governance (and other problems) from the past and prevent future violence when new problems arise (Fox 2008:54; Jarstad & Sisk 2009:2-6; Plattner 2005:7; UN 2003:199).

Democratization in post-atrocity societies raises many questions. Does democracy actually create conditions for non-violent conflict resolution? Can democracy be established by international actors as opposed to the local population? These questions, and others, are debated at length in the post-atrocity literature, so I will examine them only briefly in this chapter. The main aim of this chapter will be to answer important normative questions which have been, thus far, largely unaddressed: Is it morally legitimate for interveners to try to democratize post-atrocity states? If so, do they also have a moral duty to do so? If interveners have a duty to try to democratize the target-state, does this duty include/require

the use/threat of force? In what follows, I argue that interveners have a (limited) duty to try to democratize the target-state and this duty may require the use of force. The argument made herein builds on several guiding principles defended in earlier chapters, particularly (G1), (G2), (D4), (D5), and (D6).¹⁰⁸ My argument, and this chapter, unfolds as follows. In Section 5.1, I argue that, of all the practically viable options of government currently available, democracy is the least unjust form of government in so far as it fulfills (D5) better than either autocracy or anocracy. In Section 5.2, I argue that due to the unique conditions surrounding post-atrocity political reconstruction, and in line with (D4) and (D5), interveners have a duty not only to help facilitate democratic elections, but also to try to democratize the target-state. Further, in consideration of (G1) and (D6), I argue that carrying out these duties may require the use of force. Lastly, in Section 5.3, I examine two empirical findings which suggest that the fundamental human rights of the target-population are more secure in post-atrocity societies which establish democracies than they are in those that create autocracies or anocracies, which strengthens the argument for democratization.

Before discussing post-atrocity democratization one must, of course, define democracy. Democracy is herein defined as: (1) a form of government in which (2) all able adult citizens are (3) equally (4) guaranteed the rights of freedom of speech, freedom of association and suffrage and in which (5) reasonably frequent and competitive elections are held to allow citizens to decide, (6) by majority-rule, (7) upon government representatives and/or government policies, and (8) in which the power of the government is constitutionally restricted.¹⁰⁹ I have chosen this definition because it is both compatible with most of the

¹⁰⁸ See the concluding page of Chapters 1, 2, and 3 for reference.

¹⁰⁹ Three notes: First, as made clear by this definition, my focus in this chapter is primarily on procedural democracy (which focuses on *how* decisions are made) rather than substantive democracy (which focuses on *what* decisions are made). Though, at times, my discussion within this chapter enters the grey area between the two, it should be understood that my concern herein is with procedural democracy. For further discussion on this distinction see (Box et. al. 2001:609-610; Cohen, J. 1997:407-411; Janda et. al. 2011:27-29).

Second, each of the eight elements is a necessary but, on its own, insufficient part of democracy. This is important to note because there is a tendency by some observers of the so-called spread of democracy to label governments which hold

definitions found in political theory and it conforms with the definitions used in the empirical literature, and more specifically, the Polity IV conditions which most of this literature relies upon.¹¹⁰

Having set out the definition of democracy, it is also necessary to understand democracy in relation to the two other forms of government which will be discussed in this chapter. First, autocracy, also termed authoritarianism, is defined as: a form of government in which “citizens’ participation is sharply restricted or suppressed,” and in which executive recruitment is “closed” (not determined in anyway by the population), and in which “once in office, chief executives exercise power with no meaningful checks from legislative, judicial, or civil society institutions” (Gates et. al., 2006:896; Marshall & Cole 2009:8). Second, anocracies, alternatively called semi-democracies, inconsistent, transitional, or mixed governments in the literature, are “neither fully democratic nor fully autocratic but, rather, combine an, often, incoherent mix of democratic and autocratic traits and practices” (Marshall & Cole 2009:8). The Polity IV database uses measurements of executive recruitment, executive constraints, and political competition/participation to rate individual governments along a scale from +10 to -10 and counts those governments scoring +10 to +6 as democratic, those scoring +5 to -5 as anocratic, and those scoring -6 to -10 as autocratic (Marshall & Cole 2009:8-9). Thus, these three broad government types are best understood as creating a spectrum of governance. Very few actual governments fit perfectly into one

elections as democratic even though they do not have the other necessary requirements of democracy. These are best described as anocratic, though even autocracies may hold some form of elections (e.g. Saddam Hussein).

Third, factor 8 includes two elements. First the government includes some genuine form of checks and balances/separation of powers (to include an independent judiciary). A government in which an elected group of figureheads are organized under a separation of powers, but where the true wielders of power sit outside of this separation would not count as a democracy (e.g. Iran). Second, a government can be understood to be constitutionally restricted either formally or informally (as in the cases of the UK and New Zealand). What is important is that the separation of powers and/or restrictions on government are binding – either in formal legal constitutions or in customary law (though, of course, the latter option would not be realistic for newly forming democracies).

¹¹⁰ The Polity IV data base is a widely used database which classifies states as either democratic, anocratic, or autocratic, based upon the existence and level of various features within state governments.

ideal type, rather most governments fall somewhere along the spectrum closer to one ideal type than another and are thus categorised.

5.1 Democracy as the Least Unjust Form of Government

There are numerous ways that political theorists have sought to defend democracy as the most just/least unjust form of government. In this section I concentrate on the three most common and, in my view, most convincing arguments. All three defences begin with the fundamental claims, discussed in Chapter 2, that all human-beings (a) have intrinsic moral worth, (b), must be treated in ways that respect their moral worth, and (c), are of *equal* moral worth. Further, treating individuals in ways that respect their moral worth includes treating them in ways that recognize, protect, and facilitate their right to lead a minimally decent life. In Chapters 2 and 3, I argued that the rights necessary to live a minimally decent life include the rights to physical-integrity, autonomy, and national self-determination. Each defence of democracy discussed herein focuses on one of these three rights.

First is the claim that democratic governments are best at allowing individuals to actualize their right to autonomy, herein termed *the autonomy defence*. Second, and least often made, is the argument that of all forms of government, democracy is best at realizing the right to national self-determination, herein termed *the national self-determination defence*. Third is the position that democracy best protects individuals and communities from abuse at the hands of government, herein termed *the protective defence*. Rather than choosing one of these arguments to defend the claim that democracy is the least unjust form of government, I argue that all three are important, valid, and complementary. It is important to keep in mind throughout the following that for each of these arguments the claim is not that democracy is an absolutely just form of government. Rather, the claim is that of all the options of government currently available (the various forms of autocracy and anocracy), democracy is the *least* unjust. This is a crucial point because it allows room for the

acknowledgment that democracy, despite being the most just form of government available, has flaws.

Each of the three arguments in defence of democracy begin with the assumption that government is necessary because collective living and, thus, collective decision making is a necessary part of a minimally decent life. As Hobbes, Locke, and numerous theorists since have argued, and as modern experiences of failed states lend credence to, in instances of collective living where there is no government which provides collective protection and a means of collective decision making (whether autocratic, anocratic, or democratic), life becomes detrimentally insecure. So government is necessary, but the establishment of government presents a number of problems. First, acknowledging that government is necessary leaves open the question of what moral principles ought to shape/limit government. Second, governments themselves can be a source of great insecurity for individuals and communities. The three defences of democracy address these two issues.

The autonomy defence of democracy begins with the observation that when a government is created, it is empowered to make and enforce collective decisions which affect the lives of individuals; decisions made for the good of the collective may significantly influence the range of autonomous choices each individual can make. That collective decisions have such an impact is not necessarily unjust, rather it is an inescapable condition of collective living. Given this inescapability, the right to autonomy requires that individuals within a collective be given “equal rights...in the specification of the political framework which generates and limits the opportunities available to them” (Held, D. 2006:264). As I discussed and defended the right to autonomy in Chapter 2, I will not do so again here. It is helpful, however, to recall that the right of autonomy is the right of each individual to a significant degree of freedom to make choices, and act upon those choices, which guide and determine his/her life.

Ultimately the autonomy defence boils down to this: individuals ought to have some input (when possible) into those things which significantly shape the scope of their autonomy, and thus their lives.¹¹¹ Since collective decisions inevitably shape the scope of individual autonomy, individuals should have the ability to help shape those collective decisions. The autonomy defence holds that democracy, of all the forms of government, “provides the maximum opportunity” possible for individuals to exercise autonomy while living in a collective (Campbell 2006:96; Dahl 1998:51-52; Jones 1994:180-182; McFaul 2004:148-149). By being afforded the right to participate equally in elections and other instruments of democratic decision-making, individuals are given the opportunity to voice their opinions and have some say over collective decisions and, thereby, over those things which will affect the scope of their individual autonomy. More strongly, democracy “*institutionalises* [the] equality of all citizens as persons with moral and political views” (Campbell 2006:96, my emphasis).

To be clear, the autonomy defence does not claim that democracy allows the autonomous choices of every individual to be reflected or chosen in every decision – this is impossible. Rather, the autonomy defence claims that through elections and majority-rule, every collective choice will reflect the autonomous choices of the maximum number of individuals possible. Moreover, because most democratic governments include a number of political parties, not only is the maximum number of autonomous choices reflected in collective decisions, but a great deal of the range of autonomous views are also continually represented.¹¹² Even when individuals fall into the minority whose autonomous decisions are not reflected in a particular decision, as Peter Jones points out, there is “a significant difference between...being entirely excluded from the a decision-making process and...having

¹¹¹ See William Nelson for an objection to the claim that people ought to have a say in decisions that significantly affect their lives (1980-45-47). The objection is largely based on contractual relationships and, I believe, ultimately fails to counter the autonomy defence.

¹¹² I am thankful to Jeremy Waldron for this point.

a right to contribute equally to that process even though one might be outvoted” (1994:181).¹¹³ Autocracies and anocracies, on the other hand, do not generally allow individuals to influence government policy in any meaningful or reliable way (I will return to a possible exception to this shortly). Citizens are treated as passive, non-autonomous, individuals to be ruled over. Government decisions consider the autonomous choices of only one or a few individuals. As a result, when it comes to honouring the right to autonomy, democracy is the least unjust form of government.¹¹⁴

The national self-determination defence of democracy argues that democracy allows nations to actively shape their communal life to a greater extent than any other form of government. Of all the defences of democracy, this is the one least often made and, when made, the least fully argued. Amartya Sen states that democracy is valuable, in part, because it allows individuals to “participate in the political life of the community” and to be denied such participation, “is a major deprivation” (1999:10). Albert Weale argues that one of the reasons democracy is preferable over other forms of government is that it allows individuals to protect and advance their “common or public interests” (2007:50). Though I think the national self-determination defence is attractive, it needs to be drawn out more clearly.

Of course, the centre of this defence is the right to national self-determination. As I defended this right in Chapter 3, I will not do so again here. However, it is necessary to reiterate that national self-determination is the right of nations to some degree of political autonomy for the purpose of allowing the nation to shape and preserve its collective values and collective way of life. The right is grounded on the claim that in order to live a

¹¹³ See Thomas Christiano for a critique on how varying levels of poverty and education within a democracy may produce some inequalities in political participation (1996:4). While Christiano's critique is important, I do not think it undermines the autonomy defence made here. Rather it highlights one of the possible differences between procedural and substantive democracy.

¹¹⁴ For a fairly common, though I think ultimately surmountable, objection to the autonomy defence, see (Christiano 1996:5-6, 25; Griffin 2008:247). The objection is based on the claim that a person's vote in a modern democracy is usually only one in several million and such a figure does not constitute an autonomous choice.

minimally decent life, individuals must be allowed to actively and continually form, participate in, and preserve their communities and communal way of life.

Let us examine the claim that democracy allows groups to actively create and preserve their collective life to a greater degree than any other form of government. A good starting point is the argument put forward by William Nelson that democratic procedures create decisions, policies, and laws which reflect “the common good” and “mutually agreeable conceptions of fundamental constraints” (1980:117-118).¹¹⁵ It does this, Nelson argues, because the democratic process requires individuals/parties who wish to advance policies or laws to present and defend their proposals to the public (before an election or referendum) and in order for their proposals to win they must be presented in a way that gains widespread public support. To gain such support, Nelson continues, such proposals must reflect common conceptions of both the individual and collective good life.

To give a bit more detail to Nelson's argument, I would add that because proposals are decided upon by majority-rule (or at least, the representatives who enact these decisions are voted in by majority-rule), such decisions must appeal to the majority of the collective. In order to gain majority appeal, individuals hoping to have their proposals adopted must know, or seek out, what the collective conceptions of the good are and as a result, a sort of dialogue must exist between those who propose decisions and the collective which decides upon/supports those decisions. Of course, not everyone in the collective will agree, but majority-rule ensures that the greatest number of individuals who make up the collective are enabled to steer each decision and thus, democracy comes as close as possible to tracking the general collective will of the community (I will return to the issue of the preservation of minority/sub-state nations shortly). By contrast, because autocracies and anocracies generally deny members of the collective the ability to participate in any meaningful way in

¹¹⁵ Nelson does not present this argument as relating to national self-determination, in fact, he never mentions this right. However, as Nelson's argument so closely relates to national self-determination, I feel justified in including him here.

the political process and, thereby, deny the exercise of national self-determination they are, therefore, less just than democracies in this regard.

For both the autonomy and national self-determination defences of democracy I have qualified the claims that autocracies and anocracies do not allow their citizens to participate, in any real or meaningful way, in the political process with the word ‘generally’ – they generally do not do this. I have done this because, as you will recall, in Chapter 3 I argued that there are three ways by which members of a nation can be said to be self-determining: democratically, council-based, and implicitly. Now the claims that democracy is less unjust than autocracies based on the autonomy and national self-determination defences stand. Also, as far as implicit national self-determination is concerned, the conclusion that democracy is less unjust than anocracy, based on these defences, also stands. However, it is theoretically conceivable that a council-based anocracy, modeled after Rawls' conception of a decent hierarchical society, would allow its citizens to participate in political decisions to such a degree that the autonomy and self-determination defences of democracy made herein would not hold.¹¹⁶ It is even conceivable that such a council-based government, depending on how much weight/influence the opinions of each council were given in the decision making process, could allow its citizens greater or fuller realization of their individual autonomous choices and national self-determination than democracy.¹¹⁷

Now, the claim that a council-based anocracy might actually be equally or better equipped at realizing the autonomous choices of its citizens and their right to national self-determination is a powerful objection. The objection, however, reflects a great divide between theory and the real world. In theory, we may be able to imagine such a council-based government. In reality, however, such an anocracy (to my knowledge) does not exist

¹¹⁶ See Chapter 3, Section 3.2 for a review of the details of decent hierarchical societies.

¹¹⁷ To be clear, Rawls does not argue that decent hierarchical societies were equally or more just than democracies. Rather, Rawls holds that they might be tolerably just (2002:64-77). Therefore my speculations here depart from Rawls.

and chances are (I think) fairly slim that one will come into existence, especially from the ruins of a post-atrocity society (I return to this point in the next section). So, while we may grant the objection that, in theory, some form of council-based anocracy might be equally just as democracy (or perhaps even more so) in regards to the autonomy and national self-determination defences, in practice the autonomy and national self-determination defences of democracy are successful in showing that democracy is the more just form of government.

The final defence of democracy, the protective defence, holds that if a government has the power to make decisions without regard to the public will and without being held accountable to the population, then it is more likely to make decisions which go against the public will and, more strongly, which will harm or threaten the population. There are two approaches to this argument. The first, and most common, is captured in the often quoted statement of Locke that to allow for such unrestricted government is “to think, that men are so foolish, that they take care to avoid what mischiefs may be done them by *pole-cats*, or *foxes* [in the state of nature]; but are content, nay, think it safety, to be devoured by *lions*” (1980:50). Individuals/groups who govern without the limitations of public will and accountability, so the argument goes, are likely to be “driven by megalomania, paranoia, self-interest, ideology” etc., and as a result will use their position to promote their own interests rather than the collective interest (Dahl 1998:46). Often this will lead to repression and abuse of the population.

The second, less pessimistic, approach holds that even if individuals/groups who govern without limits or accountability are committed to the collective interest and, thus, are not 'lions,' they are, by virtue of being human, fallible. The belief in human fallibility, Weale explains, is the belief that “[p]roneness to error in theoretical and practical reasoning” is a “pervasive feature in social and political life” (2007:66). Weale argues that no one individual or small group of individuals “will have sufficient knowledge to secure the right answer” to

problems that require collective decisions (2007:77-78). Rather, each individual is, at the same time, a source of how decisions will most likely affect him/her individually and subject to fallibility about how decisions may affect others and the collective as a whole. As a result, in order to avoid bad decisions being made because of fallibility, when a decision must be made concerning the collective, the most likely way of arriving at the best solution is by making the decision collectively. Therefore governments ruled by one or a few individuals are more likely to err in judgment, due to fallibility, and thereby more likely to cause the population to suffer as the result of bad decisions.

Both approaches converge on a common solution: to avoid the dangers of unrestricted government by the few, government must be driven by and held accountable to the population; government must be democratic. Democracy prevents abuse of the population in three interconnected ways. Firstly, because the person best suited to protect an individual's rights and interests is the individual him/herself and because democracy gives each citizen an equal chance to voice and stand up for his/her own rights and interests (either directly or through representatives), democracy protects individuals from abuse better than autocracy or anocracy (Nelson 1980:113-114). Secondly, because individuals are fallible, democratic procedures which include input from the entire adult population are less prone to error than decisions made by an individual or small group and, thus, the population is less prone to having its rights and interests neglected (Weale 2007:77-78). Lastly, democracy has a built in safety net in the form of elections which further decrease the likelihood of abuse by allowing the population to remove government officials from office if they fail to act upon the public will or abuse the population (Campbell 2006:96-97; Sen 1999:11). The overarching claim, to clarify, is not that autocracies and anocracies will always and inevitably abuse their populations, nor is the claim that democracies will never abuse their populations.

Rather, the claim is that democracies are less likely than autocracies or anocracies to abuse their populations and, therefore, democracies are more just.

Standing alone, the theoretical arguments for the protective defence of democracy are fairly convincing. They are further strengthened when matched with current empirical data. Three findings in particular support the protective defence. First, studies show autocracies and anocracies are far more likely than democracies to violate their population's human rights (Apodaca 2001; Bueno de Mesquita et. al., 2005; Davenport 2007; Davenport & Armstrong 2004; Englehart 2009; Harff & Gurr 1988; Keith 2002; Krain 1997; Poe et. al., 1999; Wayman & Togo 2010). More strongly, both R. J. Rummel and Barbara Harff, who have done extensive studies on the occurrence of mass-atrocities, find that the “probability of mass murder is highest under autocratic regimes” (Harff 2003:70; Rummel 1995, 1998, 2008). The cases of mass-atrocity since 1970, listed in Appendix-1, confirm these findings. Of the 49 cases of mass-atrocity since 1970, 43 were carried out, either in whole or in part, by governments against their own citizens. In these 43 cases of government perpetrated mass-atrocity, 70% percent were autocratic, 28% were anocratic, and 2% percent were democratic governments. These statistics affirm, quite starkly, that autocracies and, to a lesser degree, anocracies are more likely than democracies to carry out mass-atrocities against their own citizens.

The second empirical finding worth noting is that while the number one risk factor for the occurrence of mass-atrocities is autocracy, the second most significant risk factor is civil war. Further, studies show that anocracies are most prone to civil war. Autocracies and democracies, on the other hand, are shown to be equally, or nearly equally, secure against civil war (some studies show democracy to be slightly more secure) (Bueno de Mesquita et. al., 2005; Collier 2009:18-19; Gates et. al. 2006; Harff 2003; Hegre et. al., 2001; Hendrix 2010:273; Krain 1997; Poe et. al., 1999; Wayman & Tago 2010). Experts agree that this is

due to the concentration of power within government and its relation to the costs of violently challenging the government. In autocracies the costs of violently opposing the government are too high because the government will violently eliminate challengers. In democracies the costs of violent opposition is too high because the democratic system makes nonviolent opposition a more viable option. Anocracies, however, are prone to intrastate violence because the cost of violently challenging government is relatively reasonable given the high stakes of power, the government's limited ability to crush its opponents, and the unreliability of nonviolent means of opposition.

This second finding might, at first sight, appear to conflict with the finding, discussed above, that autocracies are significantly more prone to mass-atrocities than either anocracies or democracies, and many of the studies which concentrate on this second finding are worded in a way which does make the two findings seem rather contradictory. Gates et. al., for example write that democracies and autocracies “are the most stable political systems” (2006:893). However, this seeming contradiction is really just an oddity in the second set of studies. These studies concentrate solely on regime longevity and the outbreak of civil war. They do not take into consideration mass-atrocities which take place outside of the context of civil war. This means that these studies consider Stalin's Russia and Mao's China 'stable' along the same lines as democracies like France or Sweden despite the fact that millions were massacred by these autocratic regimes. Rather than having conflicting studies, we simply have two separate findings regarding mass-atrocities: (1) the greatest risk factor for the occurrence of mass-atrocities is autocracy and (2) the second greatest risk factor for the occurrence of mass-atrocities is the outbreak of civil war and anocracies are more prone to civil war than any other form of government.

The third finding which is relevant to the protective defence of democracy is that made by Amartya Sen (1999). Sen shows that “no substantial famine has ever occurred in

any independent and democratic country with a relatively free press” (1999:7-8). This study does not suggest that autocracies or anocracies purposefully starve their populations (though some certainly do). Nor does it claim that the right to subsistence is always met in democracies (one need only walk through the slums of modern democracies to see that this is not the case). Rather, it shows that the subsistence rights of the general population are better protected under democracy than under autocracy or anocracy. Combining all three studies, we have concrete support for the claim that democracies are considerably more likely than either autocracies or anocracies to protect the right to physical-integrity of their citizens and, therefore, are more just.

Having now discussed three defences of democracy, I would like to examine a challenge to the claim that democracy is the most just form of government which applies to all three defences. The challenge is this: In a system of unlimited democratic majority-rule it is possible for the majority to use its voting power to abuse minorities – the majority could, for example, vote to massacre, enslave, or otherwise oppress minorities (Campbell 2006:96; Talbott 2005:140). If this is so, then it is possible that a democratic majority could violate individuals' rights to physical-integrity, autonomy, and national self-determination to an equal or greater extent than autocracies or anocracies and, if this also is true, then perhaps democracy is not the least unjust form of government (henceforth termed the unlimited democracy objection).

The unlimited democracy objection highlights a potentially serious danger within democracy and one which I think must be granted to a degree. However, I do not think that the objection is successful in negating the claim that democracy is a *less* unjust form of government than autocracy or anocracy. Against this objection we could return again to the divide between theoretical possibility and practical reality. In practice, the empirical studies reviewed in the discussion of the protective defence of democracy suggest that the potential

danger of unlimited democracy does not come to fruition often enough to negate the claim that democracies are, generally, less unjust than autocracies or anocracies. Further, the fact that all current democracies have restricted the power of the majority through constitutional guarantees (either formally or informally) of the rights of all citizens (via something like the US Bill of Rights), suggests that majorities within a democracy are more likely to uphold minority rights than to trample upon them. While these empirical findings weaken the unlimited democracy objection, it seems to me (more importantly) that this objection suffers from an internal incoherence which renders it untenable.

One possible response to the unlimited democracy objection is, firstly, to concede that unlimited democracy is potentially dangerous and, secondly, to argue that democratic decision-making must be limited by constitutional guarantees of the basic rights of all citizens. The idea is, then, that in order to maintain the claim that democracy is the least unjust form of government we must limit/constrain democracy. The problem, of course, is that if we are placing constraints on democracy in order to maintain the claim that democracy is the least unjust form of government, then it is these constraints that are doing the work in supporting this claim, not the institution of democracy itself. If this is so, one might wonder whether we could simply apply these constraints to autocracy and anocracy and thereby render these forms of government less unjust as well (of course doing so would turn an autocracy into an anocracy). So this response will not work.

To be sure, I do not negate the claim that the power of the majority within a democracy must be constrained in order to overcome the unlimited democracy objection. However, it seems to me that the institution of democracy itself necessitates many of these constraints; that is, many of these constraints are demanded by and contained *within* the institution of democracy rather than being some sort of foreign or outside constraints applied to democracy. In a democracy all individuals are entitled, and equally so, to participate in the

political decision-making process. At a minimum, this means that all individuals, whether they are part of a majority or a minority, have the right to vote, to discuss, share, and debate their beliefs and opinions, and to form and maintain groups which promote their interests. These rights are necessarily and indisputably dependent upon the protection of the fundamental human rights to physical-integrity, autonomy, and community. An individual must be alive in order to vote. An individual must be able to openly practice his/her chosen religion free from fear in order to exercise the right to discuss and debate his/her opinions. An individual must be able to freely identify with his/her racial, ethnic, or national community in order to fully express his/her interests/needs. If we accept these claims, then we must also accept that the protection of fundamental human rights is, in large part, a requirement of democracy. Constitutionally guaranteeing basic rights against abusive majority rule, then, is not a constraint which must be placed *upon* democracy, it is a constraint necessarily contained *within* democracy. A democratic majority which voted to enslave or severely oppress a minority would, in that act, violate the dictates of democracy and, effectively, turn the democracy into an autocracy or an anocracy; the minority would no longer have the right participate freely and equally in the political process and thus a necessary element of democracy would be missing.¹¹⁸ Granting that the institution of democracy contains restraints which limit the likelihood of abuse of individuals/minority groups by the majority, we can maintain the claim – against the unlimited democracy objection – that democracy is the least unjust form of government.¹¹⁹

Granting the autonomy, national self-determination and protective defences of democracy, it follows that the establishment of democracy fulfills (D5) to a greater extent than either autocracy or anocracy. This being so, we have now arrived at the first point in the

¹¹⁸ According to my argument, then, the Athenian democracy, the US democracy during the time of slavery, and democracies which deny/denied the right to vote to women (among other examples) were, in fact, not democracies but anocracies.

¹¹⁹ To be clear, my claim is not that democracy does not need any outside constraints in order to be more just; it is simply that democracy contains enough internal constraints to withstand the unlimited democracy objection.

argument that interveners have a duty to try to democratize post-atrocity states. If, as (D5) states, interveners have duties to help create, support, and maintain institutions that protect and promote individuals' rights to physical-integrity, autonomy, and national self-determination and if it is the case that democracy protects and realizes these rights more than any other form of government currently available, then it seems to follow that, unless and until better (and practically viable) rights-protecting institutions are designed, interveners have a duty to try to help create, support, and maintain democratic institutions within the target-state.¹²⁰ This argument is strengthened when we look more closely at the unique conditions of post-atrocity political reconstruction.

5.2 Dangers of Post-Atrocity Elections

To get a clear picture of the special, and volatile, circumstances of post-atrocity political reconstruction, a moment of review is necessary. In Chapter 4, I argued that most post-atrocity societies will be left without a government, either because the government falls before or during the atrocities or because interveners remove the government from power on the grounds that it was committing atrocities (which I argued interveners have a duty to do in most cases). As a result of the events leading up to the atrocities, the atrocities themselves, and the lack of government, the post-atrocity society often faces mass population displacement, mass area destruction, the predatory-factor, and an intrastate security-dilemma. The combination of these conditions puts the lives of the target-population at great risk and renders the target-population unable to effectively carry out their *duty to institutionalise* (D5) and their *duty to aid* (D6) in regards to the fundamental human rights of their individual members. In light of this, I argued that in most post-atrocity cases interveners have a duty to occupy the target-state and temporarily take on the role of government in order to protect the

¹²⁰ Whether or not, based on the arguments made in this section, there is a general moral right to democracy is beyond the scope of this thesis, but see Griffin for discussion (2008:242-255). For discussions on whether a right to democracy exists in international law see (Cohen, J. 2008:580-581; Fox 2008:154-157; Franck 1992:90-91; Rich 2001:20-33).

rights of the target-population and to serve as a necessary medium for bringing the target-population out of the security-dilemma so that individuals within the population can resume their role as primary duty-bearers.

So, the post-atrocity picture, in most cases, is this. Interveners have occupied the target-state in order to help rebuild infrastructure, deliver aid, mediate the security-dilemma, and prevent the predatory-factor. Interveners are temporarily governing the target-state and, therefore, are in a unique position of responsibility to the target-population. In accordance with (D4) and (D6), interveners not only have duties to protect and advance the target-population's fundamental human rights to individual physical-integrity and autonomy, but also to help protect, advance, and institutionalise their collective right to national self-determination. Interveners, that is, are responsible (along with the target-population themselves, a point I return to later) for helping to facilitate the political reconstruction of the target-state; they are responsible for passing the reins of government back to the target-population. This process is an exercise of national self-determination.

An immediate question arises in this post-atrocity situation: How can interveners help the target-population exercise their right to national self-determination and begin the process of political reconstruction? In Chapter 3 I argued that national self-determination can be exercised democratically, through council-based hierarchies, or implicitly. However, implicit national self-determination is only available to long-standing governments as it requires a history of implicit consent by the population and non-repression by the government. This appears to leave only the options of democratic national self-determination and council-based national self-determination open to the post-atrocity society. However, we run into a difficulty here. How does an intervener know what form of government (what form of self-determination) the target-population wants without holding at least one election? If the target-state has an existing council system, it might be possible not to hold an election;

however, as noted earlier, this is not likely to be the case. It seems fair to conclude, then, that post-atrocity political reconstruction necessitates at least one democratic election (though, as I will argue below, I think at least two elections are required). Further, given their position of authority and their resources (to include resources provided by agents not occupying the target-state, but who have duties to aid the target-population nevertheless), interveners have an obligation to help facilitate this election.

We must now examine the special circumstances involved in post-atrocity elections. Democratic elections have many positive attributes: they allow individuals to voice their autonomous choices regarding government, they actualize the right to national self-determination, and, in most circumstances, they decrease the likelihood that conflicts of opinion will lead to violence by providing a non-violent means of conflict resolution. Regarding this last benefit, Roland Paris explains that a democratic election “paradoxically encourages the public expression of conflicting interests in order to limit the intensity of such conflicts by channeling them through peaceful political institutions before they turn violent” (1997:74). In established democracies the paradox of democratic elections works quite well. However, in post-atrocity societies democratic elections can lead to the election of violent extremist groups, sporadic violence, and even to the outbreak of civil war and/or the resumption of mass-atrocities.

Recent studies of post-atrocity elections over the last two decades explain why elections can have such devastating effects (Bermeo 2003:162-166; Carothers 2007:12; Chesterman 2004:207; Collier 2009:40, 81-82; Fukuyama 2005:87; Hoglund 2009:80-86; Ignatieff 2008; 300; Jarstad 2006; Paris 1997:75-76, 2007:151-159; Plattner 2005:7; Reilly 2009:161-166; Reynolds 2005:55; Sisk 2009: 252; Wolpe & McDonald 2006:137). Though the prospects of democratic elections are likely to be greeted with enthusiasm by the majority of the target-population as an important step in reconstruction and towards the withdrawal of

the interveners, post-atrocity elections may also remind the target-population that the security created by the interveners is only temporary. Elections put state power and resources up for grabs once again and, therefore, may be perceived by groups within a society as an all-or-nothing competition in which the stakes of winning or losing equate to winning or losing assurance of the group's livelihood. In these circumstances, the threats of an intrastate security-dilemma and the predatory-factor (both discussed in Chapter 4) reemerge.

If, during post-atrocity elections, groups within the society feel that their security is at risk, the security-dilemma may reemerge and the likelihood of inter-group hostility and violence increases. Not only does the security-dilemma increase the risk of violence, it also makes it less likely that groups will support moderate/conciliatory candidates because supporting such groups suddenly seems too risky. Furthermore, predatory groups/individuals may see elections as either a way to seize state power and wealth or simply as an opportunity to incite insecurity and violence for their own gain. As is often the case, predators will likely take advantage of the security-dilemma by preying on the population's fears, using extremist and divisive rhetoric in order to gain positions of power within the new government or to reignite inter-group hatred and violence and reap the benefits of the chaos that this creates. Predatory groups may also use threats and violence to prevent moderate/conciliatory candidates from running in the election. With the reemergence of the security-dilemma and the predatory-factor, the conflicts which led to the initial atrocities and feelings of revenge associated with those atrocities are likely to flare up, further increasing the polarization between groups and the likelihood of violence and atrocities. If, despite all these possibilities for resumed violence, elections actually do occur, there is also the risk that, if the election results in a winner-take-all situation in which one individual or group holds all the power, those who lose the election are unlikely to honour the results and, conversely, are likely to resort to violence in order to overturn them. The manifestation of these dangers can readily

be seen in the 1990 and post-Dayton Agreement elections in Bosnia, the 1992 elections in Angola, and the 1993 elections in Cambodia, among others.

With all this in mind, holding democratic elections may seem like quite a dismal and dangerous affair and one might be inclined to argue that elections should not be held. However, the picture painted above is not inevitable and, despite the dangers, the reality is that democratic elections must be held. Firstly, democratic elections can either lead to a resumption of violence or they can serve as a way for the target-population to establish a legitimate government, non-violently resolve (or begin to resolve) lingering conflicts, and implement a nonviolent system through which to address future problems. Secondly, outside of holding democratic elections there is no alternative way for interveners and the target-population to create a legitimate government. If interveners simply handed over the reins of government to an individual/group of their choosing, this would clearly violate the target-population's right to national self-determination. Thirdly, as noted earlier, nearly all mass-atrocities include a conflict over government power and/or resources, so to leave the question of government unaddressed is to leave the potential for the recurrence of atrocities dangerously high. So the interveners face a dilemma: elections must be held, but elections may put the lives of the target-population in serious danger. The solution, according to most studies, is to carefully engineer the timing, rules, and stakes of the election in a way that brings out the benefits of elections while decreasing the dangers.

Though the idea of electoral engineering may sound a bit suspicious and illegitimate at first (it sounds awfully similar to electoral rigging), the reality is that all elections must be engineered – someone must decide when to hold elections, whether to hold sub-state or state elections first, what positions candidates will run for, and what requirements candidates must meet in order to compete. First, in order to reduce the likelihood of violence and the threat to the lives of the target-population, post-atrocity experts recommend that elections are designed

such that they do not lead to a winner-take-all outcome (Chesterman 2004:209; Collier 2009: 81-82; Hoglund 2009:91, Jarstad 2006:6-7; Paris 2007:190; Stedman 1997). In order to avoid winner-take-all elections, experts argue that elections must end in some sort of power-sharing government and must be limited by a separation of powers (to include some sort of independent judicial body empowered to resolve disputes which may arise from the elections).¹²¹ The exact form of power-sharing – be it integrative/centripetalism, consociationalism, federalism, etc. – and separation of powers must be decided by the target-population in deliberation with the interveners and must be constitutionalized *before* elections take place (hence the need for at least two elections - I examine this point below).¹²² As a result groups and individuals will understand that the elections will not end in the complete domination of one group/individual over the rest and the likelihood of a reemergence of the security dilemma will be considerably lessened. This, of course, rules out elections aimed at creating autocracies or anocracies.

Secondly, experts argue that 'the rules of the game' should disqualify extremist groups/individuals “who clearly and repeatedly advocate violent action against other individuals or groups” (Paris 1997:83). Conversely, election rules should reward individuals/groups who exhibit political moderation, both in terms of qualification for competition and requirements for winning. As an example, Paris cites the case of Nigerian presidential election requirements from 1979 to 1983 in which candidates were required to win both a majority of overall votes and a minimum of 25 percent of the votes in two-thirds of each of Nigeria's nineteen states. This requirement, explains Paris, encouraged candidates

¹²¹ Though power-sharing forms of government have been shown to significantly *reduce* the likelihood of violence, they are not an absolute guarantee. The 1994 genocide in Rwanda was carried out by Hutu extremists determined not only to eliminate the Tutsi population but also prevent the creation of the power-sharing government established by the Arusha Accords.

¹²² For discussion on the various forms of power-sharing and the benefits/disadvantages of each in post-atrocity societies see (Bermeo 2003; Chesterman 2004; Light 2001; Reynolds 2005 and especially Reilly 2002). There is quite a lot of debate within the policy-oriented literature as to which sort of power-sharing is best suited for post-atrocity societies, however, I am inclined to agree with the argument that because of the different circumstances of each post-atrocity society, the best power-sharing method must be decided on a case-by-case basis.

to run on conciliatory platforms which cut across group identities and highlighted truly national issues and solutions (2007:191). Setting rules of the game geared at rewarding moderation and cooperation decreases the leverage of would-be predators and reduces the likelihood that groups will be pulled into the security-dilemma.

Thirdly, and perhaps obviously, interveners (and members of the target-population who are able) must provide a reasonably secure election environment by taking steps to prevent intimidation and violence and, if either occurs, by quickly stopping it (Hoglund 2009:86; Jarstad 2009:45). The need to maintain electoral security applies before, during, and after the elections; there must be a clear message to would-be predators that violence will not be tolerated and that the election results will be upheld (a point I will return to).

Lastly, experts argue that timing is essential. Elections should not be held too soon after the atrocities have ended for this increases the likelihood that elections will recreate the divisions and conflicts surrounding the atrocities. Arguments vary about how long it is advisable to wait, but there seems to be a general consensus that *at least* one year needs to pass after the atrocities have ended. Of course, as Andrew Reynolds points out, there is no absolute guarantee that, taken together, these electoral engineering moves will stop the recurrence of violence, but they have been shown to significantly reduce the likelihood of such violence (2005:66).

Before moving on, I would like to examine two implications of the claim that democratic elections for positions within the government must be *preceded* by constitutional design which includes some form of power-sharing and separations of powers. First, essentially this boils down to the claim that the target-state's constitution must be established before elections for positions within the government are held, even if such a constitution is only provisional (or at least a significant part of the constitution must be established). Given this, it seems that post-atrocity political reconstruction actually requires at least two

democratic elections, with the election of individuals into positions of the government being the second election. The first election would involve the target-population choosing which individuals among them would take part in designing the provisional/permanent constitution. As will be discussed shortly, the political reconstruction of the target-state, at all stages, must involve the target-population. Though interveners have an important role in helping to facilitate this process, ultimately political reconstruction is an exercise of national self-determination which necessarily requires the target-population to be the primary agent in determining their political future. The constitution, therefore, must be shaped primarily by individuals from within the target-population and these individuals ought to be chosen by the target-population – hence the need for another election.

Second, I suggest that the claim that the post-atrocity government must involve some form of power-sharing ought to be understood to imply that, among other things, the right to national self-determination for sub-state nations must be institutionalised within the state government. Institutionalizing this right, I submit, would likely reduce the likelihood of the reemergence of an intrastate security-dilemma and, more importantly, it would likely reduce the chances of the reemergence of atrocities. Additionally, as argued in Chapter 3, not only is institutionalizing the right of sub-state nations to national self-determination advisable for the aforementioned reasons, it is required by (D5).

To take stock, I have argued that interveners have the duty to try to democratize the target-state. My argument is built on the following claims: (1) within most post-atrocity states there is a need for the construction and election of a new government; (2) holding elections in post-atrocity states may lead to a resumption of violence and atrocities and, in order to reduce the likelihood of this, governmental elections must be *preceded* by the creation of a constitution which establishes some form of power-sharing and separation of powers and must include election rules which disqualify extremist individuals/groups; (3) the

designing of this constitution must be done, primarily, by the target-population and, given this, elections must be held to designate which members of the population will participate in the constitutional convention; and finally, (4) once the constitution is in place, democratic elections to fill the seats of government must be held. The duty to try to democratize the target-state, based on this reasoning, is in accordance with (D4), (D5), and (D6).

Before moving on, I would like to look a bit more closely at what the duty to try to democratize the target-state might entail. From the above discussion it is clear that it includes advising/holding discussions with members of the target-population in order to form a constitution and set electoral rules. It also, of course, includes helping the target-population hold democratic elections. At a minimum this entails registering voters, providing the necessary voting facilities, monitoring the voting process, ensuring that all qualified candidates can compete free of intimidation, and ensuring that all able adults can exercise their rights to speech, association, and suffrage. Throughout the process, interveners, with the help of the target-population, will also need to provide a secure environment before, during, and after the elections. This brings us to the use of force.

The presence of the interveners within the target-state is backed by military force. As I argued in Chapter 4, the presence of military force is necessary to prevent the reemergence of violence/atrocities until such a time that the target-population can take over this task. I submit that the duty to try to democratize the target-state also requires the presence and possibly the use of force. My reasoning here is based on the duty to aid, D6, and mirrors that given in Chapter 4 regarding the duty to intervene and the duty to stay. D6, recall, holds that if an individual, V, is in grave danger and you, R, have the ability to rescue V without unreasonable risk to yourself, then you have a duty to rescue V using force (against V's unjust attacker) if necessary.

So far in our discussion on the duty to try to democratize we have established that (1) democratic elections must be held, and (2) democratic elections have the real potential of putting the lives of the target-population at risk, in part, because some individuals/groups (predators) may use and/or incite violence and atrocities. Now, following (D6), I suggest that if the only way to stop these predators from using/inciting violence and endangering the lives of the target-population is to use force (or the threat of force), then interveners have a duty to use force in order to protect the lives of the target-population so long as they can do so without unreasonable risk to themselves.¹²³ To be clear, this does not mean that if the majority of the population does not support democracy, interveners can impose democracy through the use of force (I return to this possibility and its implications in Section 5.4). The use of force, as I argue for it here, is justified only when it is used against those who use violence/the threat of violence in order to disrupt democratic elections – before, during, and after – and thereby place the lives of the target-population under great risk. Finally, I submit that the duty to use force is both consistent with the just war guidelines (discussed in Chapter 1) and, at the same time, must be limited by them.

So far, my argument in support of the claim that interveners may have a duty to use force in the post-atrocity political reconstruction process is grounded exclusively on the importance of protecting the lives of the target-population rather than on the importance of securing democracy within the target-state. In addition to this, I find that even in cases where the lives of the target-population are not under direct threat, interveners may still have a duty to use force in order to uphold democracy within the target-state. Imagine a post-atrocity case in which interveners oversee the election of a constitutional convention and, following the drafting of a constitution which establishes a power-sharing government, oversee elections to fill the positions of government. The elections result in a democracy in which

¹²³ As I argued in Chapter 4, the fact that the use of military force necessarily puts the lives of soldiers at risk does not constitute an unreasonable threat to the interveners.

groups A, B, C, and D share power. Unhappy with the election results and the idea of democracy, Group-D executes a successful coup and seizes control of the government. Groups A, B, and C do not retaliate and, as a result, civil war and atrocities do not resume. That is, Group-D gains control through violence, but unless challenged, no further violence or atrocities will occur. I submit that, even in such a case interveners may have a duty to use force in order to protect the democratization process of the target-state. If, as argued in Chapter 3, the right to national self-determination is a fundamental human right and if this right is exercised by the nation through democratic elections, then, it seems to me, that this right and its realization (through democracy in this case) must be protected. More strongly, in accordance with (D6), interveners have a duty to aid the target-population, using force if necessary if their right to national self-determination is in danger. Therefore, even if the lives of the target-population are not in imminent danger by the threat to/the overturning of the results of a democratic election – they can choose not resist the coup and violence will not reemerge – the threat to their right to national self-determination is sufficient to justify the use of force. This duty, of course, is limited by the just war requirements, but so limiting this duty does not negate it.

So, my claim here is that the use of force is justified both to protect the lives of the target-population from direct threat and to protect the democratic process when/if that process is part of the actualization of national self-determination. One might object to the latter claim as follows. In the paradigmatic highwayman case, a gunman says to you, “your wallet or your life!” Let us pretend that in one pocket you have your wallet and in the other you have a gun, so that you may either shoot and kill the highwayman or give him your wallet. These are your *only* options. Some theorists would argue (and I would agree) that you must give the highwayman your wallet, because your wallet is not worth killing for. One might object that the same is true of democracy. That is, using our previous example, one must allow those

who carried out the coup to stay in power because democracy is not worth killing for. I do not agree with this claim. To give up one's wallet is not to give up a fundamental human right. Though, when national self-determination is exercised democratically, to give up democracy is to give up a fundamental human right. The huge differences in value between a wallet and democracy make these two examples incongruous. Instead, imagine that the highwayman says that he will kill you unless you agree to be his slave (thereby forcing you to choose between your life and your autonomy). Here it is not clear that you must agree to be his slave. In fact, I would argue that you do have the right to shoot the highway man in order to protect both your life and your autonomy. In short, it is my view that you may (as the option of last resort) use force, including lethal force, to protect your fundamental human rights when they are under unjust attack. It is on these grounds that I have argued that the use of force is justified in protecting democracy when/if it upholds the right to national self-determination.¹²⁴

5.3 Long-term Post-Atrocity Stability

The final part of my argument for duties involving post-atrocity democratization focuses on long-term protection/security of fundamental human rights within the target-state (stability beyond the initial period of political reconstruction). Looking at the 49 cases of mass-atrocities since 1970 listed in Appendix-1, two possible empirical findings emerge which further strengthen the argument for democratization. It must be stressed, for reasons I will return to, that both findings are preliminarily and suggestive, not conclusive.

First, 16 of the 49 cases listed on Appendix-1 experienced repeated instances of mass-atrocity after the initial atrocities ended (a surprisingly low number, in my opinion). Of these countries with repeated instances of mass-atrocity, 63% of the post-atrocity governments

¹²⁴ This argument will prove important in Chapter 7 where we look at the legitimacy of using force to uphold criminal trials. For further discussion on whether an agent is justified in using force, including lethal force, to protect fundamental human rights other than the right to life (or even lesser rights), see (Fabre forthcoming; Hurka 2005; Norman 1995:117-158; Rodin 2004:122-140).

(governments which took power after the initial atrocity) were autocratic, 25% were anocratic, 6% were democratic, and 6% were failed states. These figures suggest that societies with post-atrocity governments which are either autocratic or anocratic are notably more likely to experience a recurrence of atrocities than those with democratic governments. Put another way, individuals' rights to physical-integrity, autonomy, and national self-determination are more likely to be violated (during the recurrence of atrocities) in post-atrocity societies which establish autocracies or anocracies than in post-atrocity societies which establish democracies. Of course other factors such as the economic situation, land ownership, demographics, lingering ethnic/national resentment, the influence of neighbouring/intervening states, the number of past episodes of atrocity, etc., in each state certainly impact the likelihood of recurrence of atrocity, so more research needs to be done before we can determine, conclusively, the correlation between post-atrocity government type and the recurrence of atrocity. Also, we would need to scrutinize, more closely, the movement/interplay of causality between government type and the recurrence of mass-atrocity. However, I think it is fair to say that the type of government a state has often has considerable influence on how each of these possible other factors are dealt with. I submit that this preliminary finding, in accordance with (D4) and (D5), strengthens the claim that interveners have a duty to try to democratize the target-state.

The second empirical finding which supports the claim that interveners have a duty to try to democratize the target-state looks at current measurements of the protection of fundamental human rights within each of the target-states listed in Appendix-1. To calculate the level of protection of fundamental human rights within each state, I have included measurements from both the Political Terror Scale (PTS) and Failed State Index's (FSI) human rights indicator. The PTS measurements are based on the annual human rights reports of Amnesty International and the US State Department and indicate the level of political

violence and terror within each country.¹²⁵ Each country is given a rating from 1 to 5.

Ratings of 4 or 5 indicate that human rights violations take place on a large scale; “[m]urders, disappearances, and torture are a common part of life” (Gibney et. al. 2010). Those countries with a PTS rating of 4 or 5 are marked in red on Appendix-1. Those countries with a PTS rating of 1 or 2, indicating that there are very limited (or no) cases of political terror, are marked in green.

The FSI's human rights indicator ranks countries on a scale from 1 to 10, with 10 indicating widespread violations of fundamental human rights. More specifically, within countries scoring high, from 8-10, there is a considerable amount of “violence against innocent civilians,” a large number of political prisoners, a high level of repression, and “[w]idespread abuse of legal, political, and social rights...of individuals, groups, and institutions” (FSI 2011).¹²⁶ I have also marked states with a FSI human rights measurement of 8 or higher in red on Appendix-1.

Of the 33 countries on Appendix-1, 17 countries currently score high on one or both of the PTS and the FSI databases. Of these 17 countries, 59% are anocratic, 24% are autocratic, 12% are democratic, and 6% are failed states. Conversely, of those countries with low PTS scores – in which political terror is rare or non-existent – 83% are democratic and 17% anocratic. None are autocratic. This data strongly suggests that democratization of the post-atrocity societies significantly increases the chances that the fundamental human rights of the target-population will be protected beyond the initial stages of post-atrocity political reconstruction. Again, there are certainly factors other than the type of government a state has at play here and more research needs to be done to determine, conclusively, the

¹²⁵ PTS lists Amnesty International ratings and US State Department ratings separately, where these ratings diverge, I (as suggested by the PTS website) have given the country the benefit of doubt and used the lower score.

¹²⁶ The FSI explanation of measurements is somewhat vague as to what constitutes a high indicator. It simply states: “Each Indicator is rated on a 1 to 10 scale with 1 (low) being the most stable and 10 (high) being the most at-risk of collapse and violence. Think of it as trying to bring down a fever, with high being dangerous and low being acceptable” (FSI 2011). Given this, setting 8 as the indicator of a particularly serious human rights situation is somewhat arbitrary. I came to this number by taking the average indicator measurement for those states included in the 'Alert' zone of the FSI, which is 8.3.

relationship between post-atrocity government and the long-term protection of fundamental human rights. However, it seems clear that the type of government does, nevertheless, play an important role in the security of fundamental human rights. This data (in line with D5) further supports the arguments that interveners have a duty to try to democratize the post-atrocity state.

5.4 Conclusion

I have herein argued that interveners have the duty to try to democratize the target-state (by helping to start the democratization process) and, further, that in certain circumstances this duty may require the use of force. This conclusion is based primarily on the claims made in Section 5.2 (1) that post-atrocity political reconstruction, and more specifically the target-populations' right to national self-determination, requires at least two elections, (2) that interveners have the duty to help facilitate these elections, and (3) that in order to protect the lives of the target-population from the potential dangers of holding post-atrocity elections, interveners have the duty to try to set the foundations for democracy in the target-state prior to such elections. Additionally, the discussion in this section highlighted the fact that the duty to try to democratize the target-state involves the commitment of outsiders to be involved in the target-state beyond the holding of elections. Intervenors, at a minimum, must help to secure election results (thereby preventing results like those in Angola and Cambodia in 1992 and 1993 respectively).¹²⁷ The argument that interveners have a duty to try to democratize the target-state is strengthened by the claim, defended in Section 5.1, that democracy is the least unjust form of government. If government institutions must be set up before an election takes place, designing these institutions in accordance with democracy – the least unjust form of government – seems the most legitimate option for interveners.

¹²⁷ Paul Collier argues that one effective way of ensuring electoral results and preventing the recurrence of violence/atrocities within the target-state is for outsiders to provide “over-the-horizon guarantees” by which outsiders guarantee the target-population and its elected government that if predators violently attack either, the outsiders will deploy to the target-state and stop such attacks. The UK currently provides an over-the-horizon guarantee to Sierra Leone (Collier 2009:85-87)

Lastly, the argument for democratization is further strengthened by the preliminary empirical findings examined in Section 5.3 which suggest that the establishment of democracy within post-atrocity societies increases the chances that the fundamental human rights of the target-population will be secured in the long-term. Ultimately, my argument centres on (D5) and holds that because democracy is better at protecting individuals' rights to physical-integrity, autonomy, and national self-determination than any other form of government, in most post-atrocity cases, individuals (both the interveners and the target-population), have a duty to try to establish democratic institutions within the target-state. With all these arguments in mind, we have established that interveners have a duty to try to democratize the target-state. That said, before we move on it is necessary to acknowledge the limits of this duty, as indicated by the word *try*.

The possibility, noted earlier, that a majority of the target-population may not support democracy brings us to the limits of the duty of interveners to try to democratize the target-state. Studies of efforts to democratize post-atrocity societies show that democracy cannot be fully imported from outside; while the role of outsiders is crucial, the target-population must support democratization and have an active and meaningful role in the process in order for democratic institutions to be viable (Call & Cook 2003:238-239; Etzioni 2004:15; Fukuyama 2005:85-87; Ignatieff 2008:321; Jarstad 2006:6-10; ; Light 2001:87-90; Zurcher 2011:93-94).¹²⁸ The importance of so-called local ownership is apparent even in the definition of democracy: democracy allows citizens to decide upon government policy and/or government representatives. If interveners shut out the target-population from the democratization process or if the target-population simply does not support the process, democratization will

¹²⁸ There is some debate within the post-atrocity literature as to what the exact balance should be between intervener/target-population involvement in the democratization process, however it is sufficient here to simply note that democratization of the target-state requires the involvement of both the interveners and the target-population.

not succeed and, more strongly, cannot exist.¹²⁹ This has two important implications for the interveners' duty to try to democratize the target-state.

First, this duty requires interveners to actively and constantly involve and empower members of the target-population in the democratization process. The interveners role must be advisory and supportive not determinant. This means that interveners have no right or duty to *impose* a particular form of democracy – or even democracy itself – on the target-population (in line with (D4). There may be a grey area between strongly advising and supporting through, say, diplomatic pressure/rewards, and imposing democracy where questions may arise, but the point is that where it is clear that the target-population does not support democracy, interveners are not justified in using force or severe terms of conditional aid as a way to force the target-population to adopt democracy (I return to the subject of conditional aid in the next chapter).

Second, because democratization requires the participation of the target-population, and because the interveners' duty to try to democratize the target-state is, therefore, dependent upon factors that the interveners cannot control, it is a limited duty. If it is clear that the target-population does not support democracy, then the interveners' duty to try to democratize the target-state is rendered void (though the post-atrocity cases over the last two decades suggest that this is unlikely). It is important to stress here, however, that the emphasis is on the target-population and their support, or lack thereof, of the democratization process. The interveners' duties to try to democratize the target-state are not rendered void if, as might be expected, political elites do not support the democratization process while the target-population does.

¹²⁹ A version of this lack of support may occur in target-states in which two or more sub-state nations are irreconcilably opposed/hostile to each other. Each nation may support democracy within its nation and/or with non-hostile sub-state nations, but refuse to form political institutions (of any form) with the hostile sub-state nation. In such extreme cases, depending on other factors, secession may be warranted (in which case, democratization remains an option).

We have now arrived to the answer of the question driving this chapter: Do interveners have a duty to try to democratize the target-state? My answer is yes. This duty is both limited and complex. It requires interveners to help facilitate democratization while, at the same time, allowing and empowering the target-population to be the primary drivers of this process. It is limited by the target-populations participation in and support of this process. It may also require the use/threat of force in order to protect the lives of the target-population during the particularly volatile process of democratization and to protect the process itself.

Chapter 6: Conditional Aid

A boater comes upon a man who is about to drown in the middle of an otherwise empty lake. The boater says, ‘I will rescue you only if you promise to pay me \$10,000.’ The World Bank says to a post-atrocity government ‘we will give you aid to protect your citizens and rebuild your country only if you agree to certain conditions.’ One of the central principles that I have relied on throughout this thesis is the duty to aid, D6, which holds that if V is in grave danger and R has the ability to aid V without unreasonable risk to himself (the excessive risk proviso), then R has a duty to aid V. The scenarios above present an interesting question regarding this duty: Is it ever morally legitimate for R to make his aid conditional upon some action/inaction of V? That is, granting that an actor *is morally obligated* to provide aid, is it ever morally legitimate for him to place conditions upon his provision of aid? This chapter examines this question and its implications for post-atrocity intervention. The ultimate aim is to identify which conditions the international community may not, may, and/or must (morally speaking) place on the provision of economic aid to post-atrocity societies.¹³⁰

This chapter is divided into three sections. Section 6.1 examines the literature on coercion (within the field of political theory) and, *inter alia*, argues that in many cases where R puts conditions on his aid to V, R coerces V. Building on the coercion literature, Section 6.2 identifies specific kinds of conditional aid and analyses whether they are just or unjust. This section ends with a list of just and unjust forms of conditional aid which is then used, in Section 6.3, to analyse the morality of the various conditions placed on post-atrocity aid.

6.1 Coercion

Before we begin our examination of the coercion literature, it is necessary to highlight four aspects of the conditional aid scenarios we are concerned with herein. First, the

¹³⁰ We return to these scenarios shortly. The first scenario comes from Nozick (2007:266).

scenarios are those in which V is in desperate need of aid – either V or someone in V’s care will die or otherwise permanently lose the ability to lead a minimally decent life – and R has the ability to aid V. Second, R has the ability to aid V without unacceptable risk to himself. Third, R’s condition of aid is such that V must choose between agreeing to R’s condition and receiving aid or dying/losing the ability to lead a minimally decent life and/or having someone in his care die/lose the ability to lead a minimally decent life (for ease of exposition, I herein concentrate on loss of life, though the arguments will also apply to the loss of the ability to lead a minimally decent life). Lastly, R could provide aid to V unconditionally; R’s condition is not physically unavoidable given the circumstances of the case. Throughout this chapter, let us assume that these four criteria are met.

Since the conditional aid scenarios we are concerned with are limited by these four criteria, we can bypass a great deal of disagreement found in the coercion literature. Within this literature, political theorists argue at great length about whether coercion always consists of R *threatening* V, or whether an *offer* can also be coercive. Theorists also debate where the precise lines between coercion, exploitation, and bribery fall. Though these debates and their resolutions are important and interesting in the wider world of political theory, for the limited purposes of this chapter we can focus on the features of coercion on which there is relative (though not complete) consensus.

Though theorists often disagree about the finer details of coercion (they disagree, as noted, on what separates it from exploitation), there is agreement on what, broadly speaking, coercion always entails. Firstly, limiting our discussion to coercive threats, most theorists agree that when we say that R coerces V, we are saying that R “intentionally uses a credible and severe threat of harm” in order to control V (Beauchamp 2009:69).¹³¹ Note that there are two features captured in this statement which must be present in order for us to say that R

¹³¹ Limiting our discussion in this way is not meant to indicate that an offer cannot be coercive (as I think it can but for the purpose of this chapter we can remain agnostic about this question).

coerces V. R must (a) threaten V and (b) he must do so in order to get V to act in a certain way. Condition (a) without (b) is more akin to simple assault, while condition (b) without (a) could be bribery, persuasion, or advice (Bayles 1972:21). In the basic coercion scenario, then, R says to V: ‘Do X or else I will do T to you (where T is the threatened harm).’

The second point of agreement is that when V is coerced, he is effectively *forced* by R to act in a certain way, X. R’s threat, T, makes doing X the *only* “prudent or reasonable choice” for V (Barry 1986:25; Beauchamp 2009:69-70; Cohen, G. 1983:4; Feinberg 1989:196, 231; Frankfurt 1973:83; Held, V. 1972:50-51; Kleinig 2009:14-17; Murphy 1981:80-87; O’Neill 2000:88-90; quote from Wertheimer 2007:310). To be sure, there is some sliver of choice involved here. In the paradigmatic robbery case where R says ‘give me your wallet or I will shoot you’ V *can* choose death. However, for most of us death (or the death of a loved one) is something to be avoided at (almost) all costs, so a threat whose terms are ‘do this or die’ leaves little room to speak of choice in a meaningful way. Thus, V is effectively forced to do X because the costs of not doing X are unreasonably high (in light of this point, I will sometimes refer to coercion scenarios as placing V in a forced choice).

Building on this claim, a few theorists argue that by forcing V to act in a certain way, R violates V’s fundamental human rights (Beauchamp 2009; Feinberg 1989:234; Frankfurt 1973:80-81; O’Neill 2000:88-90). When R coerces V he uses V solely as a means to achieving some benefit for himself. In so doing, he fails to treat V as an end in himself – as an intrinsically valuable human-being – and, thus, violates V’s right to respect. Further, when R forces V to take a particular action he undermines V’s ability to make an autonomous choice (not necessarily permanently) and thereby violates V’s right to autonomy.¹³² On this view, then, most cases of coercion involve rights violations.

¹³² See Chapter 2 for discussion of these rights.

Thirdly, from the coercion literature it is clear that a coercive threat can take (at least) three forms:

Coercive-threat₁ – R causes some harm to V and threatens to continue this harm until V does X.

Coercive-threat₂ – R threatens to cause some harm to V unless V does X.

Coercive-threat₃ – R owes V something, B, and V is in desperate need of B, but R threatens to withhold B unless V does X.

The first two threat types are fairly straightforward. In coercive-threat₁ R kidnaps V and says he will release V only if V agrees to pay R \$10,000. In coercive-threat₂ R puts a gun to V and says he will shoot V unless V hands over his wallet.

Coercive-threat₃ is a bit more complicated and contested. To see this complication, consider the following. V has fallen down a well. If left in the well, V will die. R comes along and says to V that he will throw a rope down to V and pull him up (and thereby save V's life) only if V agrees to pay R \$10,000. The question is whether R's proposal to V is an offer or a threat. It is generally thought that "a threat holds out to its recipient the danger of incurring a penalty, while an offer holds out to him the possibility of gaining a benefit" (Frankfurt 1973:62). On one reading of the well scenario, it might be thought that R is offering V the benefit of aid and, thus, making an offer. Against this, some theorists argue that where R owes V a benefit, B, the withholding of B is a penalty and, thus, R's proposal is a threat (Bayles 1972:23; Haksar 1976:68-69; Nozick 2007:265-266). That is, one does not *gain* a benefit by being given something that one is *already owed*. We do not think, for example, that after a month of hard labour an employee is given the benefit of pay. Rather, we think that the employee is owed his pay and that if this pay is withheld he is penalized. Similarly, if R has a moral duty to aid V (as in the well scenario) then, on this view, R owes V aid and his proposal to withhold this aid is a threat.¹³³

¹³³ For those theorists, myself included, who hold that an offer can be coercive, the definition of a coercive offer would be quite similar to coercive-threat₃ (Feinberg 1989:233; Frankfurt 1973; Held 1972; Steiner 2007:289; Kleinig 2009:15; Lyons 1975:435; Wertheimer 2007:311). The crucial distinction is that in a coercive offer (or at least one form of a coercive offer),

The final point to discuss is this: the fact that R forces V to act in a certain way does not, by virtue of this fact alone, make R's coercive threat unjust (Feinberg 1989:197-198; Haksar 1976:72-73; Murphy 1981:80-83). It would be misleading to say that there is wide consensus on this point, but I include it because it is quite relevant to the issue of conditional aid in the post-atrocity setting. To see how a threat may be coercive and yet just, consider the following scenario:

Doctor-1: V₁ needs a life-saving drug. R, a doctor, has the drug. R knows that V₁ intends to unjustly kill V₂ as soon as he receives the drug. R says that he will give V₁ the drug only if he agrees to hand-over his gun and not commit murder.¹³⁴

Intuitively, the doctor's condition seems morally legitimate. Here R coerces V₁ in order to save V₂'s life. If we accept that it is sometimes just to kill an attacker in order to save a victim (as argued in Chapter 2), then it seems reasonable to also accept the claim that it is sometimes just to coerce an attacker in order to save a victim. We will examine this scenario in greater detail shortly, but for now let us accept the claim that conditional aid is not always unjust (even though it forces V to act in a certain way).

While I do not have the space to defend these four points of (relative) consensus further, I think they must be granted. So let us accept and assume the following hold in the scenarios we discuss: (1) when R coerces V, R uses a threat of harm in order to get V to act in a certain way; (2) when R coerces V, he effectively forces V to act in a certain way and therefore, in most cases, violates V's right to respect and to autonomy (we will discuss an exception to this); (3) there are different types of coercive threats, one of which, coercive-threat₃, involves the threat to withhold a benefit R owes to V; and (4) not all coercive-threats are unjust.

¹³⁴ V desperately needs B, R has no moral duty to provide B, but says he will give B on the condition that V does X. Those theorists who do not believe an offer can be coercive would most likely say R exploits V (Bayles 1972:22-23, Gert 1972:47-48; Nozick 2007). In either case – coercive offer or exploitation – theorists agree that (in most cases) R's proposal is unjust. This, of course, assumes that R cannot prevent V₁ from murdering V₂ in some other, (less harmful) way (for example, by helping V₂ to flee). For a similar scenario see (Haksar 1976:72).

6.2 Coercive Conditional Aid

As noted, the conditional aid scenarios we are concerned with all involve a situation in which V is in grave danger and R has the ability to aid V without excessive risk to himself. Accordingly, all fall under the category of coercive-threat₃ (though may also include elements of coercive-threat₁ and ₂). The aim of this section is to closely examine various forms of conditional aid and identify the different moral wrongs that these different conditions entail (in addition to the violation of the right to respect and autonomy which, as noted, I understand to occur in almost all the cases we discuss). To this end, we will examine three forms of coercive-threat₃ which are found in the literature (W1, W2, and W3 below) along with three forms which I have not yet encountered in the literature (W4, W5, and W6). Lastly, we will examine the circumstances under which placing conditions on aid is morally obligatory (J1). Throughout, I will use coercive-threat₃ and conditional aid interchangeably.

Many theorists agree that conditional aid is unjust in those cases where R has intentionally or foreseeably *caused* the circumstances which put V's life in danger (without just cause). Let us call this Wrong-1 (W1). (W1) is illustrated by the following scenarios:

Boating-1: A boater throws his companion overboard. The companion cannot swim and will drown unless the boater pulls him from the water. The boater offers to rescue the man on the condition that the man pays him, the boater, \$10,000.

Millionaire-1: A lecherous millionaire injects a child with an "organ-impairing microbe" which will cause the child to die unless he undergoes an expensive surgery. The child's mother cannot afford the surgery. The lecherous millionaire says to the child's desperate mother that he will pay for the surgery if she agrees to be his mistress (Feinberg 1989:244).

Chemical-1: A chemical company dumps toxic waste into a village's water source. If the contaminated water is consumed, the victim will suffer a long and painful death. Many villagers have consumed the water. Luckily, the chemical company has found a chemical that will counter the effects of the toxic waste and save the lives of the victims. The chemical company offers the victims this life-saving remedy on the condition that the villagers agree, contractually, that they will buy all their chemical products exclusively from the chemical company (from small things like cleaning products to chemicals for the village's water

treatment plant).¹³⁵

In all three scenarios, R unjustly creates the circumstances which place V in a forced choice, thus these scenarios combine coercive-threat₁ and coercive-threat₃.¹³⁶ There is, of course, a difference between Boating-1 and Millionaire-1 where R *intentionally* places V in a forced choice and Chemical-1 in which R unintentionally but *foreseeably* creates the forced choice. On account of this difference, we may want to say that boater's and the millionaire's actions are more morally repugnant than the chemical company because the motivating purpose of the boater and the millionaire is to force V to act in a certain way while, by contrast, the chemical company is, at first, 'just' extremely irresponsible. The chemical company ought to have known (because it was reasonably foreseeable) that dumping toxic chemicals into the village's water supply would very likely have such dire consequences. So, despite the difference of intentionality, all fit under (W1) because in all three scenarios, R knowingly and willingly places V in a forced choice (this point will prove important in our discussion about post-atrocity conditional aid).

The distinct moral wrong of (W1), then, unlike the scenarios we will review below, is not centred on an unjust condition applied to aid but, rather, focuses on the fact that R intentionally or foreseeably creates the circumstances under which V needs aid in the first place (thus it focuses on the coercive-threat₁ aspect). It is the throwing overboard of the companion, the injecting of the child, and the dumping of toxic waste that are the focus of (W1) rather than the propositions of aid later made by the boater, the millionaire, and the chemical company that are spotlighted in (W1).

¹³⁵ I borrow this scenario, with modification, from Feinberg (1989:196)

¹³⁶ The qualifiers 'unjustly' and 'without just cause' are meant to allow for the possibility that R causes V's desperate situation in an act of justified self-defence and then offers aid to V on some condition. R, in such a case, would not be committing (W1) (though he might be committing one of the wrongs we will discuss next).

Another important feature of (W1) is that, while (W1) is always morally wrong, its occurrence does not necessarily render the entire conditional aid transaction unjust – a point of importance for post-atrocity conditionality. To see this, consider the following:

Doctor-2: V_1 needs a life-saving drug. R, a mad-scientist doctor, has the drug but wants to try out a new drug that he has developed. All the mice to which he has given this new experimental drug have died, but he (irrationally) wants to try it on a human subject nevertheless. R knows that the drug will probably kill V_1 , but he hopes for the best and gives V_1 the drug anyways. As expected, the drug proves poisonous. V_1 will die unless he gets an antiserum which R has just discovered. R, in the meantime, has found out that V_1 intends to unjustly kill V_2 as soon as he receives the antiserum. R says that he will give V_1 the antiserum only if he agrees to hand-over his gun and not commit murder.

In this scenario, it is clear that R has committed (W1) and, thereby, wronged V_1 . However, given V_1 's plan to kill V_2 , R's condition seems morally justifiable (I will return to cases of just conditions of aid shortly).

Before we move on to (W2), it is necessary to dissect Millionaire-1 a bit more. Millionaire-1 is interesting because it involves multiple victims which R victimizes in different ways. R endangers the child's life and violates (D4), his duty to avoid, and (D6), his duty to aid, in relation to the child's right to physical-integrity. However, the assault is not meant to, and does not, coerce the child. Rather, the millionaire coerces the mother. Though the millionaire does not coerce the child, he uses both the child and the mother solely as means to achieving his purpose of acquiring a mistress and thus violates their rights to respect. Further, R's assault on the child violates, in a physical way, the child's right of autonomy and, through creating the coercive forced choice, also violates the mother's right of autonomy. As we move on through variations of this scenario, it is helpful to keep these distinctions in mind.

Millionaire-1 (and subsequent Millionaire scenarios) is also unique in that, because it involves multiple victims, it presents us with a moral wrong that is not apparent in the single victim cases. I suggest that in cases where there is more than one victim and these victims

are joined in a special relationship, R also violates V's right to community (understood as the right of individuals to form, shape, and maintain valuable relationships with others). In *Millionaire-1*, the millionaire, by threatening the child's life, threatens to end the parent-child relationship and, in so doing, violates both the child's and the mother's rights to community – in this case their right to family. This point will become interesting when applied to post-atrocity aid, as it suggests the possibility that denial of aid to the target-population *may* (among other things) violate their right to community – in this case their right to national self-determination.

Let us focus now on the different types of conditions that are unjust for R to place on his aid to V. We will begin with the condition most often discussed in the literature, (W2).

Consider the following scenarios:

Boating-2: A boater comes upon a man who is about to drown in the middle of an otherwise empty lake. The boater offers to rescue the man on the condition that the man pays him, the boater, \$10,000 (Nozick 2007:266).

Millionaire-2: A lecherous millionaire says to a desperate mother that he will pay for the lifesaving surgery her son needs if she agrees to be his mistress (Feinberg 1989:230).¹³⁷

In these scenarios, R's condition of aid takes advantage of V's dire circumstances for his own excessive gain (Haksar 1976:69-71; Zimmerman 1981:133-153). In Feinberg's words, R's condition of aid in such cases is "parasitical, exploitative... unconscionable... opportunistic"

¹³⁷ I realize that this case is a bit controversial, as some readers may object that we do not generally say that millionaires have a duty to pay for dying children's medical care. I see no reason, however, why this should not be so, since, so long as the excessive risk proviso is met, this seems to be required by D6. Of course, if a millionaire had to aid every dying child, this may become excessively risky (and this would be mitigated by (D5) which spreads the costs of aid amongst many individuals), but when confronted with one child, this is not the case. To demonstrate my reasoning here on less controversial terms, consider the following. A man has a food-store of over one million apples. He comes upon a starving child who will die if he does not receive food. The man can save the child by giving him a small bushel of apples. The man does not need the apples for his own survival and, in fact, many of the man's apples will rot before he is able to eat them himself. Thus the excessive risk proviso is met. It seems clear in this case that the man has a duty to give the child the apples which will save his life. If he then says to the child's mother that he will only provide the apples if she agrees to be his mistress, then he (a) violates his duty to aid the child (D6), and (b) coerces the mother. For those readers still on the fence, consider the following. A retired man (who has lots of spare time) comes upon a child drowning in a pool. The mother of the child is injured and cannot save the child. The man says he will save the child (and use some of his spare time) if the mother agrees to be his mistress. Here, it seems indisputable that the man violates (D6) in respect to the child and coerces the mother. I do not see any significant differences between these cases; in all three the man has a duty to aid the child even though this requires him to give up some of his excess resources – money, apples, time. For those still unconvinced, but who nevertheless hold that R is acting unjustly by way of a coercive or exploitative offer (as discussed in footnote 133), we can agree to disagree on terms, for the distinct moral wrongs discussed regarding these cases do not hinge upon these terms.

(1989:198). Here again, R violates V's right to respect by treating him solely as a means. R violates V's right to autonomy by forcing V to act in a certain way.¹³⁸ R violates (D4) and (D6) in relation to V's rights to physical-integrity. However, what (W2) captures is the fact that R not only does all this, he does it for reasons of greed and/or opportunism and this, intuitively, seems to make all the other moral wrongs he commits even worse.

Another moral wrong identified in the literature (though less often), (W3), is when R's condition of aid is trivial or degrading though not particularly profitable for R. Consider the following scenario:

Millionaire-3: A millionaire says to a desperate mother that he will pay for her son's lifesaving surgery if she agrees to dig holes in his garden and then fill them back up with dirt.¹³⁹

Though the millionaire's condition in Millionaire-3 does not seem *as* abhorrent as that given in Millionaire-1 and 2, it is, nevertheless, morally wrong. The distinguishing characteristic of (W3) is that R's condition of aid is so trivial or degrading that it conveys that V's life is, essentially, worthless (Barry 1986:25).

A fourth unjust condition of aid, (W4), is a condition by which R tries to exert influence over some aspect of V's life which has no necessary connection to the deliverance of aid and, therefore, constitutes unjust interference in V's special relationships. Consider the following scenario:

Millionaire-4: A boy will die unless he undergoes surgery. A well-intentioned millionaire, who doesn't like the boy's mother's parenting style, says that he will pay for the surgery on certain conditions. The mother must agree to read the boy a book every night, take the boy to the park at least once a week, and spend at least one hour a day with the boy with her mobile-phone, computer, and television turned off.

The reader may agree that the millionaire's conditions, if implemented, would help the mother be a better parent. It is not the content, per se, of the conditions which is morally

¹³⁸ See Feinberg for a discussion on how an offer/threat can, in some cases, be freedom enhancing (by, for example, in Millionaire-2, giving the mother and child the option of having the surgery paid for) and yet be unjust coercion (1989:230-234).

¹³⁹ See Barry for a similar scenario (1986:25).

wrong in (W4). Rather, the conditions are wrong because they constitute an unjust interference into the parent-child relationship; the millionaire does not simply advise the mother, he forces her, by his condition, to change her parenting style. While it may be advisable that the mother reads to her child, whether or not she does this is a matter that must be worked out between the mother and child. (W4), then, is a violation of V's (both mother and child) right to community (family) by way of unjust interference. This, of course, is not the only wrong R commits. As in the previous cases, he also violates both the mother and the child's right to respect, right to autonomy, and right to community (in the additional manner of threatening to allow the child to die and thus destroy the family). He also, as in previous scenarios, violates his duty to aid the child. In addition to all this, he unjustly makes aid to V unnecessarily dependent upon some action of another person – a point which I return to in (W6).

So the distinctive feature of (W4) is that R's condition unjustly interferes in a special relationship which V has with another person (who might also be seen as a victim). Though I have not seen (W4) discussed in the literature, it is important because one of the claims often made against conditional economic aid is that it gives the international community undue influence in the affairs of the target-state and, thereby, violates the target-population's right to national self-determination (a claim we will examine in the next section).

Another morally wrong condition of aid, (W5), is a condition which R could legitimately ask for in *separate* circumstances but which cannot justifiably be made in connection with aid. To illustrate this, consider the following scenarios:

Boating-3: A boater comes upon a man who is about to drown in the middle of an otherwise empty lake. The boater recognizes the man and realizes that the man owes him \$10,000 (a loan the boater made to the man on fair terms). The boater offers to rescue the man on the condition that the man pays him, the boater, the \$10,000 owed within three days.

Doctor-3: V needs life-saving surgery. R, the doctor, says to V that he can and will do the surgery, but only for a fee. The fee is fair in so far as it contributes to the expenses involved

with the surgery, helps to pay the debt the doctor owes for his training, and provides the doctor with part of his reasonable standard of living.

It is certainly less clear that there is a moral wrong being committed in the above cases, but I submit that there is. We can readily grant that the boater has a legitimate claim that V repay the loan and the doctor has a legitimate claim to charge for his services. Moreover, a case could be made that, in Doctor-3, V even has a moral duty to pay R (if he is able) in order to contribute to R's continued ability to practice medicine and aid others in dire need.

However, keeping in mind that the excessive risk proviso is met, it seems morally inappropriate for R to make such payments a condition of aid. The morally required thing for R to do, it seems to me, is to aid V and then try to settle the debt.

One might object that if R is morally justified in requesting payment for his services, why is he not able to make his services conditional upon payment, especially where such payment will help ensure the availability of aid to others. There are two problems. First, in many of these desperate aid situations time is a critical factor. If a fireman insists on standing outside a burning house until the people within agree to pay him, several people may die in the process. Secondly, there may be cases in which a victim cannot afford to pay. It seems to me that, when the excessive risk proviso is not a factor, denying a victim aid because he cannot afford to pay for one's services seems unjustifiable.

The final unjust condition of aid, (W6), occurs when R's condition, though well-intentioned, makes aid to V unnecessarily conditional upon the actions of some other person,

P. Consider the following scenarios:

Millionaire-5: A boy will die unless he undergoes surgery. His mother, P, is a drug addict. A millionaire offers to give the mother money for the life-saving surgery on the condition that she spends the money on the surgery not drugs.

Doctor-4: A boy is in need of life-saving surgery as the result of a beating by, P, his parent. The doctor tells P that he will perform the life-saving surgery, on the condition that P agrees not to beat the boy again.

These scenarios are interesting because R is actually trying to act in morally just way – he is trying to protect the child – but is misguided in his attempt. R’s condition is misguided because it makes saving V’s life conditional on P agreeing not to act unjustly towards V (this is especially misguided when P is the cause of V’s predicament in the first place). When the fulfillment of R’s duty to V is not literally dependent upon P’s fulfilling his/her duty to V, then R’s duty to V ought not to be made dependent upon P’s fulfilling his/her duty. In Millionaire-5, the millionaire ought simply to bypass the drug-addicted mother and pay the doctors to perform the surgery. Similarly, in Doctor-4, the doctor ought to perform the life-saving surgery for the child and report the parent to the appropriate child-protective services. So (W6) is a moral wrong because it makes aid to V unnecessarily conditional on the actions of some other party P.¹⁴⁰ R’s condition in (W6) is certainly not an egregious wrong like (W1) or (W2), but it is, nevertheless, morally wrong (perhaps it is more fitting to call it morally mistaken). (W6) will be especially pertinent when we discuss post-atrocity aid.

Now that we have identified morally wrong conditions of aid, let us return to the matter of morally justifiable conditional aid. Consider, again, the following:

Doctor-1: V₁ needs a life-saving drug. R, the doctor, has the drug. R knows that V₁ intends to unjustly kill V₂ as soon as he receives the drug. R says that he will give V₁ the drug only if V₁ agrees to hand-over his gun and not commit murder.

This scenario presents R with a moral dilemma: he has a duty to aid V₁ but he knows that if he aids V₁ unconditionally he will be enabling V₁ to commit a moral wrong against V₂. This conflict, I submit, requires us to qualify (D6) beyond the standard excessive risk proviso.

Such a qualification is made by Peter Singer in his seminal article, “Famine, Affluence, and Morality,” in which he states (D6) as follows (1972:231):

[I]f it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it. By ‘without sacrificing

¹⁴⁰ To reiterate, this does not dispute the fact that the child’s parent needs to be reported to child protective services and/or needs to attend counseling and parenting classes. The point is that aid to the child ought not to be made dependent upon this; aid to the child and dealing with the parent are two separate matters.

anything of comparable moral importance' I mean without causing anything else comparably bad to happen, or doing something that is wrong in itself, or failing to promote some moral good, comparable in significance to the bad thing that we can prevent.

Singer's account of (D6) goes beyond the excessive risk proviso which applies to the risk incurred by R, and adds that aid is also conditional upon that aid not causing/allowing some other foreseeable moral wrong to occur (I term this the Singer proviso).¹⁴¹ Accordingly, a justifiable condition of aid, (J1), is a condition which is made to prevent a moral wrong that would likely occur as the result of R's unconditional aid to V. There may be some difficult cases which fall somewhere between (J1) and (W6), but the majority of cases will be distinguishable. One useful distinction is made evident by a comparison of Doctor-4 (an instance of (W6)) and Doctor-1 (an instance of (J1)). In Doctor-1, R's unconditional aid to V will foreseeably enable V to commit a moral wrong. By contrast, in Doctor-4, there is no reason to believe that if R gives unconditional aid to V (the child), V will then go and commit some moral wrong. The main difference being whether the moral wrong R is trying to prevent is one that V will likely commit if he receives unconditional aid.

Another crucial point about (J1) is that where R's unconditional aid to V will likely lead to some serious moral wrong, conditional aid is not only morally justifiable, it is (in my view) morally obligatory. In Doctor-1, R has a duty to aid V₁ and V₂. V₂'s life, however, is only in danger if R aids V₁ unconditionally. This creates a very interesting dynamic. V₁, by intending to murder V₂, has placed R in a forced choice in which R must choose between the following:

Option-1 (unconditional aid): R aids V₁ unconditionally and thereby enables him to unjustly kill V₂.

Option-2 (no aid): R refuses aid to V₁ and, thereby, ensures that he does not kill V₂.

¹⁴¹ Whether or not Singer meant his account of the duty to aid to be interpreted in this way is unclear because throughout the remainder of the article he concentrates exclusively on the standard excessive risk proviso, so I may be taking a bit of liberty here. Accordingly, my claim is not that Singer actually argues for (J1) in his article (and, in fact, some read Singer as demanding unconditional aid in all cases (Collingwood 2003)). My claim, is simply that (J1) is an appropriate understanding of (D6) and Singer's statement expresses (J1) very precisely (whether he intended this or not).

Option-3 (conditional aid): R aids V_1 on the condition that he hand-over his gun and agrees not to kill V_2 .

Option-1 is morally unjust because, if chosen, R would be partly to blame for the unjust killing of V_2 . Where Option-3 is not available, Option-2 seems to be the only morally justifiable course. However, I suggest that where Option-3 is available and reasonably reliable it is morally obligatory. A less optimistic reader may argue that Option-3 will very rarely be reasonably reliable and, therefore, R ought to choose Option-2 in all cases on the grounds that V_1 will renege on his promise to R and kill V_2 once his own life is saved. However, if we agree that in cases of self and other defence, the death of the perpetrator ought to be the option of last resort (as argued in Chapter 2), then it seems that, where viable, Option-3 is morally required. Furthermore, when we apply this type of scenario to more complex cases of post-atrocity economic aid, even the less-optimistic reader may agree that Option-3 is the most morally sound option.¹⁴² Whether one is an optimistic reader or not, what is important to take away from this scenario is that when conditional aid is morally justifiable it is also morally obligatory.

The claim that morally justifiable conditions of aid are also morally obligatory leads to the following addition to (D6). If V is in grave danger and R has the ability to rescue V without (a) unreasonable risk to himself (the excessive risk proviso) and without (b) thereby enabling/contributing to some other serious moral wrong (the Singer proviso), then R has a duty to rescue V. In cases where the Singer proviso is not met and R could provide some condition to avoid the other serious moral wrong, R must provide this condition. In cases where the Singer proviso is not met and R cannot provide some condition to avoid the other serious moral wrong, R must not provide aid. This has an interesting implication. Unlike the excessive risk proviso which, if not met, makes R's aid supererogatory, when the Singer

¹⁴² As we will discuss, in post-atrocity cases R may encounter an even more difficult scenario in which withholding aid to V_1 in order to save V_2 may have the adverse effect of seriously harming V_2 or some other group, V_3 .

proviso is not met, aid becomes morally impermissible. Thus, in the converse of (J1) we have another type of unjust aid: (W7) aid is unjust when R gives it *unconditionally* despite having reasonable knowledge that such aid will lead to a “comparably bad” moral wrong.¹⁴³

Before we move on, let us consider (J1) and the rights to respect and autonomy. I noted earlier that most forms of conditional aid violate V’s rights to respect and autonomy because, in most cases, R treats V solely as a means to his own end and forces V to act in a certain way. I also noted that there may be exceptions to this. It seems to me that in cases where (J1) is applicable R does not violate V₁’s right to respect or autonomy because R himself is forced, by V₁, to place conditions on his aid because of V₁’s unjust actions/threats; actions/threats which V₁ could simply opt not to make.

To quickly sum up, the foregoing discussion has established the following conclusions about aid and conditionality:

- (W1) Conditional aid is unjust in those cases where R intentionally or foreseeably causes the situation in which V is in desperate need of aid without just cause (though it may not, on account of this wrong alone, be fully unjust if the condition given falls under (J1)).
- (W2) Conditional aid is unjust when R takes advantage of V’s dire circumstances for his own gain.
- (W3) Conditional aid is unjust when it is trivial or degrading even though not particularly profitable for R.
- (W4) Conditional aid is unjust when it constitutes an unjust interference in V’s special relationships.
- (W5) Conditional aid is unjust when the excessive risk proviso is met and R makes aid conditional upon payment for services or debt (though R, in some circumstances, may legitimately ask for payment after administering aid).
- (W6) Conditional aid is unjust when it makes aid to V unnecessarily conditional on the actions of some other party.

¹⁴³ Though beyond the context of this chapter, this claim poses a controversial question for just war theory: In an unjust war, does a medic have a duty to make medical aid to unjust combatants conditional upon their agreement to stop fighting? See Fabre for discussion of this question (2009a).

- (W7) Unconditional aid is unjust when R gives it despite having a reasonable belief that such aid will lead to a “comparably bad” moral wrong.
- (J1) Conditional aid is morally obligatory when it is made to prevent a moral wrong that is likely to occur as the result of R’s unconditional aid to V.

There may be other distinct forms of morally unjust conditional aid, but those listed will prove particularly useful in our analysis of post-atrocity conditional aid. Of course, it must be conceded that the complexity of post-atrocity conditional aid cannot be fully captured in imaginary interpersonal scenarios like the ones discussed above. However, the guidelines these scenarios have helped to establish, along with those developed in previous chapters, provide a strong starting point from which to begin our analysis of post-atrocity aid.

6.3 Post-Atrocity Conditional Aid

The previous sections showed, among other things, that aid given conditionally is not, as such, unjust. Furthermore, as discussed, the fact that conditional aid limits the recipient’s autonomy does not, by virtue of this fact, render conditional aid unjust. I suggest the same can be said about aid given conditionally to post-atrocity societies. Accordingly, we can dismiss the claims that conditional aid given to post-atrocity states is unjust on the grounds that it is (a) conditional and/or (b) that it limits the scope of target-population’s right to national self-determination (in the sense that it limits their collective choices). Both (a) and (b) may be true in a particular post-atrocity case, but neither are sufficient to show that post-atrocity conditional aid is unjust. The purpose of this section, then, is to distinguish post-atrocity conditional aid which is morally unjust from that which is morally just and obligatory.¹⁴⁴

This section proceeds as follows. First, I show that post-atrocity societies are in desperate need of aid and, subsequently, that post-atrocity cases fit the sort of conditional aid

¹⁴⁴ Thus far, I have not come across normative analysis of conditional aid to post-atrocity societies within the field of political theory. There has been some work written on conditional aid to developing countries, from which I have extracted some general points of insight. The most prominent (and thorough) work in this field is that by Pogge, whom I cite throughout.

scenarios we have been discussing. Next, I identify the ‘clear’ cases of unjust post-atrocity conditional aid. I then examine the current policy suggestions made by post-atrocity economic analysts and evaluate whether the conditions they suggest are morally just.

There are many factors which contribute to (most) post-atrocity societies’ desperate need of economic aid.¹⁴⁵ First, and most obviously, mass-atrocities equate to the deaths of thousands of people which, in turn, equates to the loss of thousands of labourers, businessmen, lawyers, teachers, bankers, politicians, etc. – all necessary elements of a stable economy. Survivors are in dire need of food, shelter, and medical supplies – all of which are in very short supply. Homes, farms, schools, hospitals, businesses, and infrastructure – the building blocks of ‘normal’ life and economic development – lay in ruins. Those structures that remain are likely to have been looted of all valuable contents (which cannot then be used by legitimate owners as capital). As a result of the chaos and destruction of the atrocities, people have moved from sustainable/profit-making life-styles to subsistence living (and where this was already so, the conditions often become even worse). Public services such as power, water sanitation, and basic medical aid are scant or non-existent. What services and institutions remain are often plagued by corruption and graft. Additionally, the target-state has amassed tremendous debts, its revenue generating institutions have collapsed, national and international trade has slowed or stopped, and foreign investment has shriveled or (more likely) disappeared. An illicit “shadow” economy is likely to have taken root (involving the sale of drugs, people, and/or looted natural resources) which undermines legitimate economic development and provides huge profits to a few while further impoverishing the majority of the population. As a result of all these factors, the post-atrocity society is in severe economic

¹⁴⁵ Under the umbrella of economic aid, I include money given either as grants or loans, goods such as food, medical supplies, and building material, and technical equipment and training given to the target-state. I also include money given to ‘outsiders’ for the purpose of providing the target-state with military and civilian personnel carrying out various post-atrocity tasks. Though beyond the purpose of this chapter, I think it would be worthwhile to assess the morality of aid given in the form of loans.

despair. To make matters worse, bleak economic conditions such as these – if not remedied – significantly increase the chance of renewed atrocities and, in turn, renewed atrocities cause even more economic devastation.¹⁴⁶

So the post-atrocity society has a collapsed or ailing economy, there is a high risk of conflict/atrocities recurring (as discussed in previous chapters), and individuals have an immediate need for food, clean water, medical supplies, and shelter. We can, therefore, state without equivocation that V – the target-population – is in desperate need of aid.

International actors can help alleviate this need by supplying food, medicine, and building materials for shelters. They can deploy (or maintain) military forces to provide much needed security and to help reduce the chance of resumed atrocities. They can give the materials, manpower, and transport necessary to rebuild infrastructure and restore/create public service provision along with money and training to help make these services sustainable. To help alleviate many longer-term needs, international actors can give budgetary support to post-atrocity governments, supply anti-corruption training and technology, provide development advice and training... the list goes on and on. Clearly, the international community – R – can aid V and, experts agree, they can do so without excessive risk. This being so, it follows from (D6) that the international community has a *prima facie* moral duty to provide this aid.¹⁴⁷ Granting that post-atrocity cases meet the criteria of the conditional aid scenarios discussed in the last section, we can now turn to the task of distinguishing what forms of post-atrocity aid are unjust from those that are just and obligatory.

There are some forms of conditional post-atrocity aid which are clear instances of moral wrongs (W1) – (W6). When international actors, prior to the post-atrocity period, provide funds (as grants or loans) to individuals who have and/or are committing atrocities,

¹⁴⁶ See Collier for an excellent account of the post-atrocity economic situation and its causes and possible consequences (2003).

¹⁴⁷ Studies show that international aid can significantly reduce the risk of renewed atrocities through a wide variety of projects. For details, see (Addison & McGillivray 2004; Chauvet et. al. 2010a & 2010b; Collier 2003; Collier & Dollar 1999:20; Duponche 2008; Emmanuel & Rothchild 2007; Galtung & Tisne 2009; Nitzchke & Studdard 2005).

their offers of aid to post-atrocity societies are instances of (W1). Similarly, when international actors buy goods from individuals who have and/or are committing atrocities, their offers of conditional aid to post-atrocity societies are instances of (W1). The claim, of course, is not that international actors who provide funds to individuals like Mobutu Sese Seko or Omar al-Bashir, or who buy diamonds from Charles Taylor or timber from the Khmer Rouge *intend* that these funds be used to commit mass-atrocities. Rather, the claim is that when international actors support individuals/groups that are known perpetrators of atrocities, it is *foreseeable* that this support will help provide these individuals/groups with the resources needed to stay in power and commit atrocities. When international actors have foreseeably contributed to atrocities their post-atrocity conditional aid is unjust (at least in part).¹⁴⁸

Relatedly, when aid is given *unconditionally* in the post-atrocity period to individuals or groups who are likely to resume atrocities or use aid for otherwise unjust purposes (to fill their personal bank accounts rather than fund public services, for example), international actors are guilty of (W7). After the 1994 Rwandan genocide, for example, international actors sent \$1.3 billion in unconditional aid to the Hutu refugee camps inside the DRC despite knowing that a significant portion of this money was being controlled and used by the Hutu militants responsible for the Rwandan genocide. These same extremists, sustained by aid, subsequently helped ignite and carry out the atrocities in the DRC (De Waal 1997:629; Lischer 2003:79-80, 107-108).¹⁴⁹ The implication of (W7), is that when international actors are aware that their aid, given *unconditionally*, will likely be used for unjust purposes,

¹⁴⁸ Two notes. First, for further detail on these and other instances of (W1), see (Boyce 2002; Cooper 2005:468-469; De Waal 1997:624-625; and especially Pogge 2000, 2001, 2002). International actors have already made some efforts to prevent the unintended but foreseeable support of atrocities (Collier 2003:179; Cooper 2005:468-471; Wright 2007). Second, this is not to say that the international community should not give aid to the target-population because they are guilty of (W1) – in fact a case may be made that the imperative to give aid is even greater in these cases. Rather, it is simply to note that a moral wrong has been committed by the international community that ought to be acknowledged and taken into consideration.

¹⁴⁹ See Boyce for a similar (though less extreme) instance of (W7) in Bosnia (2002:1039).

conditional aid is just and obligatory (J1) (we will return to what sort of conditions this might entail shortly).

There is a danger that international actors wanting to avoid (W7) will commit (W6) rather than implement conditions in accordance with (J1). Returning to the Rwanda-DRC example, a few international actors, not wanting to supply the Hutu militants controlling the refugee camps, cut aid to these camps all together. This had little effect because most donors continued to pour in aid. Imagine, for the sake of argument, that all donors had cut off aid to the camps and made their aid conditional upon the militants agreeing to demilitarize (thereby rendering the militants incapable of committing further atrocities). This would be an instance of (W6) because it would make the aid to innocent refugees (who were in desperate need of food, shelter, clean water, and medical supplies) dependent upon the actions of the militants – the very same militants that forced many of these individuals into the refugee camps in the first place. Instead, international actors ought to have deployed military forces to the camps to ensure that aid was being delivered to non-militants and that militants were not controlling the camps. If deployment was not possible (though I think it was and that in most cases it would be), then just and obligatory conditions of aid, in this case, could have specifically targeted militants such that those who relinquished their weapons would receive aid. Barring this and other possible mechanisms to reduce the provision of aid to militants the decision of whether or not to deliver aid may turn on a calculation of proportionality.¹⁵⁰ This, admittedly, will be a difficult calculation to make. Comparing all the possible harms of pouring aid into camps largely controlled by atrocity-committing militants against all the possible harms of forgoing aid to camps entirely is quite a tall task and I am inclined to lean on the side of providing aid. However, given the global military and NGO capabilities, I am also inclined to think that such painful choices will not have to be made very often. The crucial point here

¹⁵⁰ See Chapter 1 for discussion on proportionality.

is that where there is the option of utilizing such capabilities, unconditional aid is unacceptable.

Conditions designed to advance the economic interests of the donor states are clear instances of (W2); these conditions are motivated by greed. In a number of post-atrocity cases international actors have given military and economic aid on the condition that donors are granted business contracts in the target-state's petroleum, diamond, and/or other lucrative industries (Boyce 2002:1035). Another case of (W2), called procurement-tied aid, occurs when international actors give aid on the condition that the target-state use the aid to buy material and/or services from the donor state's companies (Apodaca 2001:593). Cases transform from (W2) to (W3) when aid is made conditional on businesses from the donor states being granted small business contracts because the condition moves from being excessively profitable for R to being (nearly) trivial (Boyce 2002:1035-1036).

One particularly controversial form of conditional aid is that which makes aid dependent upon the payment of debts (Apodaca 2001:593-594; Boyce & O'Donnell 2007; Pogge 2001). In post-atrocity Bosnia, international actors *lent* Bosnia \$45 million dollars in aid on the understanding that this so-called aid was to be used to repay Bosnia's portion of the former Yugoslavia's Cold War debt (Boyce 2002:1041). At the very least, this is an instance of (W5). However, most cases in which international actors make aid conditional on the repayment of debts are morally worse than (W5) because it is far from clear that the payment being asked for would be a legitimate request outside of the aid scenario (like the request of the doctor for payment in Doctor-3). When atrocity committing regimes are given loans – without question or condition – by international actors, there seems no tenable argument to support the claim that post-atrocity societies ought to repay those loans, especially since they were very likely used to fund the atrocities committed against them.

Much less tenable is the idea that desperately needed aid ought to be made conditional upon repaying such debts.¹⁵¹

Those are some of the (sadly) common forms of conditionality which are clearly unjust. The morality of many other forms of conditional aid is not so clear. This is due, in part, to the complexity of the post-atrocity situation and the related fact that it is much more difficult to make aid and its conditions effective when it is given to societies rather than particular individuals. International actors have often given aid to post-atrocity societies on conditions that they (I think it is safe to say) honestly and reasonably thought would make aid effective at saving and improving lives only to discover that these conditions had unforeseen consequences (standard macroeconomic conditions being one example).

It is to these morally complex instances of conditional aid that we now turn. Rather than wade through the long list of complicated post-atrocity aid conditions (practiced or proposed), I think the most fruitful way forward is to rely on the current recommendations of post-atrocity economic analysts and evaluate whether or not these recommendations, if implemented, would be morally just.¹⁵² There is a surprising amount of consensus among these experts as to what forms of aid conditionality ought (in a practical sense) to be used in post-atrocity cases. The package of recommendations that emerges from this consensus is sometimes termed ‘peace conditionality’ and, for ease of exposition, I adopt that term.

The overarching premise of peace conditionality – as the name indicates – is that the establishment, maintenance, and entrenchment of sustainable peace (understood as the long-term end of violence and atrocities) ought to be the driving purpose of all un/conditional aid.

¹⁵¹ Largely due to world-wide public outcry, the international financial institutions have become more willing to forgive debts. In addition to debt forgiveness, there have been several proposals on how to prevent abusive governments from taking loans and what to do to when legitimate governments inherit debts from abusive predecessors (Boyce & O’Donnell 2007:292-293; Pogge 2001:338).

¹⁵² By taking this approach I am bypassing an examination of aid given on the condition that the target-state makes the cookie-cutter macroeconomic reforms that were, for several, years standard conditions of aid to both developing and post-atrocity states. I am bypassing these conditions because though they were standard for many years (and are sometimes still given), numerous studies have shown that they do not work and, in fact, often have detrimental effects (Boyce 2002:1037-1042; Collier 2003:177; De Waal 1997:624-638). In place of these, economists now recommend, among other things, macroeconomic conditionality specifically tailored for post-atrocity societies – which I discuss shortly.

The first priority of peace conditionality is to relieve and prevent immediate suffering; aid provides food, medicine, clean water, shelter, and security and helps to restore public services. Beyond this, the more specific aims and related conditions of aid will vary from case to case, but will include some combination of the following.

Some disbursements of aid are conditional upon implementing agreements between rivals and addressing outstanding grievances (Chauvet et. al. 2010a; Nitzschke & Studdard 2005:233; Woodward 2002). Along this line, aid is linked to the implementation of milestones laid out in various peace agreements, the holding of elections, and upholding of the transitional constitution. Aid is also tied to the creation of police forces and human rights protecting agencies, the return of refugees/internally displaced people, and the equitable delivery of government funds and other resources (decreasing the cause for grievances among different intrastate groups). Aid might also be linked to the re/establishment of primary education, teacher salaries, and school enrollment.

Another goal of peace conditionality is to reduce corruption and, conversely, to promote transparent and responsible government spending (Addison & McGillivray 2004:363; Collier 2003:166-176; Galtung & Tisne 2009:99-102; Nitzschke & Studdard 2005:233; Patrick 2000:58; Spector 2011). Corruption increases the chance of renewed atrocities and is one of the main contributors to wasted/misused aid. In order to reduce the likelihood of corruption, a significant portion of aid is made conditional on the implementation of anticorruption tools. These conditions might be put on budgetary support such that donors deposit aid directly into the target-state government's budget (without earmarking it for a specific purpose) on the condition that government spending be made meticulously transparent to donors and, more importantly, the target-state population (the government would have to have records of all money received and spent). Experts agree that anticorruption/transparency conditionality is particularly important in the management of

natural resources. Anticorruption conditions increase the likelihood that profits made from natural resources are spent on genuinely needed government institutions and public goods.

Another facet of peace conditionality is the use of aid as tool to prevent the resumption of violence and/or the continuance of illicit economies (Boyce & O'Donnell 2007; Collier 2003; Woodward 2002). To this end, some aid is targeted at former combatants and/or perpetrators of atrocities. Militants who relinquish their weapons and cut ties with violent groups might receive amnesty, money, land, employment, and/or occupational training.¹⁵³ Similarly, some aid is conditional upon a reduction in military size and spending by the target-state.¹⁵⁴ Some aid is also linked to government/community cooperation with war crimes tribunals. Peace conditionality also targets individuals involved in criminal/shadow economies by offering aid (in the form of income, employment, and/or occupational training) to those willing to give up their illicit sources of income (Nitzschke & Studdard 2005:234). Simultaneously, some aid (monetary and military) is designated for projects that enable the target-state to block militants' access to natural resources and the markets.

Peace conditionality also makes some aid conditional on the implementation of economic reforms geared at long-term economic development and poverty reduction (Addison & McGillivray 2004; Boyce & O'Donnell 2007; Collier 2003:150-155, 180-181; Patrick 2000; Snodgrass 2004; Woodward 2002). To this end, some aid is made conditional on macroeconomic reforms. However, experts agree that macroeconomic reforms need to take a backseat to fulfilling the immediate needs of the target-population and addressing standing grievances between groups. Accordingly, these conditions are not given right away.

¹⁵³ We will discuss the issue of amnesty in the next chapter. For now, let us accept that not all individuals who participate in the conflicts in which atrocities occur participate in atrocities (either literally or willingly) and, further, giving aid to these individuals in exchange for arms is, *prima facie*, morally acceptable.

¹⁵⁴ These conditions would be complemented by the deployment of external military forces or over-the-horizon guarantees (mentioned in Chapter 5).

Further, experts agree that because standard macroeconomic reforms tend to have unacceptable consequences in post-atrocity societies (which may actually increase the chances of resumed conflict), macroeconomic reforms and conditionality are specially tailored to the post-atrocity environment.¹⁵⁵ One such tailored condition ties aid to government cuts in military spending (to avoid cuts on public goods). Donors may also make some aid conditional on its being used to provide/augment public safety nets to ensure the delivery of public services, give income and training to the unemployed, and to guard against devastating price-shocks (in goods that the target-state produces). Under peace conditionality, donors allow (do not make conditions against) regulations preventing the privatization of publicly owned resources from benefiting a few powerful elite, subsidies to fledgling local companies, luxury taxes, and continued government ownership of natural resources as a source of revenue (such measures are usually seen as contrary to macroeconomic reforms). Relatedly, aid is attached to the reconstruction of transportation, markets, and ports and to the resuscitation/creation of local agriculture, manufacturing, and various other local businesses (Collier 2003:155-156; Galtung & Tisne 2009:106).

Another important aim of peace conditionality that experts emphasise is the avoidance all-or-nothing conditions. Conditions are designed to differentiate between “vulnerable populations on the one hand and political leaders on the other” (Boyce 2002:1037). The need for this differentiation and how it is achieved will depend on the circumstances of each case but we can get an idea of how this might work by comparing best- and worst-case scenarios.

In a best-case scenario, the target-state government is dedicated to protecting and serving the target-state population and creating a stable political and economic environment. In these cases, aid is disbursed to and through the government in the form of general budget support on the condition that the government design and implement whatever reforms are

¹⁵⁵ Standard macroeconomic reforms include reduction of government deficit and spending, lowering tariffs, eliminating price controls and subsidies, liberalizing markets and reducing regulations, and privatizing government/public assets.

necessary to achieve their (above stated) goals and implement anticorruption tools.

Conditionality, in these cases, supports government decisions and reforms (by offering incentives to keep them on track), reduces the likelihood of corruption and violence, and helps to strengthen government institutional capacity and sustainability (by disbursing aid through the government) (Boyce & O'Donnell 2007; Patrick 2000; Woods 2005:393-394; Woodward 2002).

In a worst-case scenario, the target-state government is corrupt, prone to violence, and exploits the target-population. In such cases, aid bypasses the government and is delivered (likely with military protection) directly to the population (via various civil society and local government groups) in the form of food, medical supplies, building materials, seeds, agricultural equipment, and investment in local projects. Beyond military presence and the refusal to disburse aid to and through the government, peace conditionality in these cases might include proactive measures such as freezing or seizing bank accounts, implementing travel restrictions on individuals and their families, and the cessation of trade with government-affiliated companies. In these cases the provision of aid as well as access to other goods/luxuries/resources are made conditional on the end of corruption and violence (Addison & McGillivray 2004:353; Boyce 2002:1038; Lischer 2003:104).

In addition to conditions targeted at the target-state government and population, advocates of peace conditionality argue that the aid process must, itself, become more accountable and transparent (Boyce 2002:1044; Boyce & O'Donnell 2007; Galtung & Tisne 2009:101; Patrick 2000).¹⁵⁶ Donors must be held accountable to the target-state population for how aid is earmarked, whether or not the aid reaches the people/projects it is supposed to reach, and whether it accomplishes the tasks it is supposed to accomplish. Information on the allocation of aid – how much aid is given, for what purposes, to whom, and why – must be

¹⁵⁶ Some headway has already been made on this point with campaigns like 'Publish What You Fund' and the related International Aid Transparency Initiative (Galtung & Tisne 2009:105).

available for public scrutiny and verification. Furthermore, aid donors and target-state governments must actively seek the input of the target-state population to find out where and how aid is needed.

Those are the recommendations of those who advocate peace conditionality. The question before us is *if* international actors attach peace conditionality to their aid, will these conditions be just?¹⁵⁷ On the whole, the conditions outlined above seem to avoid moral wrongs W2 - W7. The conditions designed to cut off support to corrupt and/or violent governments and militant groups are important steps in counteracting (W1). The practice of designing aid conditionality to differentiate between violent groups/individuals and the larger population is particularly important, as it avoids making aid unnecessarily conditional on a separate party – (W6). Furthermore, those elements of conditional aid which are designed to prevent aid being used to fund violence and/or corruption are in accordance with (J1) and are, therefore, morally obligatory.

Though the bulk of peace conditionality seems morally just and (therefore) obligatory, there is a danger (often expressed by opponents of conditional aid) that conditions aimed at economic reform may fall under (W4). That is, conditions aimed at economic reform may constitute an unjust interference in the relationship between the target-state government and population thereby violating the target-state's right to national self-determination. It is important to remember here, that with (W4) the issue is not whether the conditions given, if implemented, would lead to a better situation for V (in this case the target-state). It is fairly safe to say that the tailored economic reforms that are suggested by advocates of peace conditionality would create more secure and prosperous conditions in the target-state.¹⁵⁸ The

¹⁵⁷ Though putting peace conditionality into practice has been slow, there are indications that post-atrocity conditionality is moving in this direction.

¹⁵⁸ Empirical studies show a number of significant connections between target-state economic conditions and the outbreak and duration of atrocities. (Collier 2003:152-153; Collier & Hoeffler 2002; Duponche 2008; Evans, G. 2008:91; Justino 2009). Complementing these studies, there is also research that suggests that economic development not only reduces the risk of atrocities/conflict, it also increases the general protection of human rights (Apodaca 2001; Sen 1999). For an excellent

issue is simply whether these conditions unjustly interfere with national self-determination. I submit that whether or not this is so depends on the circumstances in which these conditions are given.

One of the things proponents of peace conditionality stress is that economic reforms ought to be designed *by* the target-state government. The role of international actors in the design of economic reforms is to provide expert advice and technical assistance. Conditionality, in these cases, would not be used to impose reforms designed by outsiders, but simply to act as an incentive to get the target-state government to accomplish the goals it has set for itself.

For the less optimistic reader this might sound more like wishful thinking than reality. Let us say, then, that aid is made conditional upon economic reforms designed by international actors with little or no input from the target-state government and/or population (research shows that this is practically unwise, as reforms that are made without target-state input tend to fail, but for the sake of argument let us put this aside). It seems to me that whether or not these conditions are unjust depends on how these conditions impact the overall distribution of aid. If these conditions are put on desperately needed aid, such that unless reforms are made the target-state will not receive food, clean water, military support, building materials, medical supplies or other supplies necessary for survival, then it is clearly unjust. One could go further and say that if aid which would provide for the reconstruction of essential institutions and infrastructure is made conditional upon economic reforms, then it is unjust. This, however, is not what is described in the peace conditionality literature.

In contrast to the above scenario, I think there is a criterion which, if met, would make aid tied to economic reforms (designed with little or no input from the target-state) morally legitimate. The criterion is this: economic reforms must be tied to particular distributions of

aid rather than all aid or portions of aid necessary to stabilize the target-state. That is, aid made conditional on economic reforms must have no significant effect on the distribution of aid for things like food, water, shelter, and security. If this criterion is met, it seems that economic reform conditionality no longer falls into the desperate conditional aid scenarios we have been discussing. Under these circumstances the target-state *could* reasonably refuse to implement the reforms without losing all/necessary aid because, unlike the desperate need situations we examined earlier, the option of refusing these conditions or holding out for better terms would not lead to unacceptable consequences. Therefore, the target-state government would not be forced to accept conditions which the target-population did not support. Peace conditionality, with its explicit policy of avoiding all-or-nothing conditions meets this criterion.

6.4 Conclusion

The aim of this chapter has been to examine the morality of conditional aid in post-atrocity societies. To this end, I have argued that conditional aid is unjust in the following cases: when donors have intentionally/foreseeably supported the perpetrators of atrocity (W1), when aid is given unconditionally to individuals/groups who are likely to resume atrocities (W7), when aid to the general population is made unnecessarily dependent upon the actions of government officials or militants (W6), when aid is conditional on advancing the commercial interests of the donors (W2) and (W3), and when aid is made conditional on the repayment of debt (W5). I also examined peace conditionality and argued that most of the conditions advocated in this approach are morally just and, therefore, morally obligatory. Finally, I argued that, if implemented under the terms of the peace conditionality approach, aid tied to macroeconomic reforms (a particularly controversial topic) is not unjust because the target-state has the option to refuse or negotiate the terms of aid. The most important conclusion to take away from this chapter is that when it is likely that unconditional aid will

be used for morally unjust purposes, international actors have a *duty* to condition their aid in ways that allow them to save lives and avoid those unjust outcomes.

Chapter 7: Peace, Justice, and Moral Accountability

One of the just war guidelines discussed in Chapter 1 was (G6) – the requirement that individuals be held accountable for the unjust harms they are morally responsible for.

Typically discussions on how to fulfill this requirement centre on criminal trials and the need to prosecute those individuals morally responsible for starting unjust wars (in violation of *jus ad bellum*) and/or those individuals who fight unjustly (violating *jus in bello*).¹⁵⁹ More recently, just war theorists have also begun to explore the value of reparations as a means to hold individuals accountable for the wrongs they commit (Bass 2004:408-409; Evans, M. 2005a:13; Hayden 2005:171; McCready 2009:74-75; Sassoli 2009:278; Schuck 1994:983). Within the post-atrocity policy oriented literature there is also a great deal of concern about holding individuals accountable for the atrocities they commit. The discussion has largely been framed within the so-called peace versus justice debate which presents security within the target-state and criminal prosecution of perpetrators as, often, incompatible goals – one must choose either to hold individuals accountable for atrocities *or* strengthen peace and security in the target-state. Surprisingly, political theorists generally, and just war theorists specifically, have not really engaged the peace versus justice debate even though, as I hope to show herein, both can offer valuable insight to the discussion.

The purpose of this chapter is to provide a normative analysis of the peace versus justice debate and establish the duties of the international community regarding the issues of post-atrocity justice central to this debate. The chapter is divided into two sections. Section 7.1 reviews the peace versus justice debate. Section 7.2 engages the political theory literature on punishment and the normative guidelines and principles developed in earlier chapters of

¹⁵⁹ For normative discussion on who ought to be criminally prosecuted – soldiers, commanders, and or civilian leaders – and the possible reasons why individuals might be excused from criminal prosecution on the grounds that they were not morally responsible (in full or in part) for the crimes they committed see (Levinson 1973; May 2007; Rodin & Shue 2010; Walzer 2006:287-325). It is my view that all morally responsible individuals are *prima facie* liable to punishment, though the case for punishment of particular individuals may not hold up for reasons of practicality and proportionality.

this thesis in order to critically analyse the peace versus justice debate and examine the international community's duties within the context of this debate.

7.1 Peace and Justice

The peace versus justice debate is not static. Though there are still some circumstances in which proponents on each side lock horns in a seemingly irreconcilable contest that pits peace and stability against justice, there is a growing consensus within the post-atrocity literature that peace *and* justice are often both possible and necessary for post-atrocity societies. Accordingly, in order to understand and then analyse post-atrocity justice, we must examine both the peace *versus* justice debate and its peace *and* justice counterpart.

To begin, consider the following case. The military dictatorship of Augusto Pinochet lasted from 1973 until 1990. During that time, the government killed, 'disappeared,' and tortured unknown thousands. In 1978, after a particular gruesome period of mass-atrocities, Pinochet passed a law granting himself and his military forces amnesty for the atrocities. Then in 1989, with only a few months before elections, Pinochet publically warned: "No one touches anyone. The day they touch one of my men, the rule of law ends" (Rigby 2001:66). When Patricio Aylwin took office in 1990, he promised the Chilean public "as much justice as possible" (Roht-Arriaza 2006:viii). Aylwin commissioned a truth commission which sought to give an account of the atrocities, identify the victims and discover their fates. However, the report did not name those responsible for the atrocities and no members of the military were prosecuted or otherwise punished. Many Chileans, along with many in the international community, were outraged by the continued impunity enjoyed by Pinochet and the military and the concomitant lack of justice for victims and their survivors. The democratically elected government faced a serious dilemma. On the one hand, they felt a pressing need to bring justice to the victims of Pinochet's regime. On the other hand, Pinochet, still chief of the military, maintained a lot of military power and it was thought that

if the government pursued prosecutions or even named perpetrators in the truth commission, Pinochet would carry out his threat and conflict and atrocities would resume. In Chile, peace and justice appeared to conflict and the Aylwin government chose peace.

The Chilean example captures much of what is at stake in the peace versus justice debate. Proponents of peace argue, ultimately, that criminal prosecutions often cause more harm than good (Cobban 2007:207-210; Grodsky 2009:820-823; Huyse 2008:4-5; Lie et. al. 2007:1-4; Mallinder 2007:208-209; Orentlicher 1991:2544-2546; Snyder & Vinjamuri 2003/4). In some post-atrocity cases, perpetrators retain a significant amount of power and if threatened with prosecution will likely rearm and conflict and atrocities will resume; one can hardly expect perpetrators to allow themselves to be arrested, tried, and punished when they have the ability to prevent this. To this end, Snyder & Vinjamuri argue that the risk of criminal trials instigating resumed violence depends, to a significant degree, on the post-atrocity strength of the perpetrators and conclude that “[o]nly a decisive military victory over the criminal parties” removes the risks involved with criminal trials (2003/4:18).

Additionally, in cases where atrocities were ethnically or religiously charged, or otherwise pitted identifiable groups against each other, criminal trials might exacerbate cleavages between groups, heighten feelings of grievance and hatred and lead to a recurrence of atrocities. Lastly, after mass-atrocities there are generally very finite resources for establishing post-atrocity security and addressing the needs of the target-population, and to spend these limited resources on costly criminal trials, as opposed to food, water, and medical aid, is not only a misuse of valuable resources, it may further perpetuate grievances and, thus, conflict. This is especially so where victims themselves express a preference/need for aid over criminal trials. Given these possibilities, experts on the peace side of the debate argue that in order for the target-population to escape the cycle of violence and create a secure environment, it is often necessary to forgo criminal prosecutions.

Against these views, proponents on the justice side of the debate hold that those who perpetrate atrocities must be prosecuted for their crimes in order to deter future atrocities and bring closure to the victims. Regarding the former, justice proponents argue that when governments grant amnesties to perpetrators they undermine their own legitimacy and power and increase the chances of renewed atrocity (Keller 2008:13-14, 42; Lie et. al. 2007:1-4; Moreno-Ocampo 2007; Orentlicher 1991). Firstly, criminal prosecutions have an immediate impact on the likelihood of renewed atrocities because imprisoned perpetrators cannot commit atrocities. Secondly, when a government acquiesces to the demands/threats of perpetrators and, out of fear, grants them amnesty, a dangerous message is sent: those individuals or groups who are ruthless enough are above the law and can challenge the authority of the government and get it to act according to their will. Thirdly, by failing to prosecute perpetrators, governments fail to establish respect for the rule of law and human rights norms within society and, thereby, increase the likelihood of future atrocities. The government's refusal to hold perpetrators accountable may itself be perceived as an act of condoning the atrocities and snubbing the idea that no one is above the law.

Together these dangers – that the government is seen as influenced by violence and blackmail and as not upholding respect for human rights and the rule of law – create the additional risk of sending the message that disagreements are most effectively addressed through violence rather than through non-violent political and social channels (Kim & Sikkink 2010:942; Orentlicher 1991:2600; Snyder & Vinjamuri 2003/4:17). When those who commit atrocities are rewarded rather than punished, this may become the preferred method of problem solving for many within the society. Conversely, when perpetrators are prosecuted, a strong message is sent that those who commit atrocities will be held accountable and punished for their crimes. This, in turn, promotes non-violent means of conflict resolution by sending the message that violence does not pay.

Proponents of justice also argue that criminal prosecutions are necessary for healing and reconciliation. In order for survivors of atrocity to begin to recover and, relatedly, in order for the society as a whole to begin to reconcile and recover, survivors must have their suffering acknowledged, know what happened to their loved ones, and have their attackers punished (Bass 2002:304; Huyse 2008:3-4; Lie et al 2007:1-4; Mallinder 2007:210; Rigby 2001:4; Snyder & Vinjamuri 2003/4:17). This is not only essential for the psychological recovery of survivors, it is also important as a measure to prevent survivors from carrying out acts of vengeance which would likely lead the society back into conflict. If amnesties are granted, survivors may have to face their attackers in their daily lives, serving as a constant reminder of the atrocities and increasing survivors' feelings of fear and anger. Survivors "may see their rights sacrificed to appease those who began the conflict in the first place" (Hannum 2006:549). As a result, peace created by amnesties remains threatened by the continued and heightened feelings of grievance and injustice which survivors may carry. These considerations are particularly important where atrocities are associated with group-based grievances. Trials not only bring some sense of redemption to victims, they highlight the responsibility and guilt of individuals and may, thereby, dispel the perception that entire groups are guilty of atrocities. Thus, rather than the atrocities in Bosnia and Kosovo being carried out by *Serbs* full-stop, trials may help Bosnian and Kosovar Muslims see that these massacres were carried out by particular Serbs – Karadzic, Mladic, Arkan, and Milosevic, for example. This may have the effect of deflating tensions and hatred between groups, reducing the likelihood that predators can manipulate history for their own ends (through anti-group propaganda), and, ultimately, decreasing the chances of renewed atrocities.

This is a snapshot of the peace *versus* justice debate. In recent years, and largely in response to the varied transitional justice methods employed in several post-atrocity countries, there has been a shift from peace *versus* justice to an emphasis on peace *and*

justice. The view that peace and justice are both compatible and necessary elements of post-atrocity justice is based first and foremost on the claim that justice is not and need not be limited to criminal prosecutions (Clark 2011; Huyse & Salter 2008; Keller 2008; Mallinder 2007; Minow 1998; Rigby 2001). Retributive justice – including criminal prosecutions and vetting (purging individuals associated with atrocities from social, political, economic, security, and military institutions and barring them from employment in these institutions) – focuses primarily on the past and punishing perpetrators. By contrast, restorative justice focuses mainly on rehabilitation of victims, communities, and society. Regarding victims, restorative justice focuses on what victims need to recover and move forward with their lives. At the community/societal level, restorative justice looks for solutions to the root causes of conflict, aims to reintegrate victims and perpetrators back into society, and searches for ways to repair broken relationships. Strictly restorative justice measures include the provision of physical and psychological therapy to victims, the erection of public memorials and monuments, and reparations/material aid to victims from the state and/or international community. Many justice mechanisms have retributive and restorative attributes: truth commissions which name and shame perpetrators, reparations programmes which draw funds from perpetrators, public apologies, tradition-based justice programmes (such as gacaca courts in Rwanda, magamba ceremonies in Mozambique, or mato oput ceremonies in Uganda), even amnesties may be considered retributive and restorative if they are conditioned on perpetrators admitting their guilt and giving a full account of their crimes (as in South Africa).¹⁶⁰ Peace and justice advocates argue that given the wide range of justice mechanisms available even when criminal prosecutions pose too serious a threat to the

¹⁶⁰ For insightful evaluation of the various justice mechanisms listed in this paragraph see (Grodsky 2009; Keller 2008; Mallinder 2007; Minow 1998; Rigby 2001). For information specifically on tradition-based justice mechanisms and discussion on the validity/effectiveness of using these mechanisms to deal with mass-atrocities see (Huyse & Salter 2008).

security of the target-state, other valid and meaningful measures of justice can still be taken; peace *and* justice are possible even when criminal trials are not.¹⁶¹

The main point is that after mass-atrocities justice serves a variety of important purposes. Justice not only holds perpetrators accountable for their crimes, it also provides a medium through which the truth can be documented, victims can be acknowledged and assisted, and the society, as a whole, can begin the reconciliation process. When justice and its purposes are understood in this broader sense – giving both perpetrators and victims their due, so to speak – it becomes clear that criminal trials, while important, are not *the* determining factor as to whether or not justice has been served. To be sure most, if not all, advocates of peace and justice agree that, whenever possible, it is ideal to combine criminal trials and alternative forms of justice. However, while a combination of criminal trials and other forms of justice is ideal, some experts point out that if we are concerned with serving justice in the broader sense, then alternative justice mechanisms might have more to offer, in some respects, than criminal trials (Keller 2008:33-47; Minow 1998:47, 58 -90). As one example, truth commissions may establish a fuller historical account of the atrocities (as opposed to criminal trials in which facts are disputed and limited to particular events and individuals) and, thereby, create a better understanding of the systemic/societal factors that led to atrocities (presumably making them easier to identify and prevent in the future) and make it harder for opportunists to abuse historical narratives for their own ends. Truth commissions may also help individuals discover the fates of their missing family members, as perpetrators may be more willing to reveal this information when they do not face criminal prosecution for their confessions. Further, truth commissions may be better than criminal trials at aiding victims because they often place much more focus on victims' testimony and

¹⁶¹ Recent empirical studies support this view, showing that while criminal prosecutions do reduce the likelihood of renewed atrocities, truth commissions, reparations programmes, vetting, and tradition-based justice mechanism can also be effective at deterring atrocities (Kim & Sikkink 2010; Lie et. al. 2007).

are therefore better at identifying victims and their needs. Lastly, though less severe than criminal trials, truth commissions can render punishment – such as reparations or community service – which may be more conducive to reconciliation because it prioritizes repairing relationships and communities.

Again, most experts argue that whenever possible, it is ideal to carry out criminal prosecutions and a variety of other justice mechanisms. However, some experts argue that there may be exceptional cases where justice is better served by forgoing trials and utilizing other justice mechanisms *even* when trials are possible (Cobban 2007; Huyse 2008:5; Ingelaere 2008:45, 51; Minow 1998:4, 135; Rigby 2001:7). Whether this is so depends on the nature of the atrocities and/or the particular needs, beliefs, and values of the target-population. Consider the case of Mozambique (Cobban 1998:13-18, 136-182; Igreja 2010; Igreja & Dias-Lambranca 2008; Weinstein & Francisco 2005).¹⁶² From 1976 to 1992 government FRELIMO forces and anti-government RENAMO forces massacred, tortured, and enslaved the civilian population. Many of the FRELIMO fighters were conscripted under severe duress and many of the RENAMO fighters, many of them children, were abducted and forced under the threat of death to participate in the atrocities. After the atrocities ended there were no criminal trials, no truth commission, and no vetting programme. There appeared to be consensus on both sides and among the general population that the best way forward was to put retributive justice aside. With so many people forced to participate in the atrocities – often against their own families and communities – most fighters were seen as both perpetrators and victims and a priority was placed on the need to rehabilitate perpetrators and reintegrate them into their communities. Those who did seek retributive justice did not turn to criminal courts but, instead, either took their cases to traditional

¹⁶² As is often the case, there are certainly varied accounts of post-atrocity justice in Mozambique and the views and needs of the victims. With this in mind, though the account of Mozambique given here is supported by several studies, it is used illustratively (if we accept that this is the case then...) and should be read as such even if one does not agree with the ‘facts’ as presented.

community courts or went to spiritual healers who performed various ceremonies to repair relationships between victims and their attackers. For many individuals seeking justice, so some experts claim, tradition-based mechanisms had more meaning and impact than criminal prosecutions (possibly viewed as a somewhat foreign form of justice) would have had and, therefore, have been more effective at restoring relationships and security.¹⁶³

Finally, many advocates of the peace *and* justice perspective argue that championing criminal trials as the only acceptable form of justice is problematic even if we agree that all/most perpetrators ought to be prosecuted, because this is often impossible (Minow 1998:x,122; Uvin & Mironko 2003:219-229). As Martha Minow, explains: “There are simply too many victims and too many perpetrators. Even the most sophisticated criminal justice system would be completely overwhelmed” (1998:x). The post-genocide experience in Rwanda is a vivid example of the difficulty, or sometimes impossibility, of criminally prosecuting all/most perpetrators (Cobban 2007:18-22, 58-79; Longman 2010:306). In the aftermath of the 1994 genocide, the new Rwandan government set out to apprehend those responsible for the atrocities. Within a few years, over 100,000 people had been arrested for participating in the genocide and were awaiting trial. The prisons were extremely overcrowded and the treatment of prisoners, in many prisons, was deplorable. During the genocide, many judges and lawyers were killed or (in order to avoid this fate) had fled and, pushed to maximum capacity, the judicial system was only able to process 1,500 to 2,000 cases annually. Realizing it would take well over 100 years to prosecute all the individuals awaiting trial (with that number still rising), the Rwandan government turned to the tradition-based gacaca courts as a solution, rerouting the majority of cases awaiting trial to these

¹⁶³ The case of Mozambique also presents a different twist on the peace versus justice debate. The 1992 peace accord which ended the atrocities was negotiated by the leaders of FRELIMO and RENAMO and, because these two groups held the military and political power within the country, the implementation of the peace agreement and sustainability of peace was also, in many ways, dependent upon these parties. Under these conditions, the likelihood of holding criminal trials is highly unlikely on the national level and may pose a serious threat to peace from an international standpoint (in the event that an international tribunal/the ICC pursued prosecutions).

courts.¹⁶⁴ In cases like Rwanda where it is nearly impossible to prosecute all/most perpetrators in international or national criminal courts, using a combination of justice mechanisms is not only wise (insofar as it allows justice to be achieved in the broader sense and does not create unattainable expectations among victims) it is practically necessary.

In summary, in post-atrocity societies we must reconcile the need to uphold justice with the need to establish and maintain security. In extreme cases, perpetrators may wield enough power to prevent criminal trials, vetting, and/or naming and shaming truth commissions. However, even in these apparent peace versus justice cases, all justice is not lost for it may still be possible to institute several restorative justice mechanisms. Such cases are, therefore, more appropriately termed peace versus retributive justice or, as the debate is typically limited to the question of trials, peace versus criminal prosecution. By contrast, in many post-atrocity cases both peace and justice, in many forms, are possible.

7.2 Peace, Justice, and Morality

From a strictly pragmatic point of view, I find the peace *and* justice perspective – the view that in most post-atrocity cases peace and justice are possible and that even in those cases where criminal prosecutions are not obtainable other forms of justice can still be achieved – the most plausible. What the entire debate is lacking, however, is an extensive normative assessment of the issues. What is the justification and purpose of punishment? What, in regards to punishment, does justice demand? What does morality demand in those cases where, due to the threats of perpetrators, we are faced with choosing between granting amnesties or holding criminal trials and risking renewed atrocities? What, if any, are the moral obligations of the international community within the context of the peace and/versus justice debate? Answering these questions is the aim of this section. Though political theorists have not engaged the peace versus justice debate, there are two areas of political

¹⁶⁴ For analysis on the strengths and weaknesses of the gacaca system, see (Cobban 2007:69-79; Ingelaere 2008; Longman 2010; Uvin & Mironko 2003:219-229).

theory which are particularly relevant to the debate: punishment and just war theory. So to begin our normative analysis we will examine these two bodies of literature and draw out the implications they have for the peace versus justice debate.

Before we begin, a bit of clarification on the conception of peace and its meaning is necessary. While there are certainly different definitions of peace, within the context of the peace versus justice debate the predominant understanding – the type of peace most people intend when they refer to the peace versus justice debate – is restricted to negative peace. That is, in the debate, peace usually equates to an absence of violence and an environment which is relatively secure from the renewal of violence; violence is not occurring at this moment nor is there the sense that violence will break out at any moment. Though this is a limited (albeit important) understanding of peace, because it is this conception that frames the peace versus justice debate, it is the conception that I use herein. Thus, arguments which emphasise preventing violence and protecting the lives of the target-population made throughout should be understood as arguments from/for the peace side of the debate. With this in mind, let us begin our discussion of punishment.

We turn now to our first question: What is the justification of punishment? Though most theorists agree that punishment is necessary, justifying punishment has proven to be a surprisingly tricky task. Theories usually fall into two camps: deterrence theory and retributive theory. The deterrent theory holds that the threat of punishment deters individuals from committing crimes and enforces the norms and laws which establish security and stability in a society. Though appealing, the deterrent theory is subject to two common objections against utilitarianism. First, if P (the perpetrator of a crime) is punished solely on the grounds that his punishment is necessary to advance some social good (like norm building, security, or order) then P is used merely as a means to an end. Further, and more problematic, a theory which justifies punishment exclusively on the grounds that it advances

some social good, without any reference to why P in particular is punished, may allow for anyone – guilty or innocent – to be punished in order to advance this social good.¹⁶⁵ We do not generally accept that a person can be used, without his consent, simply for the good of society and thus, on its own, the deterrent theory fails (Bedau & Kelly 2008; Berman 2008: 258; Burgh 1982:194-195; Ellis 2003:337; Goldman 1982:58; Haksar 1986:317-318).

The retributive theory broadly holds that P, on account of his wrongdoing, deserves to be punished. This theory captures the common intuition that if P commits a crime against V, something must be done to right this wrong. We are generally opposed to the idea of letting P go on his merry way and/or of V having to passively endure the violation against him. There are different versions, but a common one holds that punishment is required as a way to “force wrongdoers to pay the debts they incur as a result of their crimes” (McDermott 2001:413). Stronger accounts argue that P *deserves* to be punished. Though this theory reflects a common intuition, it too is problematic. First, many versions fall short of justifying punishment as opposed to simply debt repayment. Without more detail, the theory may demand only that if I steal your car, I must give it back. Giving a stolen good back, on most accounts, does not constitute punishment which is generally thought to place costs on P beyond debt repayment in this strict sense (McDermott 2001:413). Second, the theory often fails to tell us *why* P deserves to endure costs beyond simply repayment. Without an explanation of why P ought to bear some cost/harm beyond repayment, some opponents charge that the retributive theory unnecessarily harms P and is, therefore, tantamount to a barbaric act of revenge (Berman 2008:258; Gardner 2008: xxix).¹⁶⁶

To avoid the weaknesses of these two theories, many theorists have combined deterrent and retributive elements and a number of complex and promising justifications of

¹⁶⁵ Against this Rawls has argued that the utilitarian justification of punishment would not allow, on utilitarian grounds, an innocent person to be punished (1955).

¹⁶⁶ Against this Nozick has argued that there are clear differences which separate revenge and punishment (1981:366 -370).

punishment have emerged. Providing a survey and critique of these various hybrid justifications is far beyond the scope of this chapter. Rather, my limited aim here is to present the justifications that I find most convincing. To this end, I discuss and the justification put forward by Daniel McDermott and then augment this theory with insights from Robert Nozick and Anthony Ellis. I then build on this combined theory in order to show that punishment is not only justified, it is also obligatory.

McDermott argues that when P commits a crime against V he commits (at least) two wrongdoings (2001). First, P violates V's right to X, where X is the good taken/violated in the crime. If P steals from V, X is the stolen property. If P assaults V, X is V's physical-integrity. Let us call this violation-1. Secondly, P violates V's right to respect – his right to be treated as a valuable human-being.¹⁶⁷ Or, as McDermott puts it, he fails to treat V as a member of our (mankind's) moral community. Let us call this violation-2. According to McDermott, P incurs a debt for both of these violations. The debt incurred by violation-1 is often, largely, a material debt. If I steal your car, I owe you the car or its monetary equivalent (plus perhaps pain and suffering costs). The debt incurred by violation-2, however, is a moral good not a material good, and unlike material goods cannot simply be transferred from P to V. McDermott argues that the debt of the moral good that P owes to V – which, he incurred by failing to treat V as a member of our moral community – can only be repaid by temporarily denying P some of the benefits of belonging to our moral community. Here we arrive at the justification of punishment, for as McDermott explains “[w]e are no longer, as restitutionists advocate, taking goods from wrongdoers and giving them to victims, but merely denying goods to wrongdoers, and thus our actions [are] punitive in nature” (2001:419).¹⁶⁸

¹⁶⁷ See Chapter 2 for discussion of the right to respect.

¹⁶⁸ In many cases violation-1 will also be a violation of a moral good. If I assault you, I attack your physical-integrity and, in so doing, I incur a moral debt in addition to that incurred by the violation of your right to respect which cannot be fully paid by

What does it mean to deny P some of the benefits of belonging to our moral community? Broadly, McDermott argues that when we treat others as members of our moral community we treat them as “one of us” (2001:417). More specifically, we respect their right to a significant “sphere of non-interference” from others; “we allow them to pursue a career...to choose where to live...to make contracts, to patronize businesses, to participate in politics, to drive a car, to get married, to make friends, to go bowling...” (McDermott 2001:424, 428). In short, as I argued in Chapter 2, when we treat a person as an intrinsically valuable human-being, among other things, we respect their right to autonomy. According to McDermott, then, punishment involves (temporarily) depriving P of some of the scope of his autonomy. “By imprisoning wrongdoers,” he argues, “what we do, in effect, is remove them from the family of man and deny them many of the benefits of being treated as members in good standing of this family” (2001b:428-429). By limiting the range of autonomous choices available to P, we force him to pay his moral debt (at least to some significant extent).

I find McDermott’s account convincing and herein adopt it. However, I think it can be developed into a stronger argument by shifting, or expanding, the focus to include, in a more meaningful way, P’s victim, V. Let us grant, as discussed, that when P commits a crime against V, he commits two violations – violation-1 and violation-2 – and incurs debts for both of these violations. Let us further grant that, as discussed, punishment is necessary in order to settle this debt. So far our focus is largely on P. When we bring V more fully into the equation, I suggest, we not only justify punishment we show that it is morally obligatory. P owes a debt to V and, it seems to me, that so long as this debt is left unpaid (unless V forgives P of the debt) V’s rights continue to be violated. If I have a right to X, and you steal X, then so long as you keep X you violate my right to X. Further, if I have a right to be treated as a valuable human-being and you violate this right, so long as this violation goes

material payment (though I may owe you medical costs). McDermott does not discuss this, but I think it is a fair addition to his argument.

unaddressed the violation continues. Imagine that I steal your home. You are now homeless and I am living comfortably. My initial act of kicking you out and claiming ownership of your home violated your right to your home and, so I suggest, my continued residency in your home is a continued violation of your right. Further, in taking your home, I violated your right to respect and so long as this violation is unaddressed – so long as I do not somehow pay this moral debt – this violation also continues. I could give you your house back – let us imagine that the police force me out but allow me to, otherwise, continue my life as normal – but so long as the moral wrong I have committed against you is unacknowledged through my paying some moral cost, this violation continues. The fulfillment/preservation of V's rights to X (where this is a moral good) and right to respect *require* that P be punished; as long as P is not punished, V's rights continue to be violated. Thus, we are not only justified in punishing P, we have a *prima facie* duty to punish him.

While the theory of punishment we have developed so far – through McDermott's argument and my addition to it – captures important elements of punishment, we are still missing some significant insights which must be incorporated in order to arrive to a fuller justification of punishment. The first of these insights comes from Nozick, who argues (among other things) that punishment is a communicative act (1981).¹⁶⁹ When we punish P, Nozick argues, we send a clear message to P that he is being penalized because of the wrongness of his act (1981:368-369). Sending this message to P forces him to see that we – the community of which P is a part – find his act morally unacceptable and P is forced to receive this message (even if he does not agree, though hopefully he will come to agree). Punishment, then, reminds P of the boundaries of acceptable conduct. Or, as Nozick puts it “[t]he wrongdoer has become disconnected from the correct values, and the purpose of punishment is to (re)connect him... Through punishment, we give the correct values ...some

¹⁶⁹ For similar (though distinctive) arguments see (Hampton 1984; Morris 1981).

significant effect in his life” (1981:374-375). I think that Nozick is on to something very important here – the idea that punishment communicates to the wrongdoer that his act was morally unacceptable – but I think the communicative act of punishment that Nozick identifies has an even wider audience.

The idea that punishment communicates norms to a wide audience is a common theme found in deterrent theories. The deterrent theory is often presented as follows: P is punished in order to deter P and other individuals, O, from committing crime. As we saw, the theory is often charged with unjustly using P as a tool for deterring crime. Some theorists have tried to avoid this problem by combining this deterrent aim of punishment with the retributive claim that P (as opposed to an innocent person) is justly punished (and not merely used) because of the wrongdoing he committed. Recently, however, Ellis has presented a deterrent theory which, even on its own, successfully avoids the objection that P is used merely as means for the advancement of society’s ends (2003). Broadly put, Ellis argues that it is the *threat* of punishment against individual wrongdoers, not the actual punishment of wrongdoers, which is used to deter wrongdoing. As Ellis explains, the threat of punishment “is addressed to each individually, and each is punished because he, individually, chose to ignore the threat; the others, and their potential behavior, are irrelevant” (2003:340). To see this a bit more clearly, consider the following. In order to protect my house, I put up an electric fence as a deterrent. I also put up signs announcing that anyone who tries to cross the fence will be shocked. P comes along and, intending to rob me, tries to cross the fence (despite reading my signs). His attempt to rob me fails and he is severely shocked. By putting up the fence, I was trying to deter P from robbing me. My first attempt at deterring P – by way of signage – failed and P was subsequently shocked. P was not shocked to deter other individuals, O, he was shocked simply as a consequence of his failing to heed my threats. My signage and electric fence are intended to deter P and O each individually.

Similarly, the deterrent element of punishment, on Ellis' account, is very similar to that of the signage and the electric fence. In each case of wrongdoing, of course, the threat of punishment fails in deterring that particular wrongdoer, but there are likely others who were deterred by the threat of punishment (and who we are not aware of because they did not commit a wrongdoing).¹⁷⁰

Combining the insights from Nozick and Ellis, I suggest that the *threat* of punishment is a communicative act which (a) serves to establish clear moral boundaries and reinforce norms by telling individuals what acts are morally unacceptable and (b) acts as a deterrent against wrongdoing by telling individuals what will happen if they cross these boundaries. Here again we have the building blocks to move from the claim that punishment is justified to the stronger claim that it is obligatory. Granting (a) and (b), I suggest that punishment is an essential part of the duty to institutionalise, which holds, as argued in Chapter 2, that we have a duty to create, support, and maintain institutions that protect and promote individuals' fundamental human rights – (D6). That is, if we grant (as I have) that punishment (a) reinforces norms (moral and/or legal) which protect individuals' fundamental human rights and/or (b) deters wrongdoers from violating individuals' fundamental human rights, then according to (D6) we must also grant that we have a duty to institutionalise punishment.¹⁷¹

Having now laid out our theory of punishment, we are now in a position to answer our second question: What, in regards to punishment, does justice demand? When P violates V's

¹⁷⁰ Here Ellis' argument shares some parallels with Hart who argues (to support his larger defence of punishment) that the institution of punishment is justified because it gives "criminal[s]... a fair opportunity beforehand to avoid liability" (2008:23). For further discussion on the idea that punishment is justifiable because it is carried out as the result of the wrongdoer's choice to act in a particular way see also (Berman 2008; Morris 1968).

¹⁷¹ Admittedly, deterrent theories are very difficult to empirically prove or disprove; measuring how many people are deterred from crimes may be impossible and studies based on recidivism are, in my opinion, unsatisfying. I include the deterrent aspect of punishment because I am inclined to agree that the threat of punishment does have a valuable deterring effect in the post-atrocity environment. One recent study shows that after learning of the ICC indictment of Thomas Lubanga for using child soldiers (which established the threat of punishment for this crime), militant commanders in the DRC and the CAR began dismissing their own child soldiers (Glasius 2009:505) (for additional studies see footnote 161). However, if the reader disagrees with deterrent theory, this is not particularly detrimental as the arguments made herein hold even if one omits the deterrent elements of punishment and only retains those captured by McDermott and Nozick.

fundamental human-rights, justice demands that P be punished. Our moral obligation to punish P is based on two grounds. First, so long as P is not punished, V's rights continue to be unjustly violated. We have a duty to protect V's rights from violation, so we have a *prima facie* duty to punish P. Second, since punishment serves to promote and protect individuals' fundamental human rights by reinforcing norms and preventing crime, in line with (D6), we have *prima facie* duty institutionalise it. Note, however, that I have argued that there is a *prima facie* duty to punish P as opposed to an absolute duty to punish P. As in nearly all cases of rights and duties, there may be cases where the duty to punish conflicts with the fulfillment of other rights and duties and, in some of these cases, the need to protect/fulfill those other rights or duties may outweigh our duty to punish. Though not discussed within the frame of morality, the peace versus justice debate presents us with exactly such a conflict.

So, the question before us is this: What does justice, from a moral perspective, demand in post-atrocity cases? More specifically, does justice demand that perpetrators of atrocity stand trial in a criminal court? Building on the preceding arguments we can say that since criminal prosecutions are a primary mechanism of punishment, and since there is a *prima facie* duty to punish, in those cases where we must choose between criminal trials and immunity, we have a *prima facie* duty to hold trials. However, the peace versus justice debate presents us with a serious conflict of rights which forces us to weigh the fulfilment of this duty against the fulfilment of other important duties.

The peace versus justice debate asks what we should do in those post-atrocity cases where we are faced with choosing between granting amnesties or holding criminal trials amidst threats of renewed violence. In these instances, I suggest, the normative case for criminal trials *almost* always fails. Mass-atrocities are by definition injustice on a massive scale; every instance of torture, mutilation, rape, or murder is a grave injustice. In these cases we must balance the justice fulfilled by criminal trials – which seek to address injustices

which have already occurred – against the new acts of injustice that are likely to occur if we insist on criminal trials. It seems to me that, in most cases, the need to prevent further cases of injustice prevails (though considerations of proportionality may change this conclusion – a point I discuss next). This conclusion is made more palatable if we accept the claim (which we will return to) that criminal trials are not the sole means of achieving justice because it means that past injustices need not remain completely unaddressed for the sake of preventing further injustice in the present.

We reach a similar conclusion when we assess the peace versus criminal prosecution dilemma within the context of just war theory. As made evident in Chapter 1 on just war theory, attempts to uphold justice often encounter a serious complication when injustice is committed on a large scale; often the use of force is necessary to defend/restore the fundamental rights of large numbers of people but it is quite difficult – if not impossible – to contain this force so that it does not, unintentionally, deny/violate the fundamental rights of some others. A central question in just war theory, for example, is whether a state may justly defend itself from an aggressive attack in order to protect the lives of its citizens even though some non-labile non-combatants in the aggressor state may be killed in the process. To deal with this dilemma, just war theory holds that in order for a war or intervention to be just it must, among other things, meet the requirement of proportionality, (G2). (G2), recall, holds that one must ensure that the use of force must not cause more harm (understood as the violation of fundamental human rights) than good (understood as the defence/protection of fundamental human rights). Since, as the discussion in Section 7.1 makes clear, post-atrocity justice sometimes requires decisions of justice that involve balancing goods and harms, it seems that (G2) is extremely relevant to the peace versus criminal prosecution debate.

Applied to the peace versus justice dilemma, (G2) requires us to weigh the likely harms of pursuing criminal trials against the likely harms of forgoing trials. Proportionality

dictates that where criminal prosecution will cause more harm than good – by, for example, leading to protracted conflict and/or atrocities because perpetrators are resolved to fight unless they are granted amnesties – insisting on prosecutions is unjust. However, in a handful of cases, where there are credible reasons to doubt the perpetrators’ abilities to carry out their threats, calculations of proportionality may dictate calling the perpetrators’ bluff and pushing forward with criminal trials. In these exceptional cases it may be that the harms created by impunity far outweigh the limited number of new attacks carried out by perpetrators who, despite their threats, do not have the wherewithal to renew large-scale attacks. Whether or not it is proportional and, therefore, justifiable to risk calling the perpetrators’ bluff is, of course, a very difficult call to make and post-atrocity governments would do well, as a rule, to err on the side of caution.¹⁷² However, these conclusions hold only in those cases where there truly are only the two options of either granting amnesties or renewing conflict. In some cases there may be other options which make the dilemma and its resolution a bit trickier.

The suggestion that there may be other solutions to the peace versus criminal prosecution dilemma brings us to the question of the international community’s duties to the target-state regarding matters of post-atrocity justice. In earlier chapters I argued that the international community has a duty to intervene in cases of mass-atrocity (subject to just war criteria) to stop the atrocities, remove atrocity-committing regimes from power, and maintain security within the target-state in the post-atrocity period until the target-population is able to undertake this task on their own. If the international community fulfils these duties then the likelihood that the interveners and the target-population will be faced with the peace versus criminal prosecution dilemma is very slim; the perpetrators’ capabilities will have already

¹⁷² One exception to this rule may be where there is overwhelming consensus within the general population that perpetrators ought to be criminally prosecuted despite the risks involved. In other words, if a majority of the population is willing to risk their lives (in the event that perpetrators renew atrocities in order to avoid trials) for the sake of pursuing criminal trials, then there may be a case for overriding considerations of proportionality.

been significantly diminished if not destroyed, international forces will already be providing security, and, as a result, the risks of perpetrators violently opposing criminal trials is low. Only in those cases where the interveners' capabilities have suddenly changed such that they are no longer able to successfully maintain security would this dilemma be possible (in which case the just war requirements of likelihood of success and proportionality would no longer be met). In those cases where the interveners' capability to maintain security within the target-state remains, they have a duty to protect the target-population from the threats/attacks of perpetrators attempting to resist criminal prosecution.

The suggestion that the use of international military force provides a third option in the peace versus justice debate presents us with an important question: Is punishment a just cause for the use of force? An agent has a just cause, recall from Chapter 1, if his action defends or secures fundamental human rights which are under on-going or imminent attack – (G1). For centuries, just war theorists have held punishment to be a just cause for war (Johnson 1999:27). In recent times, however, the idea of punishment as a just cause has fallen to the wayside. In part, this may have been due to disagreement among political theorists over the justification of punishment and charges that its pursuit was barbaric. However, it seems to me that if we understand punishment as a morally obligatory aspect of the protection of fundamental human rights (as argued above), then the claim that punishment constitutes a just cause of war is tenable. Of course, granting that punishment is a *just cause* for war does not grant that wars/intervention fought in pursuit of this cause are always just. Just cause is only one of the just war criteria. Actors pursuing punishment by force must meet the other just war requirements and I suspect that these requirements will not be met in most cases. Namely, it seems to me that in many cases the pursuit of punishment by war will fail to meet the requirement of proportionality. We will return to the requirement of proportionality momentarily, but for now let us move forward with the claim that punishment

is a just cause for the use of force.

Granting that punishment is an important part of the protection of fundamental human-rights and a just cause for the use of force ties the upholding of criminal trials with the duty to aid. The duty to aid, recall, holds that we must aid those whose fundamental human rights are in grave danger if we are able to do so without unacceptable risk to ourselves (D6). Further, the duty to aid may even require a rescuer to use force against an unjust attacker in order to save the victim. If we accept that criminal trials are (often) an important mechanism for protecting fundamental human rights, then it follows that when these trials are threatened, fundamental human rights may also be put in danger and, therefore, we – the international community – may have the duty to protect these rights by way of providing a secure environment for criminal proceedings if we can do so without unacceptable risk to ourselves. Hence the duty to maintain a military presence in the target-state is justified not only by the immediate need to protect the lives of the target-population from the various threats which are common in post-atrocity societies (as discussed in Chapter 4), but is also justified in order to prevent perpetrators from renewing violence and/or atrocities in order to derail criminal trials. So long as intervention meets the other just war criteria, these post-atrocity duties hold whether or not there was an initial intervention to stop the atrocities.

While I think the above argument is correct, it does present us with an interesting complication. The complication is especially apparent in those cases where there was no initial intervention and the international community is called upon to militarily intervene in order to prevent perpetrators from violently opposing criminal trials. As discussed in Chapter 1, just war theory holds that in order for the use of force to be just it must be the option of last resort. If by granting perpetrators amnesties one could get them to lay down their weapons and agree not to renew atrocities, would the use of force to facilitate criminal trials be a violation of last resort and, therefore, be unjust? For the sake of argument, let us put aside

questions about the reliability of promises of non-violence made by perpetrators of mass-atrocity and accept that perpetrators will not commit further atrocities if granted amnesty. It seems to me that even in cases where the option of amnesty is available, the use of force to secure criminal trials – so long as it meets the other just war requirements – is justified.¹⁷³

As discussed in Chapter 1, the requirement of last resort does not literally require actors to try all methods short of force. Rather, last resort requires actors to try all methods short of force which are reasonably likely to be equally or more effective at achieving ones just cause. Understood in this way the requirement of last resort is simply a reiteration of the requirement of proportionality: force is the option of last resort if it likely to result in less harm to fundamental human rights than a non-violent option.

So the question is whether, given the unique circumstances of each post-atrocity state, granting amnesties to perpetrators and forgoing criminal trials or securing criminal prosecutions by way of military force will result in less harm. Just to be clear, the question here is distinct from that asked in the paradigmatic case of peace versus criminal prosecutions discussed above. In the paradigmatic case there are two choices: grant amnesties *or* hold criminal trials and take the risks that perpetrators will make good on their threats and atrocities will resume. In the scenario we are discussing here there is a third choice: hold criminal prosecutions and deploy military force to prevent perpetrators from resuming atrocities. In these cases, when granting amnesties are likely to lead to less harm, the use of military force violates (G2) and is, therefore, unjust. It is far from clear, however, that this will be the result in most post-atrocity cases where the third option of military force is available.

¹⁷³ My argument here is similar to that in Chapter 5 where I argued that the use of force may be justified in defence of democracy when/if democracy upholds the right of national self-determination. My argument here is that the use of force may be justified in defence of criminal trials when/if those trials uphold fundamental human rights (as I have argued they do). Someone may object that this is similar to the highwayman case – instead of ‘your wallet or your life’ we have ‘your amnesty or your life’ – but, as I also argued in Chapter 5, I think that these cases are incongruous and, therefore, it does not follow from the conclusion that one ought to give up one’s wallet because it is not worth killing for that one ought to grant amnesties.

Calculations of proportionality must weigh (a) the harms likely to occur as a result of collateral damage if international forces confront/disable perpetrators and the attacks perpetrators might be able to carry out against (b) the harms that are likely to occur if perpetrators are granted amnesties. These latter harms would include, at a minimum, the possible effects of failing (in part) to institutionalise the protection of fundamental human rights, the injustice of failing (in part) to give victims of human rights violations their due, and the possible serious future repercussions (namely the renewal of atrocities) of sending the message that violence and blackmail pays.¹⁷⁴ Where interveners have already intervened in the target-state and are maintaining security (because they have fulfilled their previous duties) it seems to me that, in most cases, the harms involved with caving in to the demands of perpetrators, though this is a non-violent option, outweigh the harms involved with securing criminal trials through the continued use/threat/maintenance of force – thus (G2) is met.

In those cases where the international community has not already intervened and must decide whether or not to deploy military forces in order to provide security for criminal trials it is much more difficult to figure out where the balance lies, but it seems to me there will be cases where military intervention is the option of last resort/proportionality. The situation in Uganda is illustrative (Cakaj 2010:4; Lancaster & Lacaille 2011; Latigo 2008; Vershbow 2011). Since 1988 the LRA, headed by Joseph Kony, has killed, mutilated, tortured, raped, and abducted thousands of civilians, particularly children, in Uganda and, to a lesser extent, in Sudan, the CAR, and the DRC. Despite varying attempts to end the violence – including military attacks by the Ugandan military, the passing of an amnesty law granting amnesties to all perpetrators who surrendered, the issuance of ICC arrest warrants for Kony and other LRA leaders, and the deployment of a small number of US Special Forces serving in an advisory/intelligence capacity to aid Ugandan forces – the atrocities continue. In response to

¹⁷⁴ I use the qualifier ‘in part’ here in recognition that alternative justice mechanisms may mitigate these harms.

the ICC arrest warrant, Kony called for peace negotiations with the Ugandan government and said that the LRA would disarm in exchange for the cancelation of/immunity from the ICC arrest warrants and a guarantee of amnesty (during the negotiations, however, atrocities continued). Kony's proposition is seen by most as creating a textbook case of peace versus criminal prosecution, but I think this is incorrect. Rather, it seems to me that the Ugandan case is an example where the third option of intervention by the international community is required. The current strength of the LRA is estimated at only a few hundred soldiers, a large portion of whom are poorly trained children who were abducted and are forced to fight. Moreover, since 2008 the LRA has broken into small fighting groups of 10 to 30. Given the weakness of the LRA forces relative to the strength of force the international community *could* deploy and, as a result, the high likelihood of success that such an intervention would have, it seems to me that intervention – as opposed to either granting amnesties or allowing atrocities to continue – is the proportional and just option. This conclusion, in my opinion, would hold even if the LRA had temporarily ceased atrocities but threatened to continue them unless their demands were met by a certain date (so that the argument for intervention is not made entirely on the fact that atrocities are on-going; this fact grounds intervention on the duty to intervene as argued in Chapter 4).

The Ugandan case brings up another important issue. Though the ICC has issued arrest warrants for key LRA leadership, they have no independent means of enforcement to ensure these arrests take place. While these warrants may have had a positive effect on the Ugandan situation (by bringing the LRA to the negotiating table and reducing, to some extent, the number of atrocities), there can be serious risks involved with openly threatening perpetrators with prosecution without the means to arrest them. For example, in 1995 the International Criminal Tribunal for the former Yugoslavia (ICTY) indicted Ratko Mladic for the mass-atrocities he committed in Bosnia but, like the ICC, the ICTY had no independent

means of arresting him (it had to rely on Serbian or NATO forces, neither of which was willing to carry out the arrest). Days after learning of the ICTY's plan to indict him, Mladic orchestrated the Srebrenica massacre in which at least seven thousand were killed (Bass 2002:230). Of course, committing atrocities was Mladic's modus operandi (hence the indictment), so we certainly cannot argue that the massacres occurred solely because of the threat of indictment. However, some analysts have suggested that Mladic upped the ante, so to speak, as a way to spite the tribunal. The possibility that arrest warrants issued without the means to carry them out may increase the maliciousness of perpetrators further supports the claim that the international community has a duty to secure criminal trials by force when/if perpetrators threaten/use violence to avoid trial. When arrest warrants are issued and the international community has the ability to carry out these arrests, they have a duty to do so, not only to secure criminal trials but also to protect the lives of the target-population from potential increases in atrocities which perpetrators may commit in response to the warrants. This is especially so when the international community, as opposed to the target-state government, has issued the warrants.

To take stock, so far I have discussed the international community's role in the peace versus criminal prosecution dilemma and have argued that in many cases the possibility of intervention by international forces offers a tenable solution to this dilemma. When intervention meets the requirements of just war theory, I have argued that the international community has a duty to intervene to secure criminal prosecutions and protect the lives of the target-population. So far in this discussion I have concentrated on the just war requirements of just cause, proportionality, and last resort (itself a calculation of proportionality). Another just war requirement that is of particular interest to our discussion is legitimate authority – (G4).

There has been some concern within the peace and justice literature, especially since the creation of the ICC, that the international community may pursue post-atrocity criminal trials against the wishes of the target-state. (G4) can be used to address this concern. Let us begin our discussion by considering the case of South Africa (Cobban 2007:8-12, 80-135; Minow 1998:53-90; Rigby 2001:123-145). In 1995, after months of public consultation on matters of post-atrocity justice, the newly elected Nelson Mandela signed the South African Truth and Reconciliation Commission (TRC) into law. The TRC was mandated to establish a historical record of the atrocities committed during apartheid, discover the fate of missing persons, and recommend reparations for victims. The TRC also had the power to grant amnesties to any individual for any crime on the condition that the perpetrator made a full disclosure of his crimes (and could show that the crimes were politically motivated). The decision to grant amnesties to perpetrators – to members of the apartheid regime and anti-government forces – was based on the widely held beliefs that criminal prosecutions would exacerbate racial tensions and, thereby, lead to further conflict, and that amnesties made conditional upon full disclosure would allow for a fuller and more factual account the events. Further, there was a general consensus among the population that the TRC, on the whole, would be more conducive to national reconciliation than criminal prosecutions. As Mark Freeman notes, South Africa is now “widely...regarded as one of the paradigmatic cases of...successful transition out of violent conflict” (2011:3).

Jump ahead now to 2004 when the UN published a document stating that it rejected all amnesties granted for atrocities, and held that “no such amnesty previously granted [was] a bar to prosecution before any United Nations-created or assisted court” (UN 2004:21, article 64c). This policy was understood to hold even where such amnesties were widely supported by the target-population. The UN position and the success and approval of the TRC present us with the following question: Would it have been morally justifiable for the

UN to pursue criminal prosecutions for South Africans guilty of atrocities who had been granted amnesties by the TRC even though these amnesties were not the result of blackmail (as in the paradigmatic peace versus criminal justice case) and were widely supported by the South African population? More generally, is it morally justifiable for the international community to pursue criminal prosecution of perpetrators in those cases where the majority of the target-population (and particularly the majority of the victims) does not support criminal prosecutions? I find (G4) instructive here.

As argued in Chapter 1, (G4) requires that, in order for the use of force to be just, agents must have the consent of those on whose behalf they act. As the paradigmatic peace versus criminal prosecution debate makes clear, the pursuit of criminal prosecutions puts the lives of the target-population at risk in those cases where perpetrators try to use violence in order to avoid trial. Further, as discussed above, indicted individuals, if not arrested, may commit more atrocities simply out of spite. In order to avoid these dangers, I have argued herein that the pursuit of criminal prosecutions must be accompanied by the deployment of force to the target-state. Since criminal prosecutions and the associated deployment of force are carried out on the behalf of the target-population, (G4) requires their consent in order for intervention to be just. It seems clear, then, that in those cases where the majority of the target-population (and especially the victims) do not support criminal trials (as in the cases of South Africa and Mozambique), then the use of force to secure criminal trials is unjust and, by association, so is the pursuit of such trials.

What, though, of cases where the use of force is not necessary for criminal prosecution? Let us return to the case of Pinochet (Roht-Arriaza 2006). Recall that in 1978 Pinochet granted himself amnesty for the atrocities he orchestrated in Chile. Despite this amnesty, in 1996 a criminal complaint against Pinochet charging him with committing the atrocities in Chile was filed in a Spanish court and a criminal investigation began. Two years

later, Pinochet travelled to London for surgery. Informed of his trip, the Spanish court asked the British government to detain and extradite Pinochet to Spain where he would be prosecuted. Pinochet was immediately detained and after several months of legal proceedings in the UK over questions of legality, British courts approved Spain's extradition request. Before Pinochet's extradition, however, a medical team deemed Pinochet medically unfit for trial (under somewhat dubious circumstances), and the UK reversed its decision and sent Pinochet back to Chile. Let us depart from the facts here.¹⁷⁵ Let us pretend that Pinochet was extradited to Spain, tried, convicted, and imprisoned. Let us further pretend that Pinochet had been granted amnesty by the newly elected Chilean government in 1990 and, further, let us pretend that the amnesty was supported by a majority of the population. Finally, let us pretend that rather than holding criminal prosecutions, the new Chilean government commissioned a truth commission which was widely viewed by the population as the most appropriate form of post-atrocity justice.

(G4), concerned as it is with the use of force, does not help us in the fictional Pinochet case because there was no risk of renewed violence and no use of force. Nevertheless, the pursuit of criminal prosecution is controversial because it is done in contradiction to wishes of the Chilean population and, more pointedly, Pinochet's victims. The underlying question here is, if the victims of atrocities prefer a retributive and/or restorative justice mechanism other than criminal trials, is it unjust to go against the views of the victims and pursue criminal prosecutions? It seems to me that pursuing criminal trials in these cases undermines, at least to some extent, one of the key purposes of justice – honouring the rights of the victims. This is not to say that the fate of perpetrators ought to be left *fully* in the hands of victims; avoiding arbitrary justice and revenge killings, after all, is one of the justifications for criminal prosecutions. However, if we agree that there are a number of acceptable

¹⁷⁵ Naomi Roht-Arriaza offers a very insightful and detailed account of the Pinochet case, its possible use as a precedent in international law, and the related principle of universal jurisdiction (2006).

retributive and restorative justice mechanisms (as discussed in Section 7.1), then it seems that from these accepted mechanisms, those which are most likely to benefit the victims or, at least, which the victim places the most value on ought to be given priority. Conversely, if there is a justice mechanism that victims view as adverse to their needs (their needs associated with the atrocities and the related restoration of their lives), then it is hard to imagine a justification for pursuing those mechanisms. More strongly, pursuing a mechanism of justice which the victim places no value on, or is opposed to, fails to acknowledge the victim and, thus, may also be charged with failing to treat the victim with the respect he/she is owed.

Further, where victims constitute the bulk of the target-population and where there is wide consensus among the target-population that justice mechanisms other than criminal trials ought to be pursued, it seems to me that pursuit of criminal prosecutions by the international community would be a violation of the right to national self-determination. In Chapter 3, I argued that though fundamental human rights and their associated duties are universal, the right to national self-determination requires that members of the nation have priority in deciding how to protect the rights of their co-nationals. In other words, members of a nation ought to have the opportunity to uphold these rights in ways which reflect, shape, and protect their collective way of life without unjust interference from outsiders. Insofar as we agree that retributive and restorative justice mechanisms are means by which we protect/defend/respect fundamental human rights, it follows that the right to national self-determination dictates that members of the nation be given priority in determining which among these mechanisms they use. The point was put well by former Secretary-General Kofi Annan who, discussing the South African TRC, said: “It is inconceivable that, in such a case, the [international community] would seek to substitute its judgment for that of a whole nation which is seeking the best way to put a traumatic past behind it and build a better future” (in

Freeman 2011:88). A similar statement could be made about Mozambique. To be clear, as indicated, this argument holds only in cases where a large portion of the target-population, to include a large-portion of the victims of the atrocities, oppose criminal prosecutions. As also argued in Chapter 3, the priority given to members of a nation regarding the design of rights protecting institutions and mechanisms is negated when the nation is unable or unwilling to protect these rights. Therefore, the right to national self-determination in no way defends a decision to forgo criminal trials made *against* the preferences of the victims even in those cases where a large portion of the rest of the target-population supports this decision. In these cases the clear disconnect between the needs of the victims and the decision of the majority which disregards these needs shows that the target-state is unwilling to protect the fundamental human rights of the victims.

7.3 Peace and Justice: Conclusion

The aim of this chapter was to provide a normative analysis of the peace versus justice debate and, within the context of this debate, identify the moral duties that the international community has to the target-population. To this end, I argued that when a crime involves the violation of fundamental rights – as atrocities do – there is a *prima facie* duty to punish the perpetrators and, in particular, to hold criminal trials (which are the form of punishment at the centre of the peace versus justice debate). Further, I argued that just war theory and, in particular, the requirements of proportionality, (G2), and legitimate authority, (G4), are key determinants in decisions of whether or not to pursue criminal trials in the volatile post-atrocity environment and especially in cases where perpetrators are likely to violently oppose criminal prosecution. I also argued that in many cases where it seems that we are forced to choose between amnesty or criminal trials amidst threats of renewed violence, intervention by the international community offers a viable third option. More strongly, I argued that in those cases where such intervention meets just war requirements,

the international community has a moral duty to intervene and provide a secure environment for criminal trials.¹⁷⁶

¹⁷⁶ Though beyond the scope of this chapter, there are three issues which I think it is important for further normative work on post-atrocity justice to explore. First is the morality of disarmament, demobilization and reintegration programmes (DDR) and of the common practice of politicizing armed groups that were responsible for atrocities (turning armed groups into political parties). Many DDR programmes, for example, offer former fighters cash in exchange for their weapons and often provide demobilized fighters with a monthly income for a number of years. Similarly, the politicization of armed groups often places former perpetrators in lucrative positions of power. Unlike amnesties which are sometimes thought to unjustly give perpetrators *immunity*, these aspects of DDR and politicization could be viewed as *rewarding* perpetrators. Surprisingly, there is also little discussion about DDR programmes or the politicization of armed groups within the peace versus justice literature. For one exception see (Patel et. al. 2009). Second, are the possible moral duties associated with apprehension and extradition in those cases where a target-state government seeks to prosecute individuals who have fled the target-state and have taken refuge in another state. Lastly, are the possible moral duties associated with the seizing of perpetrators' ill-gotten assets (seizing bank accounts, real estate, etc.) and using these assets for reparation programmes.

Conclusion

The overarching objective of this thesis was to construct a normative account of post-atrocity duties that the international community has to post-atrocity societies. In the Introduction, I identified a number of essential questions which such a normative account must answer, to wit: What are the justifications for post-atrocity duties? What is/are the main goal/s of these duties? What are the appropriate means for achieving these goals? Who are the appropriate duty-bearers? I also claimed that a theory of post-atrocity justice must normatively analyse the key concerns/topics within the post-atrocity policy-oriented literature – forcible regime change, international transitional authorities, democratization, economic aid, and war crime trials – and identify what topic-specific obligations, if any, the international community might have in each of these areas. Finally, I argued that empirical data from each of these key peacebuilding topics must be used to construct and test normative claims about post-atrocity duties. Over the course of the preceding chapters we have met these aims and developed a rather substantial theory of post-atrocity duties. Let us review our path and, in so doing, get a full picture of the theory of post-atrocity justice that we have created.

Chapters 1 through 4 helped answer the essential normative questions listed above. The arguments presented in Chapters 2 and 3 showed that fundamental human rights – the rights to physical-integrity, autonomy, and national self-determination – and their associated duties – the duties to avoid, to institutionalise, and to aid – provide the moral foundation – the grounds/justification – for post-atrocity duties. Though all three of these general duties played an important role in identifying and refining more specific post-atrocity duties, the duty to aid, (D6), served as the cornerstone upon which most of these duties were built. These chapters also revealed that the ultimate goal of all post-atrocity duties is, and must be, the protection of individuals' fundamental human rights. The examination of just war theory,

in Chapter 1, focused on one of the possible means for achieving post-atrocity duties – the use of military force – and identified a number of requirements that post-atrocity duties involving the use of force must meet in order to be just (and obligatory). Chapter 4 addressed questions concerning duty-bearers and established that while the international community as a whole has duties to post-atrocity societies, duties requiring the use of force are limited to those states with voluntary military forces. Further, I concluded that the most appropriate intervener, and the one who has duties of intervention, is the agent who is likely to be the most effective.

Using the normative framework constructed in Chapters 1 through 4, in Chapters 4 through 7 I analysed the key areas of concern within the post-atrocity policy-oriented literature. In Chapter 4 I discussed the issues of regime change and the establishment of international transitional authorities (ITA). I argued that, in most post-atrocity cases, interveners have a duty to remove atrocity-committing regimes from power, occupy the target-state, and establish an ITA. Chapter 5 focused on the issue of democratization. Here I argued that interveners have a duty to try to democratize the target-state by helping to facilitate and secure the democratization process through the provision of material, civilian, and military resources. In Chapter 6 I set up a typology of just and unjust conditional and unconditional economic aid and provided a critical analysis, based on this typology, of post-atrocity economic aid conditions currently practiced and those recommended by post-atrocity experts. Finally, in Chapter 7 I engaged the peace versus justice debate and argued that the international community has a *prima facie* duty to intervene in order to secure criminal trials in the target-state if/when perpetrators use threats/violence to avoid prosecution.

As noted, one of the central claims running throughout this thesis is that we – the international community – have duties to protect the fundamental human rights of the target-population and these duties may often require the use of military force. Equally important, I

have shown that the use of military force – intervention – is also constrained and limited by the need to respect these very same rights. Most notably, the just war requirement of proportionality, (G2), introduced in Chapter 1 showed, in later chapters, that post-atrocity duties involving the use of force are limited such that they stand only when carrying out such duties will likely lead to more good (fulfillment of fundamental human rights) than harm (violation of fundamental human rights).

Another common theme of this thesis was that our duties to the target-population of post-atrocity societies are limited, to a great extent, by the consent and participation of the target-population. Consideration of the requirement of consent – discussed in Chapter 1, (G4), Chapter 2 as a qualifier to (D6), Chapter 5 regarding democratization, and Chapter 7 on criminal trials – emphasises the fact that intervention must not be something that outsiders do to the target-population but, rather, must be something that outsiders do on behalf of and in support of the target-population. Moreover, many of our post-atrocity duties are limited by the active support and/or participation of the target-population. For example, in Chapter 5 I argued that the international community's duty to try to democratize the target-state is necessarily limited because it is dependent upon the target-population's support of, and active participation in, the democratization process. We saw this again in Chapter 7 where I argued that the duty to secure criminal prosecutions was limited by the target-population's (and in particular the victims') support of criminal trials.

The limitations and qualifications to post-atrocity duties reveal an important fact about post-atrocity intervention, to wit: the circumstances and conditions surrounding each mass-atrocity case will vary and, accordingly, our exact post-atrocity duties will also vary on a case-by-case basis. Acknowledging this, my hope is that the post-atrocity duties identified herein and the normative framework upon which these theories are built, can serve as a normative guide and template for post-atrocity intervention. Moreover, I have striven to

show throughout this thesis that our decision to intervene or not intervene in a post-atrocity society must be based upon normative considerations regarding the respect and protection of fundamental human rights rather than on concerns of self-/national-interest (where these are separate from the protection of fundamental rights) or, as is often the case, our lack of motivation. More strongly, where the normative conditions are met, post-atrocity duties are obligatory. While we may admire and praise those who carry out their post-atrocity duties (and their duties in relation to humanitarian interventions more generally), we must remind ourselves that these duties are just that – *duties*; they are not supererogatory acts of charity that we – the international community – choose to do out of the kindness of our collective or unilateral hearts. Recognizing that we have *duties* to victims and survivors of atrocities is important because it forces us to face the fact that when we fail in our duties – as we most certainly have on many occasions – we too are guilty of violating the rights of these victims and survivors.

Despite having constructed a fairly substantial theory of post-atrocity duties, there are a number of issues which, due to limits of time and space, I have not discussed but which a larger/follow-on work would need to deal with. These unaddressed issues include the following: What duties might the international community have in relation to the rehabilitation of child-soldiers, the physical and psychological recovery of victims of non-lethal atrocities, the return of refugees, the care of children made orphans during the atrocities, and the disarmament, demobilization, and reintegration of former combatants (DDR)? What special duties might international actors who knowingly supported atrocity-committing regimes have to the post-atrocity society? How, if at all, should post-atrocity moral duties be translated into legal duties and what, if anything, might be the consequences of negating one's moral-legal duties? It is also important to expand the focus beyond post-atrocity duties and give a normative account of the duties the international community has in

relation to preparing for, preventing, and stopping mass-atrocities. Again, these are all important tasks – but ones I leave for another time.

Appendix-1

Date	Place	Gov. Perpetrators ¹	G ²	S ³	O ⁴	Non-Gov. Perpetrators	P ⁵	Gov.Type 09/10/11	PTS 2011 ⁶	FSI 2011
1970-75	Cambodia (a)	Lon Nol	A	1	1/7	Khmer Rouge, US (D), North Vietnamese Gov (A)	A	M/M/M	3	8
1971-79	Uganda (a)	Idi Amin	A	1	1		M	M/M/M	3	7.5
1971	East Pakistan	Zulfikar Ali Bhutto	M	1	1	Mutinous Bengalis in East Pakistan military	D	A/M/M	5	7.1
1972	Burundi (a)	Michel Micombero	A	1	5	Hutu Rebels	A	D/D/D	3	8
1972-87	Bangladesh	Government forces	A	1	4	Opposition forces	D	A/M/M	4	7.1
1973-77	Chile	Augusto Pinochet	A	1	4		A	D/D/D	1	3.3
1973-77	Pakistan	Zulfikar Ali Bhutto	D	1	1		D	M/M/D	5	8.7
1974-79	Nicaragua (a)	Somoza Debayle	A	1	1		M	D/D/D	2	6
1975-90	Lebanon		F/O	2	-		M	D/D/D	2	6.6
1974-91	Ethiopia	Mengistu Mariam	A	1	1		M	M/M/M	3	8.5
1975-78	Cambodia (b)	Khmer Rouge	A	1	1/7	Vietnamese Gov.	A	M/M/M	3	8
1975-2002	Angola	Jose dos Santos MPLA	A ⁷	1	6	Jonas Savimbi UNITA	M	M/M/M	3	7.5
1975-99	East Timor	Indonesian military	A	1	1		D	D/D/D	2	6.8

¹ Governments are listed in this section only when they are perpetrators of atrocities. However, to indicate what sort of government was in power when atrocities occurred, in those cases where the government was not responsible for such atrocities, I have included the government types in brackets. For example, [d], indicates that when atrocities were committed by non-government forces, a democratic government was in power.

² Government types, with the exception of failed states, are taken from Polity IV database (Marshall et. al. 2011). A = authoritarian, M = mixed/anocratic, D = democratic, F = failed, O = other to mean an agent other than that state's government was responsible for the atrocities. In many circumstances both government forces and other agents are responsible for atrocities. I list these others in the Non-government column.

³ Scenario types: 1= government committing atrocities (in full/par), 2 = government collapse before/during atrocities, 3 = other.

⁴ Outcome types: 1= government removed during/after atrocity, 2 = government collapsed before atrocity, 3 = government stays in power and mass-atrocities continue, 4= government stays in power, smaller scale atrocities continue 5 = government stays in power, mass-atrocities stop for a time and then recur, 6 = government stays in power no resumption of atrocities, 7 = those committing atrocities were not in power at start of atrocities, but are given/take power in post-atrocity period (all of the 7 types have a recurrence of atrocity).

⁵ Post-atrocity government type, using the same indicators as in footnote 2.

⁶ PTS data reference (Gibney et. al. 2010).

⁷ I label the MPLA as an authoritarian government because this is what the Polity IV database lists it as. However, I think I strong case could be made that during this time Angola was actually a failed state on the grounds that it did not have control over the entire Angolan territory and did not provide any meaningful protection or public services to the population (in fact it massacred them). If the reader is inclined to consider Angola a failed rather than authoritarian state, minor adjustments would need to be made in some of the calculations regarding regime type and the likelihood of mass-atrocities, however, these would only be minor and do not change the conclusion that authoritarian governments are the most likely form of government to commit mass-atrocities.

1976-83	Argentina	Military junta	A	1	1		D	D/D/D	2	4
1976-92	Mozambique	FRELIMO	A	1	6 ⁸	RENAMO	D	D/M/M	3	7
1977-79	DRC (a)	[a]	O	3	-	Katanga guerillas	A	M/M/M	5	9.2
1978-89	Cambodia (c)	Vietnamese forces & Samarin gov. forces	A	1	1	Khmer Rouge	M	M/M/M	3	8
1978-91	Guatemala	Gov. forces	M	1	1		M	D/D/D/	3	6.9
1978-92	Afghanistan (a)	Gov. forces	A	1	1	Russian military	A	A/A/A (US)	4	8.8
1978-present	Burma (Myanmar)	Military junta	A	1	3		-	A/A/A	5	9
1979-88	El Salvador	Gov. forces	M ⁹	1	1 ¹⁰		D	D/D/D	2	6.7
1979	Chad (a)	Hissene Habre	A	1	1	Southern Sara militants and others	A	M/M/M	4	9.4
1979-90	Nicaragua (b)	Sandinista Gov.	M	1	1		D	D/D/D	2	6
1979-2003	Iraq	Saddam Hussein	A	1	1		M	M/M/M	4	8.6
1980	India	[d]	O	3	-	Guerillas	D	D/D/D	4	5.9
1980-85	Uganda (b)	Milton Obote	M	1	1	Anti-gov. rebels	A	M/M/M	3	7.5
1980-2000	Peru	Gov. forces	M ¹¹	1	1	Shining Path terrorists	D	D/D/D	2	5.2
1980-88	Iran	Gov. forces	A	1	4 ¹²	Iraqi military	A	A/A/A	4	9
1980-90	Liberia (a)	Samuel Doe ¹³	A	1	1/7	Militants led by Charles Taylor and Prince Johnson	M	D/D/D	2	6.3
1982	Syria	Hafez al-Assad	A	1	4		A	A/A/A	4	8.6
1982-90	Chad (b)	Hissene Habre	A	1	1		M	M/M/M	4	9.3
1983-2002	Sudan (a)	Omar al Bashir	A	1	3		A	M/M/M	5	9.7

⁸ Though FRELIMO remains in power and, more specifically, President Chissano remains in power, the government of Mozambique undergoes a significant shift from authoritarian to democracy. Accordingly, though I have classified this is a scenario-3, it could arguable be classified as a scenario-1.

⁹ The Polity IV data shows 1979-80 as authoritarian, 81-84 as mixed, and 85-88 as democratic. As there is a clear transition going on during this period I have chosen to list it simply as mixed, but it is worth noting that it held each type of government in this period.

¹⁰ I have marked El Salvador, Guatemala, and Nicaragua (b) as atrocity-committing regimes which were removed from power, but it is important to note that these removals were done via elections rather than by force. That said, however, force played an important role, insofar as elections were allowed in part because the regimes were exhausted by the civil war which occurred concurrently with the atrocities.

¹¹ Polity IV classifies the Peruvian government as democratic from 1980-1990 and as mixed from 1990-2000.

¹² Though I have not marked Iran as undergoing a regime change, 1989 does mark the change from Ayatollah Khomeini to Ayatollah Khamene'i, which may have played a part in the changed treatment of the Kurds who were some of the main victims of atrocity. It also marks the end of the Iran-Iraq war which may have also changed treatment of the Kurds. That said, however, there is very little dependable data on the level of atrocities that have taken place in Iran since 1988. At the very least the Iranian government continues to carry out atrocities on a smaller scale to repress political dissent, though it is possible that mass-atrocities continue/d beyond this.

¹³ Samuel Doe was assassinated by Johnson in 1990, but competing rebel groups continued mass-atrocities.

1983-2009	Sri Lanka	Gov. forces	M	1	6	Tamil militants	D	D/M/M	4	8.6
1988	Burundi (b)	Pierre Buyoyo	A	1	5	Hutu rebels	A	D/D/D	3	8
1988-91	Somalia (a)	Gov. forces	A	1	1		F	F/F/F	4	9.7
1988-present	Uganda (c)	Gov. forces	M	1	3	Joseph Kony LRA	-	M/M/M	3	7.5 ¹⁴
1991	Burundi (c)	Pierre Buyoyo	A	1	5	Hutu Rebels	M	D/D/D	3	8
1991-present	Somalia (b)	[f] ¹⁵	O	2	-	Warlords	-	F/F/F	4	9.5
1991-2002	Sierra Leone	Gov. forces (SLA) ¹⁶	M	1	1	RUF led by Charles Taylor and Foday Sankoh	M	D/D/D	2	6.7
1992-99 ¹⁷	Algeria	Gov. forces	M ¹⁸	1	1	Islamic militants	M	M/M/M	3	7.5
1992-95	Bosnia	Slobodan Milosevic	M	1	1		M	M/M/M US/UN/EU	2	6.1
1993-2009	Burundi (d)	[m/d] ¹⁹	O	3	-	Anti-democracy/anti-government militants, Tutsi army, Tutsi and Hutu militants	D	D/D/D	3	8
1994	Rwanda	-	O	2	-	Hutu militants	A	M/M/M	2	8.2
1994-97	DRC (b)	Mobutu Sese Seko	A	1	1/7	Hutu militants, Rwandan military, Laurent Kabila militants, other rebel forces and state militaries ²⁰	A/F	M/M/M	5	9.2
1996-2001	Afghanistan (b)	Taliban	A ²¹	1	1		A	A/A/A (US)	4	8.8

¹⁴ The PTS and FSI indicators are surprisingly low for Uganda given that atrocities are ongoing. I think that this is attributable to the fact that the atrocities are mainly confined to the small Acholi region while the rest of the country is fairly stable. Thus taken as a whole, Uganda's scores are misleading.

¹⁵ Polity IV lists Somalia during this period as a -7 authoritarian state. Contrary to this I have labeled it as failed, as this seems more accurate, as Somalia during this time (and at the time of writing) had no effective or recognized government.

¹⁶ Polity IV lists 91-96 as authoritarian and 97-2002 as mixed. Many accounts of Sierra Leone during this time hold that it was a failed state. Considering all this, I have decided to list it as mixed. Charles Taylor's RUF forces were responsible for the majority of these deaths.

¹⁷ Smaller scale atrocities continue beyond this date, mostly by Islamist militant groups associated with al-Qaida.

¹⁸ Polity IV lists 92, 96-99 as mixed and 93-95 as authoritarian.

¹⁹ Polity IV classifies Burundi as a mixed government until the 2005 elections of (current) President Pierre Nkurunziza from which time it has been classified as a democracy.

²⁰ These other states include Rwanda (A/M), Uganda (M), Angola (M), Namibia (D), and Zimbabwe (A/M).

²¹ A case could be made that during this period Afghanistan was in fact a failed state rather, as the Polity IV database indicates, a state under authoritarian rule. This is in line with most accounts and, in fact, I would argue that Afghanistan was a failed state. However, I have chosen to stick with the Polity IV listing for the purposes of calculating which forms of government are more likely to commit mass-atrocities, because though the Taliban, was by most accounts a failed government, it was the recognized government and, more importantly, as a government it was authoritarian. So on my view, the government was authoritarian and the state was a failed state (contrary to Somalia after 1991 which was a failed state with no government).

1998-present	DRC (c)	Laurent & Joseph Kabila	A ²²	1	3	Various militant forces and neighbouring states	-	M/M/M	5	9.2
1998-99	Kosovo	Slobodan Milosevic	M	1	1		-	D/D/D	1	-
1999-2003	Liberia (b)	Charles Taylor	A	1	1	Anti-gov. militants	M	D/D/D	2	6.3
2003-present	Sudan (b)	Omar al Bashir	A	1	3		-	M/M/M	5	9.7

Appendix-1²³

²² Footnote 21 on Afghanistan is equally applicable to the Kabila governments and the DRC.

²³ I have chosen 1970 as my starting point, simply to reduce the number of cases under consideration. I do not think expanding this survey would significantly change the results in any way. For manageability I do not go beyond atrocities with a start date of 2003. This is not an exhaustive survey, as I am sure I have left some cases out. However, again, I do believe this is a fair representation so that adding cases would not significantly change the results. Table data taken from: Cambodia (a) (Rummel 2008:165); Uganda (a) (Bellamy 2011; Harff 2003:60; Harff & Gurr 1988:364; Meredith 2006:238; Rummel 2008:7; Wheeler 2002:111-112); East Pakistan (Bellamy 2011; Harff 2003:60; Harff & Gurr 1988:364; Power 2002:82; Rummel 2008:332; Wheeler 2002:56-59); Burundi (a) (Bellamy 2011; USIP 2004; Ngaruko & Nkurunziza 2005:37; Rummel 1998:351, 2008:10); Bangladesh (Chakma 2010; Rummel 1998:351); Chile (Bellamy 2011; Harff 2003:60; USIP 2002); Pakistan (Bellamy 2011; Harff 2003:60); Nicaragua (a) (Klerlein 2006); Lebanon (Bellamy 2011; Rummel 1998:353); Ethiopia (Baker 2004; Bellamy 2011; Harff 2003:60; Lacina & Gleditsch 2005:159; Rummel 1998:352); Cambodia (b) (Bellamy 2011; Harff & Gurr 1988:364; Power 2002:87-105; Rummel 2008:165; Wheeler 2002:79-84); Angola (Bellamy 2011; Harff 2003:60; Lacina & Gleditsch 2005:159; Rummel 2008:7); East Timor (Bellamy 2011; Powel 2006; Rummel 2008:10); Argentina (Bellamy 2011; Farer 2000; Harff 2003: 60; Harff & Gurr 1988:364; Rummel 1998:351); Mozambique (Bellamy 2011; Lacina & Gleditsch 2005:159; Meredith 2006:609); DRC (a) (Bellamy 2011; Harff 2003:60; Rummel 1998:355); Cambodia (c) (Rummel 2008:165); Afghanistan (a) (Bellamy 2011; Harff 2003:60; Rummel 1998:351); Burma (Bellamy 2011); El Salvador (Bellamy 2011; Bellamy, Williams & Griffin 2007:120; Harff & Gurr 1988:364; Montgomery 1995:140); Chad (a) (Rummel 1998:351); Nicaragua (b) (Klerlein 2006); Iraq (a) (Bellamy 2011; Harff 2003:60; Power 2002:171-173); India (Rummel 1998:352); Uganda (b) (Harff & Gurr 1988:365; Meredith 2006:238; Rummel 2008:7) Peru (Bellamy 2011; Rummel 1998:353); Iran (a) (Bellamy 2011); Liberia (a) (Bellamy 2011; Lacina & Gleditsch 2005:159; Meredith 2006:548-560); Syria (Bellamy 2011; Harff 2003:60); Iran (b) (Bellamy 2011; Harff & Gurr 1988:364; Miall, Ramsbotham & Woodhouse 2001:26); Guatemala (Bellamy 2011; Harff 2003:60; Oglesby & Ross 2009:29); Chad (b) (Baker 2004; Bellamy 2011); Sri Lanka (Altman 2009; Bellamy 2011; Harff 2003:60); Burundi (b) (Harff 2003:60; Ngaruko & Nkurunziza 2005:37); Somalia (a) (Osman & Souare 2007); Sudan (a) (Bellamy 2011; Lacina & Gleditsch 2005:159; Meredith 2006:598); Burundi (c) (Bellamy 2011; Ngaruko & Nkurunziza 2005:37); Somalia (b) (Bellamy 2011; Seybolt 2008:52-3; Shawcross 2001:67; Wheeler 2002:174); Sierra Leone (Meredith 2006:572); Algeria (Meredith 2006:460; Shawcross 2001:304); Bosnia (Harff 2003:60; Power 2002:251); Burundi (d) (Bellamy 2011; Ngaruko & Nkurunziza 2005:37; Shawcross 2001:257); Rwanda (Bellamy 2011; Power 2002:334); DRC (b) (Lacina & Gleditsch 2005:159; Ndikumana & Emizet 2005:64); Afghanistan (b) (Bellamy 2011; Shawcross 2001:13, 270); DRC (c) (Bellamy 2011; Ndikumana & Emizet 2005:64); Kosovo (Bellamy 2011; Power 2002:468-472); Liberia (b) (Bellamy 2011); Sudan (b) (Bellamy 2011; Udombana 2005:1155); Iraq (b) (Bellamy 2011); Uganda (c) (Lancaster and Lacaille 2011; Schomerus et. al. 2011). PTS and FSI data available, respectively, online at: <http://www.politicalterroryscale.org/ptsdata.php> and <http://www.fundforpeace.org/global/?q=fsi-grid2011>.

BIBLIOGRAPHY

- ADDISON, T. & MCGILLIVRAY, M. (2004) Aid to Conflict-Affected Countries: Lessons for Donors. *Conflict, Security, & Development*, 4, 347-367.
- AKANDE, D. (2010) Clearing the Fog of War? The ICRC's Interpretive Guidance on Direct Participation in Hostilities. *International and Comparative Law Quarterly*, 59, 180-192.
- ALTMAN, A. (2009) The End of Sri Lanka's Cataclysmic Civil War. *Time Magazine*. Online at: http://www.time.com/time/specials/packages/article/0,28804,1945379_1944421_1944388,00.html
- ANDERSON, B. (2006) *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London, Verso.
- ANNAN, K. (2002) Democracy as an International Issue. *Global Governance*, 8, 135-142.
- APODACA, C. (2001) Global Economic Patterns and Personal Integrity Rights After the Cold War. *International Studies Quarterly*, 45, 587-602.
- ARCHIBUGI, D. (2004) Cosmopolitan Guidelines for Humanitarian Intervention. *Alternatives*, 29, 1-21.
- BAER, D. (2011) The Ultimate Sacrifice and the Ethics of Humanitarian Intervention. *Review of International Studies*, 37, 301-326.
- BAKER, B. (2004) Twilight of Impunity for Africa's Presidential Criminals. *Third World Quarterly*, 25, 1487-1499.
- BARON, I. (2010) Dying For The State: The Missing Just War Question? *Review of International Studies*, 36, 215-234.
- BARRY, C. (1986) Lady Chatterley's Lover and Doctor Fischer's Bomb Party: Liberalism, Pareto Optimality, and the Problem of Objectionable Preferences. IN ELSTER, J. & HYLLAND, A. (Eds.) *Foundations of Social Choice Theory*, Cambridge, Cambridge University Press.
- BASS, G. (2002) *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*. Princeton, Princeton University Press.
- BASS, G. (2004) Jus Post Bellum. *Philosophy and Public Affairs*, 32, 384-412.
- BATTISTELLI, F. (1997) Peacekeeping and the Postmodern Soldier. *Armed Forces & Society*, 23, 467-484.
- BAYLES, M. (1972) A Concept of Coercion. IN PENNOCK, R. & CHAPMAN, J. (Eds.) *Coercion Nomos XIV*, New York, Aldine.
- BEAUCHAMP, T. (2009) Autonomy and Consent. IN MILLER, F. & WERTHEIMER, A. (Eds.) *The Ethics of Consent: Theory and Practice*. Oxford, Oxford University Press.
- BEDAU, H. & KELLY, E. (2010) Punishment. *The Stanford Encyclopedia of Philosophy*. Online at: <http://plato.stanford.edu/entries/punishment/>
- BEITZ, C. (1979a) Bounded Morality: Justice and the State in World Politics. *International Organization*, 33, 405-424.
- BEITZ, C. (1999) *Political Theory and International Relations*, Princeton, Princeton University Press.
- BELLAMY, A. (2004) Supreme Emergencies and the Protection of Non-Combatants in War. *International Affairs*, 80, 829-850.
- BELLAMY, A. (2008) The Responsibilities of Victory: *Jus Post Bellum* and the Just War. *Review of International Studies*, 34, 601-626.

- BELLAMY, A. (2011) *Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Prevent: Appendices*, The Stanley Foundation. Online at:
<http://www.stanleyfoundation.org/resources.cfm?id=445>
- BELLAMY, A., WILLIAMS, P. & GRIFFIN, S. (2007) *Understanding Peacekeeping*, Cambridge, Polity Press.
- BENNER, E. (2001) Is There A Core National Doctrine? *Nations and Nationalism*, 7, 155-174.
- BERMAN, M. (2008) Punishment and Justification. *Ethics*, 118, 258-290.
- BERMEO, N. (2003) What the Democratization Literature Says – or Doesn't Say – about Postwar Democratization. *Global Governance*, 9, 159-177.
- BOYCE, J. (2002) Aid Conditionality as a Tool for Peacebuilding: Opportunities and Constraints. *Development and Change*, 33, 1025-1048.
- BOYCE, J. & O'DONNELL, M. (2007) Policy Implications: The Economics of Postwar Statebuilding. IN BOYCE, J. & O'DONNELL, M. (Eds.) *Peace and the Public Purse: Economic Policies for Postwar Statebuilding*, Boulder, Lynne Rienner Publishers.
- BOX, R., MARSHALL, G., REED, B. & REED, C. (2001) New Public Management and Substantive Democracy. *Public Administration Review*, 61, 608-609.
- BROWN, C. (2007) *Sovereignty, Rights and Justice*, Cambridge, Polity.
- BUCHANAN, A. (1993) Secession and Nationalism. IN GOODIN, R. & PETTIT, P. (Eds.) *A Companion to Contemporary Political Philosophy*, Oxford, Blackwell Publishers.
- BUCHANAN, A. (1997) Self-Determination, Secession, and the Rule of Law. IN MCKIM, R. & MCMAHAN, J. (Eds.) *The Morality of Nationalism*, New York, Oxford University Press.
- BUCHANAN, A. (1999) The Internal Legitimacy of Humanitarian Intervention. *The Journal of Political Philosophy*, 7, 71-87.
- BUCHANAN, A. (2006) Secession, State Breakdown, and Humanitarian Intervention. IN CHATTERJEE, D. & SCHEID, D. (Eds.) *Ethics and Foreign Intervention*, Cambridge Cambridge University Press.
- BUENO DE MESQUITA, B., DOWNS, G., SMITH, A., & CHERIF, F. (2005) Thinking Inside the Box: A Closer Look at Democracy and Human Rights. *International Studies Quarterly*, 49, 439-457.
- BURES, O. (2005) Private Military Companies: A Second Best Peacekeeping Option? *International Peacekeeping*, 2, 533-546.
- BURGH, R. (1982) Do the Guilty Deserve Punishment? *The Journal of Philosophy*, 79, 193-210.
- CAKAJ, L. (2010) *The Lord's Resistance Army of Today*, Washington DC, Enough. Online at: www.enoughproject.org.
- CALL, C. & COOK, S. (2003) On Democratization and Peacebuilding. *Global Governance*, 9, 233-246.
- CALL, C. & WYETH, V. (2008) *Building States to Build Peace*, Boulder, Lynne Rienner Publishers.
- CAMPBELL, T. (2006) *Rights: A Critical Introduction*, Oxon, Routledge.
- CANEY, S. (1992) Liberalism and Communitarianism: a Misconceived Debate. *Political Studies*, 40, 273-289.
- CANEY, S. (1996) Individuals, Nations and Obligations. IN CANEY, S., GEORGE, D., & JONES, P. (Eds.) *National Rights, International Obligations*, Oxford, Westview Press.

- CANEY, S. (1997a) Human Rights and the Rights of States: Terry Nardin on Nonintervention, *International Political Science Review*, 18, 27-37.
- CANEY, S. (1997b) Self-Government and Secession: The Case of Nations. *The Journal of Political Philosophy*, 5, 351-372.
- CANEY, S. (2006) *Justice Beyond Borders*, Oxford, Oxford University Press.
- CAPLAN, R. (2005) *International Governance of War-Torn Territories: Rule and Reconstruction*, Oxford, Oxford University Press.
- CAROTHERS, T. (2007) The 'Sequencing' Fallacy. *The Journal of Democracy*, 18, 12-27.
- CARRICK, D., CONNELLY, J., ROBINSON, P. (2009) *Ethics Education For Irregular Warfare*, Farnham, Ashgate.
- CHAKMA, B. (2010) The Post-colonial State and Minorities: Ethnocide in the Chittagong Hill Tracts, Bangladesh. *Commonwealth & Comparative Politics*, 48, 281-300.
- CHARVET, J. & KACZYNSKA-NAY, E. (2008) *The Liberal Project and Human Rights: The Theory and Practice of a New World Order*, Cambridge, Cambridge University Press.
- CHATTERJEE, D. & SCHEID, D. (2006) Introduction. IN CHATTERJEE, D. & SCHEID, D. (Eds.) *Ethics and Foreign Intervention*, Cambridge, Cambridge University Press.
- CHAUVET, L., COLLIER, P., & DUPONCHEL, M. (2010a) *Are Post-Conflict Aid Projects More Successful Than Others?* Online at: <http://voxeu.org/index.php?q=node/5795>
- CHAUVET, L., COLLIER, P., & DUPONCHEL, M. (2010b) *What Explains Aid Projects Success in Post-Conflict Situations?* Washington D.C., World Bank. Online at: http://www.africametrics.org/documents/conference09/papers/Chauvet_Collier_Duponchel.pdf
- CHESTERMAN, S. (2004) *You, The People: The United Nations, Transitional Administration, and State-Building*, Oxford, Oxford University Press.
- CHRISTIANO, T. (1996) *The Rule of The Many: Fundamental Issues in Democratic Theory*, Boulder, Westview Press.
- CHWASZCZA, C. (2006) Secession, Humanitarian Intervention, and the Normative Significance of Political Boundaries. IN CHATTERJEE, D. & SCHEID, D. (Eds.) *Ethics and Foreign Intervention*, Cambridge, Cambridge University Press.
- CLARK, J. (2011) Peace, Justice and the International Criminal Court. *Journal of International Criminal Justice*, 9, 521-545.
- CLEAVER, G. (2000) Subcontracting Military Power: The Privatisation of Security in Contemporary Sub-Saharan Africa. *Crime, Law, and Social Change*, 33, 131-149.
- COADY, C.A.J (2006) War for Humanity: A Critique. IN CHATTERJEE, D. & SCHEID, D. (Eds.) *Ethics and Foreign Intervention* Cambridge, Cambridge University Press.
- COADY, C.A.J (2010) The Status of Combatants. IN RODIN, D. & SHUE, H. (Eds.) *Just and Unjust Warriors* Oxford, Oxford University Press.
- COATES, A. J. (1997) *The Ethics of War*, Manchester, Manchester University Press.
- COBBAN, H. (2007) *Amnesty After Atrocity?: Healing Nations After Genocide and War Crimes*, Boulder, Paradigm Publishers.
- COHEN, G. (1983) The Structure of the Proletarian Unfreedom. *Philosophy & Public Affairs*, 12, 3-33.

- COHEN, J. (1997) Procedure and Substance in Deliberative Democracy. IN BOHMAN, J. & REHG, W. (Eds.) *Deliberative Democracy: Essays on Reason and Politics*, Cambridge, MIT Press.
- COHEN, J. (2008) Rethinking Human Rights, Democracy, and Sovereignty in the Age of Globalization. *Political Theory*, 36, 578-606.
- COLLIER, P. (2003) *Breaking the Conflict Trap: Civil War and Development Policy*, Washington D.C., World Bank.
- COLLIER, P. (2009) *Wars, Guns & Votes: Democracy in Dangerous Places*, London, Vintage Books.
- COLLIER, P. & DOLLAR, D. (1999) *Aid Allocation and Poverty Reduction*, Washington D.C., World Bank.
- COLLIER, P. & HOFFMANN, A. (2002) *Greed and Grievance in Civil War*, Oxford, CSAE (University of Oxford).
- COLLINGWOOD, V. (2003) Assistance with Fewer Strings Attached. *Ethics & International Affairs*, 17, 55-67.
- CONIBERE, R., ASHER, J., CIBELLI, K. DUDUKOVICH, J., KAPLAN, R., & BALL, P. (2004) *Appendix 1: Statistical Appendix to the Report of the Truth and Reconciliation Commission of Sierra Leone*, Palo Alto, Human Rights Data Analysis Group. Online at: <https://www.hrdag.org/resources/publications/SL-TRC-statistics-chapter-final.pdf>
- COOK, M. (2000) 'Immaculate War': Constraints on Humanitarian Intervention. *Ethics & International Affairs*, 14, 55-65.
- COOPER, N. (2005) Picking out the Pieces of the Liberal Peaces: Representations of Conflict Economies and Implications for Policy. *Security Dialogue*, 36, 463-478.
- CUNNINGHAM, D. (2010) Blocking resolution: How external states can prolong civil wars. *Journal of Peace Research*, 47, 115-127.
- PATEL, A., GREIFF, P., WALDORF, L. (2009) *Disarming the Past: Transitional Justice and Ex-Combatants*, New York, Social Science Research Council.
- DAHL, R. (1998) *On Democracy*, London, Yale University Press.
- DALLAIRE, R. (2004) *Shake Hands With the Devil: The Failure of Humanity in Rwanda*, London, Arrow Books.
- DAVENPORT, C. (2007) State Repression and the Tyrannical Peace. *Journal of Peace Research*, 44, 485-504.
- DAVENPORT, J. & ARMSTRONG, D. (2004) Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996. *American Journal of Political Science*, 48, 538-554.
- DAVIDOVIC, J. (2008) Are Humanitarian Interventions Obligatory? *Journal of Applied Philosophy*, 25, 134-144.
- DE WAAL, A. (1997) Democratizing the Aid Encounter in Africa. *International Affairs*, 73, 623-639.
- DEFIGUEIREDO, R. & WEINGAST, B. (1999) The Rationality of Fear: Political Opportunism and Ethnic Conflict. IN WALTER, B. & SNYDER, J. (Eds.) *Civil Wars, Insecurity, and Intervention*, New York, Columbia University Press.
- DELMATER, J., KATZ, D. & KELMAN, H. (1969) On the Nature of National Involvement: A Preliminary Study. *The Journal of Conflict Resolution*, 13, 320-357.
- DIMEGLIO, R. (2005) The Evolution of the Just War Tradition: Defining Jus Post Bellum. *Military Law Review*, 186, 116-163.

- DOBOS, N. (2010a) Is U.N. Security Council Authorization for Armed Humanitarian Intervention Morally Necessary? *Philosophia*, 38, 499-515.
- DOBOS, N. (2010b) On Altruistic War and National Responsibility: Justifying Humanitarian Intervention to Soldiers and Taxpayers. *Ethical Theory & Moral Practice*, 13, 19-31.
- DOYLE, M. & SAMBANIS, N. (2000) International Peacebuilding: A Theoretical and Quantitative Analysis. *The American Political Science Review*, 94, 779-801.
- DOYLE, M. & SAMBANIS, N. (2006) *Making War & Building Peace*, Princeton, Princeton University Press.
- DRUCKMAN, D. (1994) Nationalism, Patriotism, and Group Loyalty: A Social Psychological Perspective. *Mershon International Studies Review*, 38, 43-68.
- DUPONCHEL, M. (2008) *Can Aid Break the Conflict Trap?*, Paris, University Paris/CES. Online at: <http://www.csae.ox.ac.uk/conferences/2008-EDiA/papers/316-Duponchel.pdf>
- DWORKIN, G. (1988) *The Theory and Practice of Autonomy*, Cambridge, Cambridge University Press.
- DWORKIN, R. (1985). *A Matter of Principle*, Cambridge, Harvard University Press.
- DWORKIN, R. (2000). *Sovereign Virtue: The Theory and Practice of Equality*, Cambridge, Harvard University Press.
- ELDEN, S. (2006) Contingent Sovereignty, Territorial Integrity and the Sanctity of Borders. *SAIS Review*, 26, 11-24.
- ELLIS, A. (2003) The Deterrence Theory of Punishment. *The Philosophical Quarterly*, 53, 337-351.
- EMMANUEL, N. & ROTHCHILD, D. (2007) Economic Aid and Peace Implementation: The African Experience. *Journal of Intervention and Statebuilding*, 1, 171-188.
- ENGLEHART, N. (2009) State Capacity, State Failure, and Human Rights. *Journal of Peace Research*, 46, 163-180.
- ETZIONI, A. (2004) A Self-Restrained Approach to Nation-Building by Foreign Powers. *International Affairs*, 80, 1-17.
- EVANS, G. (2008) *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Washington D.C. , Brookings Institution Press.
- EVANS, M. (2005a) Moral Theory and the Ideal of a Just War. IN EVANS, M. (Ed.) *Just War Theory: A Reappraisal*, Edinburgh, Edinburgh University Press.
- EVANS, M. (2005b) In Humanities Name: Democracy and the Right to Wage War. IN EVANS, M. (Ed.) *Just War Theory: A Reappraisal*, Edinburgh, Edinburgh University Press.
- EVANS, M. (2008) Balancing Peace, Justice and Sovereignty in Jus Post Bellum: The Case of 'Just Occupation'. *Millennium: Journal of International Studies*, 36, 533-554.
- FABRE, C. (2000) *Social Rights Under the Constitution: Government and the Decent Life*, Oxford, Oxford University Press.
- FABRE, C. (2007b) Mandatory Rescue Killings. *The Journal of Political Philosophy*, 15, 363-384.
- FABRE, C. (2008) Cosmopolitanism, Just War Theory and Legitimate Authority. *International Affairs*, 84, 963-976.
- FABRE, C. (2009a) Guns, Food, and Liability to Attack in War. *Ethics*, 120, 36-63.
- FABRE, C. (2009b) Permissible Rescue Killings. *Proceedings of the Aristotelian Society*, 109, 149-164.

- FABRE, C. (2010a) In Defence of Mercenarism. *British Journal of Political Science*, 40, 539-559.
- FABRE, C. (forthcoming) Cosmopolitanism and Wars of Self-Defence. IN FABRE, C. & LAZAR, S. (Eds) *National Defence*, Oxford, University of Oxford Press, under contract.
- FARER, T. (2000) *Swallowing Injustice to Build Community: Latin America After the Era of State Terror*. Presented at the Rockefeller Foundation Series, University of California, Berkley (Berkley, 20 April). Online at: <http://globetrotter.berkeley.edu/people/Farer/Farer-Injustice.pdf>
- FEINBERG, J. (1989) *The Moral Limits of the Criminal Law Volume 3: Harm to Self*, Oxford: Oxford University Press.
- FIXDAL, M. & SMITH, D. (1998) Humanitarian Intervention and Just War. *Mershon International Studies Review*, 42, 283-312.
- FOX, G. (2008) *Humanitarian Occupation*, Cambridge, Cambridge University Press.
- FRANCK, T. (1992) The Emerging Right to Democratic Governance. *The American Journal of International Law*, 86, 46-91.
- FRANCK, T. & RODLEY, N. (1973) After Bangladesh: The Law of Humanitarian Intervention by Military Force. *The American Journal of International Law*, 67, 275-305.
- FRANKFURT, H. (1973) Coercion and Moral Responsibility. IN HONDERICH, T. (Ed.) *Essays on Freedom of Action*, London, Routledge & Kegan Paul.
- FREEMAN, M. (2011) *Necessary Evils: Amnesties and the Search for Justice*, Cambridge, Cambridge University Press.
- FSI (2011) *Failed States Index*, Washington DC, The Fund for Peace. Online at: <http://www.fundforpeace.org/global/?q=fsi-grid2011>
- FUKUYAMA, F. (2005) 'Stateness' First. *Journal of Democracy*, 16, 84-88.
- GALTUNG, F. & TISNE, M. (2009) A New Approach to Postwar Reconstruction. *Journal of Democracy*, 20, 93-107.
- GANTZ, P. (2003) *The Private Sector's Role in Peacekeeping and Peace Enforcement*, Refugees International. Online at: http://www.sandline.com/hotlinks/Refugees_InternationalC3FF13.html
- GARDNER, J. (2008) Introduction. IN HART, H. L.A. (Author) *Punishment and Responsibility*, Oxford, Oxford University Press.
- GATES, S., HEGRE, H., JONES, M., & STRAND, H. (2006) Institutional Inconsistency and Political Instability: Polity Duration, 1800-2000. *American Journal of Political Science*, 50, 893-908.
- GELLNER, E. (2006) *Nations and Nationalism*, Oxford, Blackwell Publishing.
- GERT, B. (1972) Coercion and Freedom. IN PENNOCK, R. & CHAPMAN, J. (Eds.) *Coercion Nomos XIV*, New York, Aldine.
- GEWIRTH, A. (2009) Are There Any Absolute Rights? IN WALDRON, J. (Ed.) *Theories of Rights*, Oxford, Oxford University Press.
- GHECIU, A. & WELSH, J. (2009) The Imperative to Rebuild: Assessing the Normative Case for Postconflict Reconstruction. *Ethics & International Affairs*, 23, 121-146.
- GIBNEY, M., CORNETT, L., & WOOD, R. (2010) *Political Terror Scale 1976-2008*, Political Terror Scale. Online at: <http://www.politicalterrorscale.org/>
- GLOBAL GOVERNANCE (2011) 17(1).
- GOLDMAN, A. (1982) Toward a New Theory of Punishment. *Law and Philosophy*, 1, 57-76.

- GRIFFIN, J. (1988) *Well-Being: Its Meaning, Measurement and Moral Importance*, Oxford, Oxford University Press.
- GRIFFIN, J. (2008) *On Human Rights*, Oxford, Oxford University Press.
- GRODSKY, B. (2009) Re-Ordering Justice: Towards a New Methodological Approach to Studying Transitional Justice. *Journal of Peace Research*, 46, 819-837.
- HAKSAR, V. (1976) Coercive Proposals [Rawls and Gandhi]. *Political Theory*, 4, 65-79.
- HAKSAR, V. (1986) Excuses and Voluntary Conduct. *Ethics*, 96, 317-329.
- HAMPTON, J. (1984) The Moral Education Theory of Punishment. *Philosophy & Public Affairs*, 13, 208-238.
- HANNUM, H. (1996) *Autonomy, Sovereignty, and Self-Determination: The Accomodation of Conflicting Rights*, Philadelphia, University of Pennsylvania Press.
- HANNUM, H. (2006) Peace versus Justice: Creating Rights as well as Order out of Chaos. *International Peacekeeping*, 13, 582-595.
- HARBOM, L. & WALLENSTEEN, P. (2009) Armed Conflicts, 1946-2008. *Journal of Peace Research*, 46, 577-587.
- HARFF, B. (2003) No Lessons Learned From the Holocaust? Assessing Risks of Genocide and Political Mass Murder Since 1955. *The American Political Science Review*, 97, 57-73.
- HARFF, B. & GURR, T. (1988) Toward Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases Since 1945. *International Studies Quarterly*, 32, 359-371.
- HART, H.L.A. (2008) *Punishment and Responsibility*, Oxford, Oxford University Press.
- HART, H. L.A.(2009) Are There Any Natural Rights. IN WALDRON, J. (Ed.) *Theories of Rights*, Oxford, Oxford University Press.
- HAYDEN, P. (2005) Security Beyond the State: Cosmopolitanism, Peace and the Role of Just War Theory. IN EVANS, M. (Ed.) *Just War Theory: A Reappraisal*, Edinburgh, Edinburgh University Press.
- HEDLUND, E. (2011) What Motivates Swedish Soldiers to Participate in Peacekeeping Missions: Research Note. *Armed Forces & Society*, 37, 180-190.
- HEGRE, H., ELLINGSEN, T., GATES, S., & GLEDITSCH, N. (2001) Toward a Democratic Civil Peace? Democracy, Political Change, and Civil War, 1816-1992. *The American Political Science Review*, 95, 33-48.
- HELD, D. (2006) *Models of Democracy*, Cambridge, Polity Press.
- HELD, V. (1972) Coercion and Coercive Offers. IN PENNOCK, R. & CHAPMAN, J. (Eds.) *Coercion Nomos XIV*, New York, Aldine.
- HENDRIX, C. (2010) Measuring State Capacity: Theoretical and Empirical Implications for the Study of Civil Conflict. *Journal of Peace Research*, 47, 273-285.
- HERZ, J. (1950) Idealist Internationalism and the Security Dilemma. *World Politics*, 2, 157-180.
- HOFFMANN, S. (1996) *The Ethics and Politics of Humanitarian Intervention*. Notre Dame, University of Notre Dame Press.
- HOFFMANN, S. (2006) Intervention: Should it go on, can it go on? IN CHATTERJEE, D. & SCHEID, D. (Eds.) *Ethics and Foreign Intervention* Cambridge, Cambridge University Press.

- HOGLUND, K. (2009) Violence in War-to-Democracy Transitions. IN JARSTAD, A. & SISK, T. (Eds.) *From War to Democracy: Dilemmas of Peacebuilding*, Cambridge, Cambridge University Press.
- HOHFELD, W. (1964) *Fundamental Legal Conceptions: As Applied in Judicial Reasoning*, New Haven, Yale University Press.
- HOLZGREFE, J. (2008) The Humanitarian Intervention Debate. IN HOLZGREFE, J. & KEOHANE, R. (Eds.) *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, Cambridge, Cambridge University Press.
- HURKA, T. (1997) The Justification of National Partiality. IN MCKIM, R. & MCMAHAN, J. (Eds.) *The Morality of Nationalism*, Oxford, Oxford University Press.
- HURKA, T. (2005) Proportionality in the Morality of War. *Philosophy and Public Affairs*, 33, 34-66.
- HUYSE, L. (2008) Introduction: Traditional-Based Approaches in Peacemaking, Transitional Justice and Reconciliation Policies. IN HUYSE, L. & SALTER, M. (Eds.) *Traditional Justice and Reconciliation after Violent Conflict; Learning from African Experiences*, Stockholm, International IDEA.
- HUYSE, L. & SALTER, M. (2008) *Traditional Justice and Reconciliation after Violent Conflict; Learning from African Experiences*, Stockholm, International IDEA.
- ICC (2011a) *Elements of Crimes*, The Hague, ICC. Online at: <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>
- ICC (2011b) *Rome Statute of the International Criminal Court*, The Hague, ICC. Online at: <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>
- ICISS (2001) *The Responsibility to Protect*, Ottawa, International Development Research Centre. Online at: <http://www.iciss.ca/report-en.asp>
- IGNATIEFF, M. (2008) State Failure and Nation Building. IN HOLZGREFE, J. & KEOHANE, R. (Eds.) *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, Cambridge Cambridge University Press.
- IGREJA, V. & DIAS-LAMBRANCA, B. (2008) Restorative Justice and the Role of Magamba Sprits in Post-Civil War Gorongosa, Cenral Mozambique. IN HUYSE, L. & SALTER, M. (Eds.) *Traditional Justice and Reconciliation after Violent Conflict; Learning from African Experiences*, Stockholm, International IDEA.
- INGELAERE, B. (2008) The Gacaca Courts in Rwanda. IN HUYSE, L. & SALTER, M. (Eds.) *Traditional Justice and Reconciliation after Violent Conflict; Learning from African Experiences*, Stockholm, International IDEA.
- JACKSON, R. (2005) *The Global Covenant: Human Conduct in a World of States*, Oxford, Oxford University Press.
- JANDA, K., BERRY, J., GOLDMAN, J., & HULA, K. (2011) *The Challenge of Democracy: American Government in Global Politics*, Boston, Wadsworth Publishing.
- JARSTAD, A. (2006) *Dilemmas for War-to-Democracy Transitions*, Presented at State, Conflict and Democracy Conference, Lund University (12-13 May 2006).
- JARSTAD, A. (2009) Dilemmas of War-to-Democracy Transitions: Theories and Concepts. IN JARSTAD, A. & SISK, T. (Eds.) *From War to Democracy: Dilemmas of Peacebuilding*, Cambridge, Cambridge University Press.

- JARSTAD, A. & SISK, T. (2009) Introduction. IN JARSTAD, A. & SISK, T. (Eds.) *From War to Democracy: Dilemmas of Peacebuilding*, Cambridge, Cambridge University Press.
- JERVIS, R. (1978) Cooperation Under the Security Dilemma. *World Politics*, 30, 167-214.
- JOHNSON, J. (1999) *Morality and Contemporary Warfare*, New Haven, Yale University Press.
- JONES, P. (1994) *Rights*, New York, Palgrave Macmillan.
- JUSTINO, P. (2009) Poverty and Violent Conflict: A Micro-Level Perspective on the Causes and Duration of Warfare. *Journal of Peace Research*, 46, 315-333.
- KALDOR, M. (2006) *New and Old Wars*, Cambridge, Polity Press.
- KAMM, F. (2004) Failures of Just War Theory: Terror, Harm, and Justice. *Ethics*, 114, 650-692.
- KEDOURIE, E. (1993) *Nationalism*, Oxford, Blackwell Publishers.
- KEITH, L. (2002) Constitutional Provisions for Individual Human Rights (1977-1996): Are They More Than mere 'Window Dressing?' *Political Research Quarterly*, 55, 111-143.
- KELLER, L. (2008) The False Dichotomy of Peace versus Justice and the International Criminal Court. *Hague Justice Journal*, 3, 12-47.
- KEOHANE, R. (2008) Political Authority After Intervention: Gradations in Sovereignty. IN HOLZGREFE, J. & KEOHANE, R. (Eds.) *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, Cambridge, Cambridge University Press.
- KIM, H. & SIKKINK, K. (2010) Explaining the Deterrence Effects of Human Rights Prosecutions for Transitional Countries. *International Studies Quarterly*, 54, 939-963.
- KLEINIG, J. (2009) The Nature of Consent. IN MILLER, F. & WERTHEIMER, A. (Eds) *The Ethics of Consent: Theory and Practice*, Oxford, Oxford University Press.
- KOEMAN, D. (2007) A Realistic and Effective Constraint on the Resort to Force? Pre-Commitment to Jus in Bello and Jus Post Bellum as Part of the Criteria of Right Intention. *Journal of Military Ethics*, 6, 198-220.
- KOLB, R. (1997) Origin of the Twin Terms Jus Ad Bellum/Jus In Bello. *International Review of the Red Cross*, 320, 553-562. Online at: <http://www.icrc.org/eng/resources/documents/misc/57jnuu.htm>
- KNIGHT, D. (1985) Territory and People or People and Territory Thoughts on Postcolonial Self-Determination. *International Political Science Review*, 6, 248-272.
- KOSKENNIEMI, M. (1994) National Self-Determination Today: Problems of Legal Theory and Practice. *The International Comparative Law Quarterly*, 43, 241-269.
- KRAIN, M. (1997) State-Sponsored Mass Murder: The Onset and Sverity of Genocides and Politicides. *The Journal of Conflict Resolution*, 41, 331-360.
- LACINA, B. & GLEDITSCH, N. (2005) Monitoring Trends in Global Combat: A New Dataset of Battle Deaths. *European Journal of Population*, 21, 145-166.
- LAITIN, D. (1999) Somalia: Civil War and International Intervention. IN WALTER, B. & SNYDER, J. (Eds.) *Civil Wars, Insecurity, and Intervention*, New York Columbia University Press.
- LANCASTER, P. & LACAILLE, G. (2011) *Diagnostic Study of The Lord's Resistance Army*, Washington DC, World Bank.

- LATIGO, J. (2008) Northern Uganda: Tradition-Based Practices in the Acholi Region. IN HUYSE, L. & SALTER, M. (Eds.) *Traditional Justice and Reconciliation after Violent Conflict; Learning from African Experiences*, Stockholm, International IDEA.
- LAZAR, S. (2010) The Responsibility Dilemma for Killing In War: A Review Essay. *Philosophy & Public Affairs*, 38, 180-213.
- LEBOR, A. (2006) *Complicity with Evil: The United Nations in the Age of Modern Genocide*, New Haven Yale University Press.
- LEVINSON, S. (1973) Responsibility for Crimes of War. *Philosophy and Public Affairs*, 2, 244-273.
- LIE, T., BINNINGSBO, H., & GATES, S. (2007) Post-Conflict Justice and Sustainable Peace. *World Bank Policy Research Working Paper*, No. 4191, Washington D.C., World Bank. Online at: http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2007/04/09/000016406_20070409111614/Rendered/PDF/wps4191.pdf
- LIGHT, M. (2001) Exporting Democracy. IN SMITH, K. & LIGHT, M. (Eds.) *Ethics and Foreign Policy*, Cambridge, Cambridge University Press.
- LISCHER, S. (2003) Collateral Damage: Humanitarian Assistance as a Cause of Conflict. *International Security*, 28, 79-109.
- LOCKE, J. (1980) *Second Treatise of Government*, Cambridge, Hackett Publishing.
- LONGMAN, T. (2010) An Assessment of Rwanda's Gacaca Courts. *Peace Review*, 21, 304-312.
- LUBAN, D. (1980a) Just War and Human Rights. *Philosophy and Public Affairs*, 9, 160-181.
- LUBAN, D. (1980b) The Romance of the Nation-State. *Philosophy and Public Affairs*, 9, 392-397.
- LUBAN, D. (1990) Just War and Human Rights. IN BEITZ, C., COHEN, M., SCANLON, T. & SIMMONS, J. (Eds.) *International Ethics*, Princeton, Princeton University Press.
- LUBAN, D. (2002) Intervention and Civilization: Some Unhappy Lessons of the Kosovo War. IN DEGREIFF, P. & CRONIN, C. (Eds) *Global Justice and Transnational Politics*, Cambridge, MIT Press.
- LUCAS, G. JR. (2001) *Perspectives on Humanitarian Intervention*, Berkeley, University of California.
- LUCAS, G. JR. (2003) The Role of the 'International Community' in Just War Tradition – Confronting the Challenges of Humanitarian Intervention and Preemptive War. *Journal of Military Ethics*, 2, 122-144.
- LUCAS, G. JR. (2006) From *jus ad bellum* to *jus ad pacem*; re-thinking the just-war criteria for the use of military force for humanitarian ends. IN CHATTERJEE, D. & SCHEID, D. (Eds.) *Ethics and Foreign Intervention*, Cambridge, Cambridge University Press.
- LUCAS, G. JR. (2007) 'Inconvenient Truths' – Moral Challenges to Combat Leadership in the New Millennium, Presented at 20th Annual Joseph Reich, Sr. Memorial Lecture, US Air Force Academy (Colorado Springs, 7 Nov 2007). Online at: <http://www.usna.edu/ethics/Publications/Inconvenient%20Truths%20for%20USAF%20Academy.pdf>
- LUCAS, G. JR. (2009b) 'This is Not Your Father's War' Confronting the Moral Challenges of 'Irregular War,' Presented at NATO 60th Anniversary Conference (Monterey, 26 Feb 2009). Online at:

- http://www.mcgeorge.edu/Documents/publications/jnslp/_06_LUCAS%20Master%2012%2008-25-09.pdf
- LUCAS, G. JR. (2010) 'Methodological Anarchy': Arguing About Preventive War. IN WERTHEIMER, R. (Ed.) *Empowering Our Military Conscience: Transforming Just War Theory and Military Moral Education*, Surrey, Ashgate Publishing Ltd.
- LYONS, D. (1975) Welcome Threats and Coercive Offers. *Philosophy*, 50, 425-436.
- MACDONALD, M. (2009) Natural Rights. IN WALDRON, J. (Ed.) *Theories of Rights*, Oxford, Oxford University Press.
- MACK, E. (1980) Bad Samaritanism and the Causation of Harm. *Philosophy and Public Affairs*, 9, 230-259.
- MALLINDER, L. (2007) Can Amnesties and International Justice be Reconciled? *The International Journal of Transitional Justice*, 1, 208-230.
- MARGALIT, A. & RAZ, J. (1990) National Self-Determination. *The Journal of Philosophy*, 87, 439-461.
- MARGALIT, A. & WALZER, M. (2009) Israel: Civilians and Combatants. *The New York Review of Books*, May 14, 21-11.
- MARSHALL, M. & COLE, B. (2009) *Global Report 2009: Conflict, Governance, and State Fragility*, Center for Systemic Peace. Online at: www.systemicpeace.org
- MARSHALL, M., JAGGARS, K., & GURR, T. (2011) *Polity IV Project: Political Regime Characteristics and Transitions, 1800-2010*, Center for Systemic Peace. Online at: <http://www.systemicpeace.org/polity/polity4.htm>
- MAY, L. (2007) *War Crimes and Just War*, Cambridge, Cambridge University Press.
- MAYALL, J. (1999) Sovereignty, Nationalism, and Self-determination. *Political Studies*, 47, 474-502.
- MCCORQUODALE, R. (1994) Self-Determination: A Human Rights Approach. *The International and Comparative Law Quarterly*, 43, 857-885.
- MCCORQUODALE, R. (1996) Human Rights and Self-Determination. IN SELLERS, M. (Ed.) *The New World Order: Sovereignty, Human Rights, and the Self-Determination of Peoples*, Oxford, Berg.
- MCCREADY, D. (2009) Ending the War Right: Jus Post Bellum and the Just War Tradition. *Journal of Military Ethics*, 8, 66-78.
- MCDERMOTT, D. (2001) The Permissibility of Punishment. *Law and Philosophy*, 20, 403-432.
- MCDERMOTT, D. (2008) Analytical Political Philosophy. IN LEOPOLD, D. & STEARS, M. (Eds) *Political Theory: Methods and Approaches*, Oxford, Oxford University Press.
- MCFAUL, M. (2004) Democracy Promotion as a World Value. *The Washington Quarterly*, 28, 147-163.
- MCMAHAN, J. (1993) Killing, Letting Die, and Withdrawing Aid. *Ethics*, 103, 250-279.
- MCMAHAN, J. (1996) Intervention and Collective Self-Determination. *Ethics and International Affairs*, 10, 1-24.
- MCMAHAN, J. (1997) The Limits of National Particularity. IN MCKIM, R. & MCMAHAN, J. (Eds.) *The Morality of Nationalism*, Oxford, Oxford University Press.
- MCMAHAN, J. (2005) Just Cause for War. *Ethics & International Affairs*, 19, 1-21.
- MCMAHAN, J. (2009a) *Killing in War*, Oxford, Oxford University Press.

- MCMAHAN, J. (2009b) The Morality of Military Occupation. *Loyola International and Comparative Law Review*, 31, 101-123.
- MCMAHAN, J. (2010) The Just Distribution of Harms Between Combatants and Noncombatants. *Philosophy & Public Affairs*, 38, 342-379.
- MELZER, N. (2009) *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, Geneva, International Committee of the Red Cross.
- MEREDITH, M. (2006) *The State of Africa: A History of Fifty Years of Independence*, London, Simon & Schuster.
- MIALL, H., RAMSBOTHAM, O. & WOODHOUSE, T. (2001) *Contemporary Conflict Resolution*, Cambridge Polity Press.
- MILL, J.S. (1865) *On Liberty*, London, Longman, Green, Longman, Roberts and Green.
- MILLER, D. (1998) Secession and the Principle of Nationality. IN MOORE, M. (Ed.) *National Self-Determination and Secession*, Oxford, Oxford University Press.
- MILLER, D. (1999) *On Nationality*, Oxford, Oxford University Press.
- MILLER, D. (2001a) Distributing Responsibilities. *The Journal of Political Philosophy*, 9, 453-471.
- MILLER, D. (2001b) Nationality in Divided Societies. IN GAGNON, A. & TULLY, J. (Ed.) *Multinational Democracies*, Cambridge, Cambridge University Press.
- MILLER, D. (2006) The Responsibility to Protect Human Rights. Presented at Global Governance workshop, Princeton University (Princeton, February). Online at: http://www.princeton.edu/~pcglobal/conferences/normative/papers/Session6_Miller.pdf
- MILLER, D. (2007) *National Responsibility and Global Justice*, Oxford, Oxford University Press.
- MILLER, L. & MOSKOS, C. (1995) Humanitarians or Warriors?: Race, Gender, and Combat Status in Operation Restore Hope. *Armed Forces & Society*, 21, 615-637.
- MINOW, M. (1998) *Between Vengeance and Forgiveness; Facing History after Genocide and Mass Violence*, Boston, Beacon Press.
- MOELLENDORF, D. (2002) *Cosmopolitan Justice*, Oxford, Westview Press.
- MOELLENDORF, D. (2008) Jus ex Bello. *The Journal of Political Philosophy*, 16, 123-136.
- MONTGOMERY, T. S. (1995) Getting to Peace in El Salvador: The Roles of the United Nations Secretariat and ONUSAL. *Journal of Interamerican Studies and World Affairs*, 37, 139-172.
- MOORE, M. (1997) On National Self-Determination. *Political Studies*, 45, 900-913.
- MOORE, M. (1998) Introduction: The Self-Determination Principle and the Ethics of Secession. IN MOORE, M. (Ed.) *National Self-Determination and Secession*, Oxford, Oxford University Press.
- MOORE, M. (2001) *The Ethics of Nationalism*, Oxford, Oxford University Press.
- MORENO-OCAMPO, L. (2007) Building a Future on Peace and Justice, The Hague, ICC. Online at: http://www.icccpi.int/NR/rdonlyres/4E466EDB-2B38-4BAF-AF5F-005461711149/143825/LMO_nuremberg_20070625_English.pdf
- MORRIS, H. (1981) A Paternalistic Theory of Punishment. *Philosophical Quarterly*, 18, 263-271.
- MUNKLER, H. (2005) *The New Wars*, Cambridge, Polity Press.
- MURPHY, J. (1981) Consent, Coercion, and Hard Choices. *Virginia Law Review*, 67, 79-95.

- NDIKUMANA, L. & EMIZET, K. (2005) The Economics of Civil War: The Case of the Democratic Republic of Congo. IN COLLIER, P. & SAMBANIS, N. (Eds.) *Understanding Civil War: Evidence and Analysis*, Washington, D.C., World Bank.
- NELSON, W. (1980) *On Justifying Democracy*, London, Routledge.
- NEWMAN, E., PARIS, R., & RICHMOND, O. (2009) *New Perspectives on Liberal Peacebuilding*, Hong Kong, United Nations University Press.
- NGARUKO, F. & NKURUNZIZA J. (2005) Civil War and Its Duration in Burundi. IN COLLIER, P. & SAMBANIS, N. (Eds.) *Understanding Civil War: Evidence and Analysis*, Washington, D.C., World Bank.
- NITZSCHKE, H. & STUDDARD, K. (2005) The Legacies of War Economies: Challenges and Options for Peacemaking and Peacebuilding. *International Peacekeeping*, 12, 222-239.
- NORMAN, R. (1995) *Ethics, Killing & War*, Cambridge, Cambridge University Press.
- NOZICK, R. (1981) *Philosophical Explanations*, Oxford, Oxford University Press.
- NOZICK, R. (2007) Coercion. IN CARTER, I., KRMAER, M., & STEINER, H. (Eds.) *Freedom: A Philosophical Anthology*, Oxford, Blackwell Publishing.
- O'BRIEN, W. (1981) *The Conduct of a Just and Limited War*, Praeger Publishers.
- O'HANLON, M. & SINGER, P. (2004) The Humanitarian Transformation: Expanding Global Intervention Capacity. *Survival*, 46, 77-100.
- OGLESBY, E. & ROSS, A. (2009) Guatemala's Genocide Determination and the Spatial Politics of Justice. *Space and Polity*, 13.
- OLSEN, T., Payne, L., REITER, A. (2010) *Transitional Justice in the Balance: Comparing Processes, Weighing Efficacy*, Washington DC, United States Institute of Peace Press.
- O'NEILL, O. (1993) Kantian Ethics. IN SINGER, P. (Ed.) *A Companion to Ethics*, Oxford, Blackwell Publishing.
- O'NEILL, O. (2000) *Bounds of Justice*, Cambridge, Cambridge University Press.
- OREND, B. (2000). *Michael Walzer and Justice*, Cardiff, University of Wales Press.
- OREND, B. (2002) Justice After War. *Ethics and International Affairs*, 16, 43-56.
- OREND, B. (2006) *The Morality of War*, Peterborough, Broadview Press.
- OREND, B. (2008) Jus Post Bellum: A Just War Theory Perspective. IN STAHN, C. & KLEFFNER, J. (Eds.) *Jus Post Bellum: Towards a Law of Transition From Conflict to Peace*, The Hague, T.M.S Asser Press.
- ORENTLICHER, D. (1991) The Duty to Prosecute Human Rights Violations of a Prior Regime. *The Yale Law Journal*, 100, 2537-2615.
- OSMAN, A. & SQUARE, I. (2007) Introduction. IN OSMAN, A. & SQUARE, I. (Eds.) *Somalia at the Crossroads: Challenges and Perspectives on Reconstituting a Failed State*, London, Adonis & Abbey Publishers Ltd.
- PARIS, R. (1997) Peacebuilding and the Limits of Liberal Internationalism. *International Security*, 22, 54-89.
- PARIS, R. (2004) *At War's End*, Cambridge, Cambridge University Press.
- PARIS, R. (2007) *At War's End*, Cambridge, Cambridge University Press.
- PARIS, R. & SISK, T. (2010) *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*, New York, Routledge.
- PARFIT, D. (2011) *On What Matters*, Oxford, Oxford University Press.
- PATRICK, S. (2000) The Donor Community and the Challenge of Postconflict Recovery. IN FORMAN, S. & PATRICK, S. (Eds.) *Good Intentions: Pledges of Aid for Postconflict Recovery*, Boulder, Lynne Rienner Publishers.

- PATTISON, J. (2010a) Deeper Objections to the Privatisation of Military Force, *The Journal of Political Philosophy*, 18, 425-447.
- PATTISON, J. (2010b) *Humanitarian Intervention & The Responsibility to Protect: Who Should Intervene?* Oxford, Oxford University Press.
- PHILPOTT, D. (1995) In Defense of Self-Determination, *Ethics*, 105, 352-385.
- PLATTNER, M. (2005) Introduction. *Journal of Democracy*, 16, 5-8.
- POE, S., TATE, C., & KEITH, L. (1999) Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering Years 1976-1993. *International Studies Quarterly*, 43, 291-313.
- POGGE, T. (2000) The Moral Demands of Global Justice. *Dissent*, 47, 37-42.
- POGGE, T. (2001) The Influence of the Global Order on the Prospects for Genuine Democracy in the Developing Countries. *Ratio Juris*, 14, 326-343.
- POGGE, T. (2002) *World Poverty and Human Rights*, Cambridge, Polity Press.
- POWER, S. (2002) 'A Problem From Hell:' *America and the Age of Genocide*, New York, Harper Perennial.
- QUANE, H. (1998) The United Nations and the Evolving Right to Self-Determination. *The International and Comparative Law Quarterly*, 47, 537-572.
- RAWLS, J. (1955) Two Concepts of Rules. *The Philosophical Review*, 64, 3-32.
- RAWLS, J. (2002) *The Law of Peoples*, Cambridge, Harvard University Press.
- RAZ, J. (1988) *The Morality of Freedom*, Oxford, Oxford University Press.
- RAZ, J. (2009) Rights-Based Moralities. IN WALDRON, J. (Ed.) *Theories of Rights*. Oxford, Oxford University Press.
- REAUME, D. (1988) Individuals, Groups, and Rights to Public Goods. *The University of Toronto Law Journal* 38, 1-27.
- RECCHIA, S. (2009) Just and Unjust Postwar Reconstruction: How Much External Interference Can Be Justified? *Ethics & International Affairs*, 23, 165-187.
- REGAN, P. (1996) Conditions of Successful Third-Party Intervention in Intrastate Conflicts. *The Journal of Conflict Resolution*, 40, 336-359.
- REILLY, B. (2002) Elections in Post-conflict Scenarios: Constraints and Dangers. *International Peacekeeping*, 9, 118-139.
- REILLY, B. (2009) Post-War Elections: Uncertain Turning Points of Transition. IN JARSTAD, A. & SISK, T. (Eds.) *From War to Democracy: Dilemmas of Peacebuilding*, Cambridge, Cambridge University Press.
- REYNOLDS, A. (2005) Constitutional Medicine. *Journal of Democracy*, 16, 54-68.
- RIGBY, A. (2001) *Justice and Reconciliation After the Violence*, Boulder, Lynne Rienner Publishers.
- RICH, R. (2001) Bringing Democracy into International Law. *Journal of Democracy*, 12, 20-34.
- RICHMOND, O. (2011) *A Post-Liberal Peace*, New York, Routledge.
- ROBERTS, A. (2006) Transformative Military Occupation: Applying the Laws of War and Human Rights. *The American Journal of International Law*, 100, 580-622.
- RODIN, D. (2004) *War & Self-Defense*, Oxford, Oxford University Press.
- RODIN, D. (2008) Two Emerging Issues of Jus Post Bellum: War Termination and the Liability of Soldiers for Crimes of Aggression. IN STAHN, C. & KLEFFNER, J. (Eds.) *Jus Post Bellum: Towards a Law of Transition From Conflict to Peace*, The Hague, T.M.S Asser Press.

- RODIN, D. (2010) The Moral Inequality of Soldiers: Why jus in bello Asymmetry is Half Right. IN RODIN, D. & SHUE, H. (Eds.) *Just and Unjust Warriors*, Oxford, Oxford University Press.
- RODIN, D. & SHUE, H. (2010) Introduction. IN RODIN, D. & SHUE, H. (Eds.) *Just and Unjust Warriors*, Oxford, Oxford University Press.
- ROHT-ARRIAZA, N. (2006) *The Pinochet Effect; Transnational Justice in the Age of Human Rights*, Philadelphia, University of Pennsylvania Press.
- RUMMEL, R. (1995) Democracy, Power, Genocide, and Mass Murder. *The Journal of Conflict Resolution*, 39, 3-26.
- RUMMEL, R. (1998) *Statistics of Democide: Genocide and Mass Murder Since 1990*, Munster, Lit Verlag.
- RUMMEL, R. (2008) *Death by Government*, London, Transaction Publishers.
- RYAN, C. (2010) Moral Equality, Victimhood, and the Sovereignty Symmetry Problem. IN RODIN, D. & SHUE, H. (Eds.) *Just and Unjust Warriors*, Oxford, Oxford University Press.
- SANDEL, M. (2006) The Procedural Republic and the Unencumbered Self. IN GOODIN, R. & PETTIT, P. (Eds.) *Contemporary Political Philosophy: An Anthology*. Oxford, Blackwell Publishing.
- SARKEES, M. (2010a) *The COW Typology of War: Defining and Categorizing Wars* (Version 4 of the Data), CQ Press. Online at: <http://www.correlatesofwar.org/>
- SARKEES, M. (2010b) *Codebook for the Intra-State Wars v.4.0.: Definitions and Variables*, CQ Press. Online at: <http://www.correlatesofwar.org/>
- SASSOLI, M. (2009) Reparations. IN CHETAIL, V. (Ed.) *Post-Conflict Peacebuilding; A Lexicon*, Oxford, Oxford University Press.
- SCHOMERUS, M., ALLEN, T., VLASSENROOT, K. (2011) Obama Takes on the LRA: Why Washington Sent Troops to Central Africa. *Foreign Affairs*. Online at: <http://www.foreignaffairs.com/articles/136673/mareike-schomerus-tim-allen-and-koen-vlassenroot/obama-takes-on-the-lra?page=show>
- SCHUCK, M. (1994) When the Shooting Stops: Missing Elements in Just War Theory. *The Christian Century*, 111, 982-983.
- SEN, A. (1985) Well-being, Agency and Freedom: The Dewey Lectures 1984. *The Journal of Philosophy*, 82, 169-221.
- SEN, A. (1999) Democracy as a Universal Value. *Journal of Democracy*, 10, 3-17.
- SEYBOLT, T. (2008) *Humanitarian Military Intervention: The Conditions for Success and Failure*, Oxford, Oxford University Press.
- SHAWCROSS, W. (2001) *Deliver Us From Evil: Warlords and Peacekeepers in a World of Endless Conflict*, London, Bloomsbury Publishing.
- SHUE, H. (1996) *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, Princeton, Princeton University Press.
- SHUE, H. (1998) Let Whatever is Smouldering Erupt? Conditional Sovereignty, Reviewable Intervention and Rwanda 1994. IN PAOLINI, A., JARVIS, A., & REUS-SMIT, C. (Eds.) *Between Sovereignty and Global Governance*, New York, St. Martin's Press.
- SHUE, H. (2003) Limiting Sovereignty. IN WELSH, J. (Ed.) *Humanitarian Intervention and International Relations*, Oxford, Oxford University Press.
- SHUE, H. (2006) Bombing to Rescue?: NATO's 1999 bombing of Serbia. IN CHATTERJEE, D. & SCHEID, D. (Eds.) *Ethics and Foreign Intervention*, Cambridge, Cambridge University Press.
- SINGER, P. (1972) Famine, Affluence, and Morality. *Philosophy and Public Affairs*, 1, 229-243.

- SISK, T. (2009) Peacebuilding as Democratization: Findings and Recommendations. IN JARSTAD, A. & SISK, T. (Eds.) *From War to Democracy: Dilemmas of Peacebuilding*, Cambridge, Cambridge University Press.
- SLATER, J. & NARDIN, T. (1986) Nonintervention and Human Rights. *The Journal of Politics*, 48, 86-96.
- SMITH, H. (2005) What Costs Will Democracies Bear? A Review of Popular Theories of Casualty Aversion. *Armed Forces & Society*, 31, 487-512.
- SMITH, M. & DEE, M. (2003) *Peacekeeping in East Timor: The Path to Independence*, Boulder, Lynne Rienner Publishers.
- SNODGRASS, D. (2004) Restoring Economic Functioning in Failed States. IN ROTBERG, R. (Ed.) *When States Fail: Causes and Consequences*, Princeton, Princeton University Press.
- SNYDER, J. & JERVIS, R. (1999) Civil War and the Security Dilemma. IN WALTER, B. & SNYDER, J. (Eds.) *Civil Wars, Insecurity, and Intervention*, New York, Columbia University Press.
- SNYDER, J. & VINJAMURI, L. (2003/4) Trials and Errors: Principle and Pragmatism in Strategies of International Justice. *International Security*, 28, 5-44.
- SPECTOR, B. (2011) *Negotiating Peace and Confronting Corruption: Challenges for Postconflict Societies*, Washington DC, United States Institute of Peace.
- STATMAN, D. (2006) Supreme Emergencies Revisited. *Ethics*, 117, 58-79.
- STATMAN, D. (2008) On the Success Condition for Legitimate Self-Defence. *Ethics*, 118, 659-686.
- STEDMAN, S. (1997) Spoiler Problems in Peace Processes. *International Security*, 22, 5-53.
- STEINER, H. (2007) An Essay on Rights. IN CARTER, I., KRMAER, M., & STEINER, H. (Eds.) *Freedom: A Philosophical Anthology*, Oxford, Blackwell Publishing.
- STIRK, P. (2009) *The Politics of Military Occupation*, Edinburgh, Edinburgh University Press.
- SWART, G. (2007) Somalia: A Failed State Governed by a Failing Government? IN OSMAN, A. & SQUARE, I. (Eds.) *Somalia at the Crossroads: Challenges and Perspectives on Reconstituting a Failed State*, London, Adonis & Abbey Pubilshers Ltd.
- TALBOTT, W. (2005) *Which Rights Should Be Universal?* New York, Oxford University Press.
- TAMIR, Y. (1991) The Right to National Self-Determination. *Social Research*, 58, 565-590.
- TAN, K. (2006) *Justice Without Borders: Cosmopolitanism, Nationalism, and Patriotism*, Cambridge, Cambridge University Press.
- TAULBEE, J. (2002) The Privatization of Security: Modern Conflict, Globalization and Weak States. *Civil Wars*, 5, 1-24.
- TERHUNE, K. (1964) Nationalism among Foreign and American Students: An Exploratory Study. *The Journal of Conflict Resolution*, 8, 256-270.
- TESON, F. (2006) Eight Principles for Humanitarian Intervention. *Journal of Military Ethics*, 5, 93-113.
- TESON, F. (2008) The Liberal Case for Humanitarian Intervention. IN HOLZGREFE, J. & KEOHANE, R. (Eds.) *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, Cambridge, Cambridge University Press.

- TOMFORDE, M. (2005) Motivation and Self-Image Among German Peacekeepers, *International Peacekeeping*, 12, 576-585.
- UDOMBANA, N. (2005) When Neutrality is a Sin: The Darfur Crisis and the Crisis of Humanitarian Intervention in Sudan. *Human Rights Quarterly*, 27, 1149-1199.
- UCDP (2010) *Active Conflicts by Type and Year/Armed Conflicts by Type, 1946-2010*, Uppsala, Uppsala University. Online at: http://www.pcr.uu.se/research/ucdp/charts_and_graphs/
- UN (1992) *An Agenda For Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, New York, United Nations. Online at: <http://www.un.org/docs/SG/agpeace.html>
- UN (1995) *Supplement to An Agenda For Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, New York, United Nations. Online at: <http://www.un.org/Docs/SG/agsupp.html#POSTCONFLICT>
- UN (2003) *Handbook on United Nations Multidimensional Peacekeeping Operations*, New York: United Nations.
- UN (2004) *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*. New York, United Nations. Online at: <http://www.unrol.org/doc.aspx?n=2004+report.pdf>
- UN (2011) *Contributors to United Nations Peacekeeping Operations: Monthly Summary of Contributions*. New York, United Nations. Online at: http://www.un.org/en/peacekeeping/contributors/2011/mar11_1.pdf
- USIP (2002) *Report of the Chilean National Commission on Truth and Reconciliation*, Notre Dame/United States Institute of Peace & University of Notre Dame Press. Online at: http://www.usip.org/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf
- USIP (2004) *International Commission of Inquiry for Burundi: Final Report*, United States Institute of Peace. Online at: <http://www.usip.org/files/file/resources/collections/commissions/Burundi-Report.pdf>
- UVIN, P. & MIRONKO, C. (2003) Western and Local Approaches to Justice in Rwanda. *Global Governance*, 9, 219-231.
- VERSHBOW, A. (2011) *Testimony for House Foreign Affairs Committee Hearing: The Deployment of U.S. Forces in Central Africa and Implementation of the Lord's Resistance Army Disarmament and Northern Uganda Recovery Act*. Online at: <http://foreignaffairs.house.gov/112/ver102511.pdf>
- VLASTOS, G. (2009) Justice and Equality. IN WALDRON, J. (Ed.) *Theories of Rights*, Oxford, Oxford University Press.
- WALDRON, J. (1993) *Liberal Rights: Collected Papers 1981-1991*, Cambridge, Cambridge University Press.
- WALTER, B. (1999a) Introduction. IN WALTER, B. & SNYDER, J. (Eds.) *Civil Wars, Insecurity, and Intervention*, New York, Columbia University Press.
- WALTER, B. (1999b) Designing Transitions from Civil War. IN WALTER, B. & SNYDER, J. (Eds.) *Civil Wars, Insecurity, and Intervention*, New York, Columbia University Press.
- WALZER, M. (1980) The Moral Standing of States: A Response to Four Critics. *Philosophy and Public Affairs*, 9, 209-229.
- WALZER, M. (2004) *Arguing About War*, New Haven, Yale University Press.
- WALZER, M. (2006) *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York, Basic Books.

- WAYMAN, F. & TAGO, A. (2010) Explaining the Onset of Mass Killing, 1949-87. *Journal of Peace Research*, 47, 3-13.
- WEALE, A. (2007) *Democracy*, Hampshire, Palgrave Macmillan.
- WEINSTEIN, J. & FRANCISCO, L. (2005) The Civil War in Mozambique: The Balance Between Internal and External Influences. IN COLLIER, P. & SAMBANIS, N. (Eds.) *Understanding Civil War: Evidence and Analysis*, Washington, D.C., World Bank.
- WELSH, J. (2004) Taking Consequences Seriously: Objections to Humanitarian Intervention. IN WELSH, J. (Ed.) *Humanitarian Intervention and International Relations*, Oxford, Oxford University Press.
- WELSH, J. (2008a) The Rwanda Effect: The Development and Endorsement of the 'Responsibility to Protect.' IN CLARK, P. & KAUFMAN, Z. (Eds.) *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*, New York, Columbia University Press.
- WELSH, J. (2008b) The Security Council and Humanitarian Intervention. IN LOWE, V., ROBERTS, A., WELSH, J., & ZAUM, D. (Eds.) *The United Nations Security Council and War*, Oxford, Oxford University Press.
- WELSH, J. (2010) Implementing the 'Responsibility to Protect': Where Expectations Meet Reality. *Ethics & International Affairs*, 24, 415-430.
- WERTHEIMER, A. (2007) Coercion. IN CARTER, I., KRMAER, M., & STEINER, H. (Eds.) *Freedom: A Philosophical Anthology*, Oxford, Blackwell Publishing.
- WHEELER, N. (2001) Review article: Humanitarian intervention after Kosovo: emerging norm, moral duty or the coming of anarchy? *International Affairs* 77, 113-128.
- WHEELER, N. (2002) *Saving Strangers*, Oxford, Oxford University Press.
- WILLIAMS, R. & CALDWELL, D. (2006) Jus Post Bellum: Just War Theory and the Principles of Just Peace. *International Studies Perspectives*, 7, 309-320.
- WOLPE, H. & MCDONALD, S. (2006) Training Leaders for Peace. *Journal of Democracy*, 17, 132-138.
- WOODS, N. (2005) The Shifting Politics of Foreign Aid. *International Affairs*, 81, 393-409.
- WOODWARD, S. (1999) Bosnia and Herzegovina: How Not to End Civil War. IN WALTER, B. & SNYDER, J. (Eds.) *Civil Wars, Insecurity, and Intervention*, New York, Columbia University Press.
- WOODWARD, S. (2002) Economic Priorities for Successful Peace Implementation. IN STEDMAN, S., ROTHCHILD, D., COUSENS, E. (Eds.) *Ending Civil Wars: The Implementation of Peace Agreements*, Boulder, Lynne Rienner Publishers.
- WRIGHT, C. (2007) Tackling Conflict Diamonds: the Kimberley Process Certification Scheme. *International Peacekeeping*, 11, 697-708.
- YANNIS, A. (2002) State Collapse and Its Implications for Peace-Building and Reconstruction. *Development and Change*, 33, 817-835.
- ZAUM, D. (2009) The Norms and Politics of Exit: Ending Postconflict Transitional Administrations. *Ethics & International Affairs*, 23, 189-208.
- ZIMMERMAN, D. (1981) Coercive Wage Offers. *Philosophy & Public Affairs*, 10, 121-145.
- ZUPAN, D. (2010) A Presumption Against the Moral Equality of Soldiers. IN RODIN, D. & SHUE, H. (Eds.) *Just and Unjust Warriors*, Oxford, Oxford University Press.

ZURCHER, C. (2011) Building Democracy While Building Peace. *Journal of Democracy*, 22, 81-95.